

**INTERLOCAL AGREEMENT BETWEEN
CITY OF BRYAN AND THE TEXAS A&M UNIVERSITY SYSTEM
FOR MULTIPURPOSE FACILITY**

This Interlocal Agreement ("Agreement") is made effective as of the Execution Date by and between the BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas, for the use and benefit of TEXAS A&M UNIVERSITY, a member of The Texas A&M University System ("TAMU"), and CITY OF BRYAN, TEXAS ("COB"), a Texas home-rule municipal corporation and local government, for the times and dates indicated herein. TAMU and COB are each referred to herein as a "Party" and collectively referred to herein as the "Parties".

WHEREAS, Texas Government Code, Chapter 791, also known as the Interlocal Cooperation Act, authorizes local governments to contract with each other and with agencies of the state, to perform functions or services each party to the contract is authorized to perform individually; and

WHEREAS, COB desires strong quality of life through recreation opportunities for its citizens; and

WHEREAS, COB desires increased sports destination tourism at Travis Bryan Midtown Park; and

WHEREAS, COB is committed to positive engagement with Texas A&M University and its students, faculty and administration through sports and recreation opportunities; and

WHEREAS, COB and TAMU each desire to enter into this Agreement in order to delineate the intended use by the Texas A&M University Department of Athletics Tennis Team of the indoor multipurpose facility to be constructed by COB in Travis Bryan Midtown Park and which will accommodate collegiate tennis matches; and

WHEREAS, COB has issued or will issue tax-exempt obligations (collectively, "Obligations") to finance and refinance the costs of constructing, furnishing and equipping the Facility; and

WHEREAS, COB and TAMU each represent it is authorized to enter into this Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual covenants made by TAMU and COB to be respectively kept and performed, the Parties agree as follows:

Section 1. Purpose of Agreement

1.1 The purpose of this Agreement is to establish the responsibilities of TAMU and COB regarding the construction and use of a COB owned Multipurpose Facility in Travis Bryan Midtown Park ("Facility"), specifically an indoor tennis facility of approximately 65,000 square feet that can accommodate a variety of sports and other activities and will encompass six (6) tennis courts, to be constructed and maintained in the approximate location within Travis Bryan Midtown Park as shown on Exhibit "A."

Section 2. Definitions

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Annual Fee” means a fee paid for an annual license to use the Facility per Section 4.1 herein.

“COB” means the City of Bryan, Texas, a home rule municipality.

“Commencement Date” means the same day as the Execution Date.

“Completion Date” means the date a certificate of occupancy is issued for the Facility.

“Default” means the failure of a Party hereto to keep, observe, or perform any of the terms, covenants, or agreements contained in this Agreement if such failure is not remedied by such party within fifteen (15) calendar days after written notice from the non-defaulting party, or the Party fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within fifteen (15) calendar days but is otherwise reasonably susceptible of cure, the time within which the Party is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith.

“Early Termination” means an event causing or permitting the termination of this Agreement before the Termination Date as provided in Section 3.3 of this Agreement.

“Event of Default” means the occurrence when a Default is not cured within one hundred eighty (180) calendar days after notice from the non-defaulting party of such default, notwithstanding the Party’s diligent prosecution of curative efforts.

“Execution Date” means the date upon which the final signature is affixed to this Agreement.

“Expense” means all reasonable expenses as defined by Generally Accepted Accounting Principles in the United States (“GAAP”) incurred by COB in the promotion, operation, management, and maintenance of the Facility, including but not limited to the following: (i) employee payroll, benefits, severance costs, bonus and related costs, and the cost of background checks as required pursuant to this Agreement; (ii) cost of operating supplies, including general office supplies; (iii) advertising, marketing, group sales, and public relations costs; (iv) cleaning expenses; (v) data processing costs; (vi) dues, subscriptions and membership costs; (vii) signage, printing and stationary costs; (viii) postage and freight costs; (ix) equipment rental costs; (x) minor repairs, maintenance, and equipment servicing; (xi) security expenses; (xii) telephone and communication charges; (xiii) reasonable travel expenses submitted in accordance with COB’s Employee Travel Policy; (xiv) cost of employee uniforms and identification; (xv) exterminator and trash removal costs, if applicable; (xvi) computer, software, hardware and training costs for the onsite employees; (xvii) utility expenses; (xviii) office expenses; (xix) audit and accounting fees arising from COB’s operation of the Facility; (xx) all bond and insurance costs, including but not limited to personal property, liability, and workers compensation insurance, including any deductibles or self-insured retention; (xxi) commissions and all other fees payable to third parties (*e.g.* commissions relating to food, beverage and merchandise concessions services); (xxii) costs incurred under Service Contracts and other agreements relating to Facility operations and/or management including but not limited to amounts COB pays a third-party contractor for its services to operate and supervise the Facility, and (xxiii) all debt service associated with the Facility.

“Expiration Date” means the last calendar day of the thirtieth (30th) year after the Commencement Date, unless this Agreement is either: (i) sooner terminated pursuant to any applicable provision hereof, or (ii) extended pursuant to one or more Renewal Options.

“Facility” means COB owned Multipurpose Facility to be constructed in Travis Bryan Midtown Park, specifically an indoor tennis facility of approximately 65,000 square feet that can accommodate a variety of sports and other activities and will encompass six (6) tennis courts, to be constructed and maintained in the approximate location within Travis Bryan Midtown Park as shown on Exhibit A.

“Final Notice” means notice given after an Event of Default of the non-defaulting Party's intention to terminate this Agreement after the expiration of a period of thirty (30) calendar days from the date such Final Notice is delivered unless the Event of Default is cured.

“Income” means the difference between Revenue and Expense as defined herein.

“Management Firm” means a third-party qualified and experienced sports facility management entity engaged by and on behalf of COB for the operation and supervision of the Facility.

“NCAA” means National Collegiate Athletic Association.

“Revenue” means all revenues as defined by GAAP generated by COB’s operation of the Facility, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include TAMU Admissions Fees, TAMU private lesson fees or TAMU tennis-related sport camp fees nor shall it include the Annual Fee paid by TAMU.

“Renewal Notice” means written notice provided no more than twenty-four (24) months and no less than twelve (12) months prior to the expiration of the Term then in effect from TAMU to COB of TAMU’s election to exercise a Renewal Option.

“Renewal Option” means an option to extend the Term of this Agreement for an additional term of ten (10) years.

“Renewal Term” means an additional term of ten (10) years that commences at 12:00 a.m. on the day immediately following the expiration of the Term then in effect, and upon the same terms, conditions and covenants as are contained in this Agreement.

“TAMU” means Texas A&M University, including its Department of Athletics Tennis Teams.

“TAMU Admissions Fees” means fees charged by TAMU at its discretion to spectators to TAMU sponsored tennis matches and Tournaments for admission to the Facility.

“Termination Date” means the last calendar day of the thirtieth (30th) year after the Commencement Date, unless this Agreement is extended pursuant to one or more Renewal Options, in which event the last calendar day of the final Renewal Term shall be the Termination Date.

“Tournament” means an inter-collegiate or intramural tennis competition involving more than two teams.

Section 3. Term

3.1 Term. The term of this Agreement shall be for thirty (30) years (or as extended by the Renewal Option) and shall commence on the Execution Date (“Commencement Date”), and the Term shall expire on the Expiration Date (as may be extended by the Renewal Option, the “Term”). The Expiration Date

means the last calendar day of the thirtieth (30th) year after the Commencement Date, unless this Agreement is either: (i) sooner terminated pursuant to any applicable provision hereof in which event such date of termination shall be the "Expiration Date"; or (ii) extended pursuant to one or more Renewal Options, in which event the last calendar day of the final Renewal Term shall be the "Expiration Date."

3.2 Renewal Term. Subject to the terms and conditions of this Agreement and provided that (i) this Agreement is in full force and effect and (ii) no TAMU default exists on either the date of exercise or on the date of commencement of the Renewal Term, TAMU shall have the right to two (2) renewal options (each, a "Renewal Option") to extend the Term of this Agreement for an additional term of ten (10) years each (each, a "Renewal Term") that commences at 12:00 a.m. on the day immediately following the expiration of the Term then in effect, and upon the same terms, conditions and covenants as are contained herein by delivering written notice to COB (the "Renewal Notice") of such election no more than twenty-four (24) months and no less than twelve (12) months prior to the expiration of the Term then in effect; provided, however, that notwithstanding the foregoing, TAMU's right to exercise the Renewal Option shall be subject to TAMU having timely delivered the Renewal Notice to COB pursuant to the terms and conditions of this Section 3.2. For the avoidance of confusion, the Parties hereto agree that the maximum Term of this Lease shall be fifty (50) years from the Commencement Date.

3.3 Termination. Each of the following shall constitute an event causing or permitting the termination of this Agreement before the Termination Date (an "Early Termination") without penalty or prejudice to the rights or other remedies of the Party terminating the Agreement in accordance with this section.

3.3.1 Upon the mutual written agreement of the Parties to terminate the Agreement;

3.3.2 By COB upon the occurrence of a casualty loss;

3.3.3 Upon the occurrence of the taking of the Facility by the power of eminent domain or by agreement in lieu of the exercise of eminent domain;

3.3.4 Upon the occurrence of an Event of Default by TAMU under Section 10.1, COB may terminate this Agreement pursuant to Section 10.2;

3.3.5 Upon the occurrence of an Event of Default by COB under Section 10.1, TAMU may terminate this Agreement pursuant to Section 10.2;

3.3.6 In the event of non-appropriation of funding by the Bryan City Council, this Agreement shall terminate as of September 30 of the last fiscal year for which funds were appropriated; or

3.3.7 If an event of Force Majeure continues for more than 360 days, either Party may terminate this Agreement upon sixty (60) days written notice.

Section 4. Consideration

4.1 Annual Fee. TAMU shall pay COB, at the offices of its Fiscal Services Department or its successor, as an annual license fee for TAMU's use of the Facility as provided herein, an amount not to exceed Six Hundred Seventy-five Thousand and No/100 Dollars (\$675,000.00) each year during the Term. The Annual Fee shall be paid in advance on the Commencement Date and upon each anniversary thereafter for the Term of this Agreement.

4.2 COB Funding. COB will annually budget funding to maintain and operate the Facility of Six Hundred Seventy-five Thousand and No/100 Dollars (\$675,000.00) equal to the amount TAMU pays for the respective year's Annual Fee.

4.3 Competition Admission Fees. TAMU may at its discretion charge and retain admission fees for spectators to TAMU sponsored tennis matches and Tournaments ("TAMU Admissions Fees").

Section 5. Facility Income

5.1 Reserve. The Parties agree COB will create a reserve account ("Reserve") into which funds may be deposited and retained to contribute to the Facility's maintenance and operation for years in which there is negative Income. The Reserve's balance will be the greater of \$150,000.00 or ninety (90) days operating expenditures based on the given year's fiscal budget unless agreed in writing otherwise by the Parties ("Target Balance").

5.2 Income Allocation. The Parties agree that Income resulting from operations after the Completion Date for each fiscal year during the Term, less Reserve, shall be distributed equally between the Parties.

5.2.1 In the event of positive Income for the immediate past fiscal year in which the Reserve has less than the Target Balance, Income up to an amount to reach the Target Balance shall be deposited to the Reserve. For any Income in excess of that necessary to reach the Target Balance, COB shall remit to TAMU an amount equal to fifty percent (50%) of such excess within sixty (60) days of the close of COB's fiscal year.

5.2.2 In the event of positive Income for the immediate past fiscal year in which the Reserve has obtained the Target Balance, COB shall remit to TAMU an amount equal to fifty percent (50%) of any positive Income within sixty (60) days of the close of COB's fiscal year.

5.2.3 In the event of negative Income for the immediate past fiscal year, COB may draw funds from the Reserve sufficient to eliminate the year's deficit. If the Reserve does not have a sufficient balance to satisfy the deficit, COB will fund the deficit and be reimbursed for the amount funded from positive Income in the following fiscal year(s). After being reimbursed for funding any deficit, COB will allocate any remaining positive Income as set forth in section 5.2.1 . This reimbursement obligation to COB supersedes the provisions of sections 5.2.1 and 5.2.2.

Section 6. Construction of Facility

6.1 Design. COB will at its cost and expense engage one or more qualified persons or firms, in the manner required by law, to proceed with the preparation of plans and specifications for construction of an indoor multipurpose facility of approximately 65,000 square feet encompassing six (6) tennis courts meeting National Collegiate Athletic Association ("NCAA") and United States Tennis Association ("USTA") standards. The plans and specifications will be prepared in consultation with TAMU.

6.2 Construction. Upon completion of plans and specifications for the Facility developed in collaboration with TAMU, COB agrees to promptly enter a contract with a qualified contractor or contractors, in the manner required by law, for construction of the Facility according to such plans and design, at a cost to COB not exceeding \$20,000,000.00, including the cost of planning and design and the cost of all improvements. TAMU agrees to be available to COB for consultation on any question that may arise during construction of the Facility.

6.3 Completion Date. The Facility will be substantially completed and ready for use by TAMU prior to the expiration of twenty-four (24) months from the Commencement Date, as adjusted for construction delays caused by inclement weather and other Force Majeure. Construction of the Facility will be deemed to be substantially completed when a certificate of occupancy has been issued ("Completion Date").

Section 7. Intended Use

7.1 General Use. The Facility will be used (a) by COB primarily for the practice and play of the game of tennis and other sports and events, as a recreational amenity within Travis Bryan Midtown Park, and (b) by TAMU as a tennis practice, competition and NCAA Tournament facility.

7.2 Schedule. TAMU will provide COB its schedule, in writing, six (6) months in advance of (a) practice times and dates for the TAMU tennis team and (b) times and dates for TAMU and NCAA held/sponsored competitions, subject to COB's Director of Parks, Recreation & Facilities or Management Firm's (as the case may be) approval, which approval shall not be unreasonably withheld or delayed. If COB does not give TAMU written notice of any scheduling conflicts within thirty (30) days following the date of COB's receipt of TAMU's schedule, then TAMU shall be entitled to use the Facility on the dates and times set forth in TAMU's schedule.

7.2.1 Practice Use. COB grants TAMU a license for the use of the Facility, other than concession stand and retail space, for TAMU Women's and Men's Tennis Teams practice and private lessons, based upon a schedule of hours and number of courts as agreed upon by COB and TAMU. TAMU agrees its use of the Facility for practice is subject to COB's precedent use of the Facility for its own purposes with COB giving TAMU at least thirty (30) calendar days' notice of COB's intent to supersede use of the tennis court(s). Provided, however, in the event a severe inclement weather event adversely affects a regularly scheduled TAMU tennis team outdoor practice, the TAMU tennis team's regularly scheduled practice may supersede COB's use of the Facility.

7.2.2 Competition Use. COB grants TAMU a license for use of the Facility for NCAA matches and Tournament competitions, utilizing all tennis courts, based upon a schedule of hours as agreed upon in writing by COB and TAMU. COB agrees its use of the tennis courts is subject to TAMU's precedent use of the courts for NCAA competitions with TAMU giving COB at least thirty (30) calendar days' notice of TAMU's intent to supersede use of the tennis court(s).

7.2.3 TAMU Initial Schedule. At the time of execution of this Agreement, the initial practice and competition schedule for use by TAMU is set forth in Exhibit "B", attached hereto and incorporated herein for all purposes, and is approved by COB.

7.3 Inclement Weather Use. In the event a severe inclement weather event adversely affects a regularly scheduled outdoor NCAA match or Tournament, the NCAA match or Tournament will supersede COB's use of the Facility. Severe inclement weather means severe or harsh weather condition that makes it unsafe or impractical to play tennis outdoors, including snow, sleet, heavy rain, hurricanes, high winds and tornadoes.

7.4 COB Use. COB shall have exclusive use of the Facility for all times not scheduled in advance by TAMU or required to be used by TAMU due to a severe inclement weather event adversely affecting a regularly scheduled TAMU tennis team outdoor practice or scheduled outdoor NCAA match or Tournament.

Section 8. Use of Parking

8.1 In connection with TAMU's use of the Facility, TAMU will have the non-exclusive license to use parking spaces within parking lots adjacent to the Facility jointly with users of Travis Bryan Midtown Park amenities. COB and TAMU shall use reasonable efforts to coordinate any special events taking place within the Facility and other Travis Bryan Midtown Park amenities such that there shall be adequate parking to accommodate demand.

Section 9. Maintenance/Operation

9.1 Maintenance. COB shall maintain the Facility, including but not limited to the court surfaces, in a clean, neat, safe and sanitary condition and in a good state of repair at all times during the Term, so that the Facility will at all times be a first class indoor tennis facility that meets the standards and conditions set from time to time by the NCAA. COB shall provide lighting in the Facility that meets such standards.

9.2 Operation. COB shall provide for the operation and supervision of the Facility. TAMU understands and agrees that COB may contract with a third-party contractor to provide such services. In the event of a third-party contract to provide for the operation and supervision of the Facility, COB will utilize a qualified and experienced sports facility management entity for such purpose ("Management Firm"). Such third-party contract and any other third-party contract that provides for a service provider to manage, operate or provide services with respect to any portion of the Facility entered into by COB or TAMU will comply with the guidelines set forth in IRS Revenue Procedure 2017-13 (safe harbor procedures relating to private business use of tax-exempt bond financed property) unless an opinion of counsel is received that the contract will not adversely impact the tax-exempt status of bonds that financed the Facility.

9.3 Care. TAMU shall be responsible for reasonable care and protection of the Facility and equipment during TAMU and NCAA use of the Facility, and is responsible for damage to such that occurs as a result of TAMU sponsored use, except for fair wear and tear.

Section 10. Default

10.1 Event of Default. The failure of a Party hereto to keep, observe, or perform any of the terms, covenants, or agreements contained in this Agreement shall be a Default if such failure is not remedied by such party within fifteen (15) calendar days after written notice from the non-defaulting party, or the Party fails to prosecute diligently the cure of such Default to completion within such additional period as may be reasonably required to cure such Default with diligence and in good faith; it being intended that, in connection with any such Default which is not susceptible of being cured with due diligence and in good faith within fifteen (15) calendar days but is otherwise reasonably susceptible of cure, the time within which the Party is required to cure such Default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; provided, however, that if such Default is not cured within one hundred eighty (180) calendar days after notice from non-defaulting party of such Default, (notwithstanding the Party's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement.

10.2 Right to Terminate. Upon the occurrence of an Event of Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a "Final Notice") of the non-defaulting Party's intention to terminate this Agreement after the expiration of a period of thirty (30) calendar days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) calendar day period, if the Event of Default is not cured, this Agreement shall terminate without liability to the non-defaulting Party. If, however, within such thirty (30) calendar day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an action or proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) calendar day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such action or proceeding.

10.3 Cumulative Remedies. The non-defaulting party may exercise any and all other remedies available to it at law or in equity, by statute or otherwise, which shall be cumulative of and shall be in addition to the foregoing Right to Terminate.

Section 11. Parties' Relationship and Right to Promote Affiliation

11.1 COB and TAMU acknowledge and agree the Parties' relationship is that of Licensor and Licensee respectively, and that no other legal relationship exists between the Parties, including, without limitation, partners, joint ventures, employer, or employee. Neither Party shall have the right or power to bind the other Party and any attempt to enter into an agreement in violation of this Agreement shall be void. Neither Party shall take any actions to bind the other Party to an agreement.

11.2 COB is not responsible for wages, social security taxes, hospitalization insurance, or workers' compensation insurance for TAMU personnel, contractors, or students. TAMU is not responsible for wages, social security taxes, hospitalization insurance, or workers' compensation insurance for COB personnel or contractors.

11.3 Nothing in this Agreement is to be construed as transferring financial responsibility from one party to another.

11.4 The Parties also acknowledge and agree that the Parties' affiliation under this Agreement carries with it valuable publicity and standing in the State and local community. For these reasons, the Parties agree that each has the right to advertise and promote the Parties' affiliation under this Agreement; provided that any such publication, advertisement or promotion is approved in advance by both Parties.

11.5 TAMU has the right to and shall install TAMU signage at the Facility, the cost of which will be considered an "Expense" hereunder. The Parties shall mutually approve in writing the designs and placement of TAMU signs.

Section 12. Miscellaneous

12.1 Modification of Agreement. The terms and conditions of the Agreement may be modified at any time by the mutual consent of both Parties. However, no amendment or modification to this Agreement is effective unless and until it is reduced to writing and signed by duly authorized representatives of both Parties.

12.2 Written Notice. Unless otherwise specified, written notice will be deemed to have been duly delivered if delivered in person to the individuals listed below or if it is delivered or sent certified mail to the business address below or by email with return receipt at the email address below. Each Party will have the right to change its business address and email address by at least thirty (30) calendar days written notice to the other Party.

TAMU:

Texas A&M University
Attn: University Contracts Officer
330 Agronomy Road
College Station, Texas 77843-1182
Phone: 979-845-0099
Fax: 979-862-7130

Email: contracts@tamu.edu

and:

Texas A&M University
Athletics Department
Attn: Jeff Toole
1228 TAMU
College Station TX 77843
Phone: 979-862-5415
Email: jtoole@athletics.tamu.edu

with a copy to:

The Texas A&M University System
Office of Business Affairs
Attn: System Real Estate Office
301 Tarrow Street, 5th Floor

College Station, Texas 77840-7896
Phone: 979-458-6350
Email: sre@tamus.edu

with a copy to:

The Texas A&M University System
Office of General Counsel
Attn: Property & Construction
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896
Phone: 979-458-6120
Email: property@tamus.edu

COB:

City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805
Phone: (979) 209-5100
Email: kregister@bryantx.gov

with a copy to:

City Attorney
City of Bryan
P.O. Box 1000
Bryan, TX 77805
Email: LegalServicesWeb@bryantx.gov

12.3 State Agency/Political Subdivision. COB expressly acknowledges that TAMU is an agency of the State of Texas, and TAMU acknowledges that COB is a political subdivision of the State of Texas. Nothing in this Agreement will be construed as a waiver or relinquishment by TAMU or COB of its right to claim such exemptions, privileges, and immunities as may be provided bylaw.

12.4 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, in no way constitutes a waiver of that provision, nor in anyway affects the validity of this Agreement, any part of this Agreement, or the right of the Party thereafter to enforce each and every provision of this Agreement. No term of this Agreement will be deemed waived or breach excused unless such waiver is in writing and signed by the Party claiming to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

12.5 Invalidity. If any portion of this Agreement is held invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. The parties will use their best efforts to replace the respective provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

12.6 Entire Agreement. It is understood this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to

the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of COB or TAMU, either before or after the execution of this Agreement, affects or modifies any terms or obligations of this Agreement.

12.7 Choice of Law, Place of Performance and Jurisdiction. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), *Texas Education Code*, venue for a state court suit filed against The Texas A&M University System or any member of The Texas A&M University System, is in the county in which the primary office of the chief executive officer of the system or member, as applicable, is located. At execution of this Agreement, such county is Brazos County, Texas. Venue for any suit brought against The Texas A&M University System or any member of The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

12.8 Force Majeure. a. Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including Acts of God, Government restrictions including wars, insurrections, natural disasters, or other emergencies as declared by Federal, State, or County agencies or departments, and/or any other cause beyond the reasonable control of the Party whose performance is affected.

b. If performance of any obligation of either Party hereunder is prevented or rendered impracticable or infeasible as discussed in the preceding paragraph, it is understood and agreed that there shall be no claim for damages against the obligated Party for failure to perform its obligations under this Agreement.

12.9 Authority. Each Party has full power and authority to enter into and perform under this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement represent that they have authorization to sign on behalf of their respective entities.

12.10 Governmental Immunity and Release. a. TAMU and COB both enjoy sovereign and governmental immunity, respectively. By entering into this Agreement, neither TAMU nor COB consents to suit, the waiver of their respective immunity, the waiver of the right to claim such exemptions or privileges as may be provided by law, or the waiver of limitation as to damages under the Texas Tort Claims Act.

b. To the extent permitted by the Constitution and laws of the State of Texas, COB and TAMU each individually agree to hold the other harmless from and against any and all claims, losses, damages, causes of action, suits, and liabilities of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury or death of any person, for damage to any property, arising out of or in connection with the obligations pursuant to this Agreement.

12.11 Agreement Read. Each Party acknowledges it has read, understands, and intends to be bound by the terms and conditions of this Agreement.

12.12 Interpretation and Reliance. No presumption will apply in favor of any Party in the interpretation of this Lease or in the resolution of any ambiguity of any provision hereof.

12.13 Public Information Act. COB and TAMU both acknowledge the other is obligated to comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

12.14 Preservation of Tax-Exempt Status of Obligations. For so long as Obligations remain outstanding, this Agreement is intended to provide for use of the Facility that is not considered a trade or business use by a private person ("Private Business Use") for purposes of Section 141(a) of the Internal Revenue Code of 1986, as amended (herein referred to as the "IRS Guidelines"). TAMU represents and covenants that (i) its use of the Facility will not give rise to Private Business Use, and (2) it will not allow others to use the Facility in a way that will give rise to Private Business Use, unless such Private Business Use is approved by COB in writing in advance.

EXECUTED by TAMU and COB, through their duly appointed agents, on the days and year noted below, in duplicate originals, each of which shall be deemed an original.

BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM,
an agency of the State of Texas, for the use and benefit of Texas A&M University,
its member:

By: _____
Name: _____
Title: _____
Date: _____

THE CITY OF BRYAN, TEXAS

By: _____
Bobby Gutierrez, Mayor
Date: _____

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Thomas A. Leeper, City Attorney

EXHIBIT "A"

[depiction of approximate location of Facility within Travis Bryan Municipal Park]

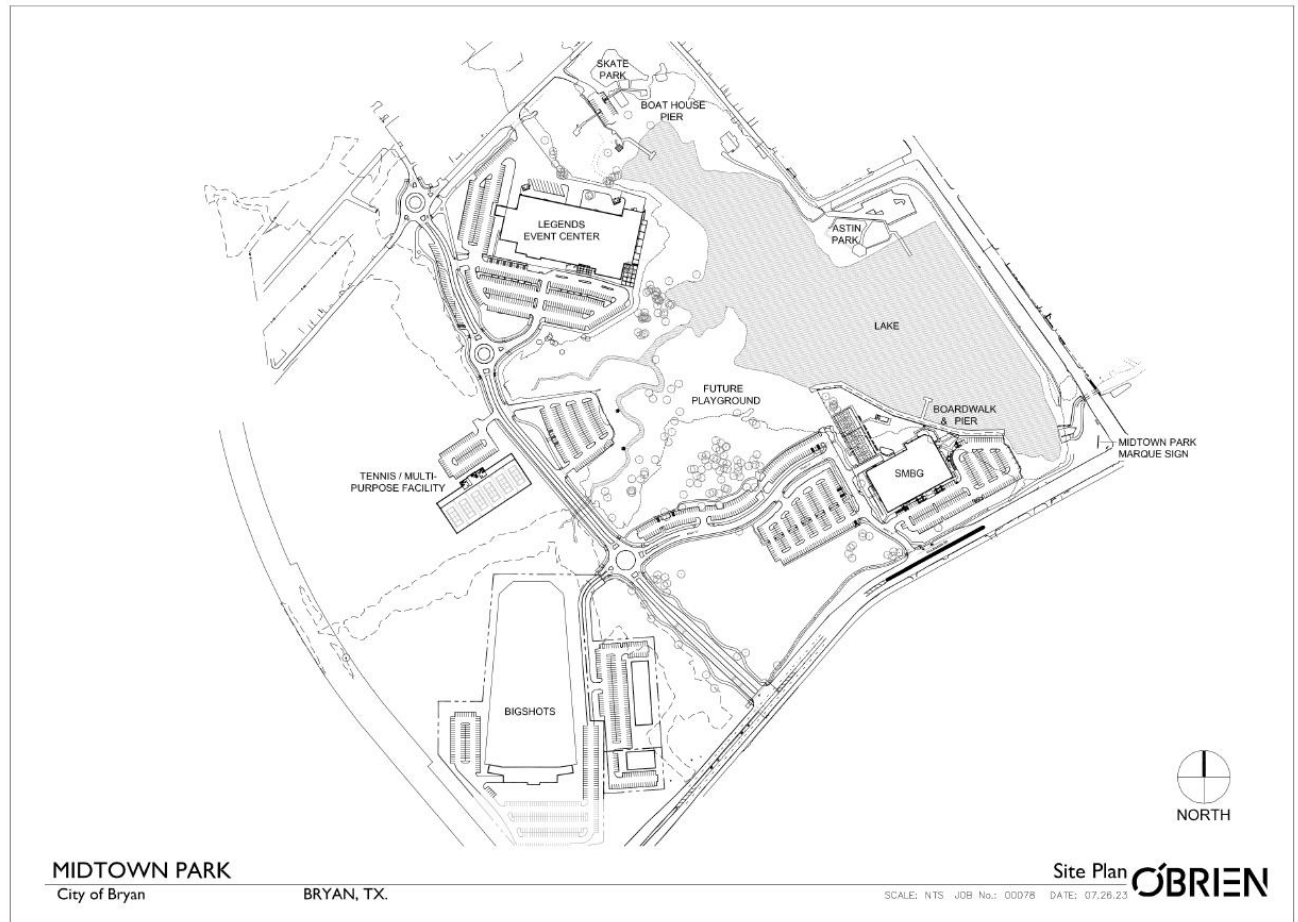


EXHIBIT “B”

5. ESTIMATED UTILIZATION

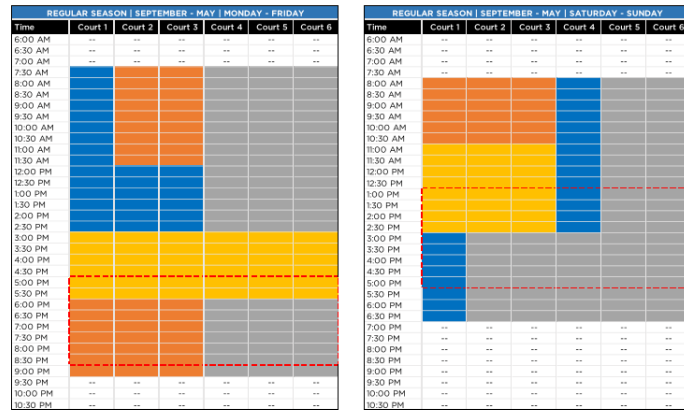
DRAFT COPY
For Discussion Purposes Only

REGULAR SEASON SCHEDULE

The schedules below depict the estimated programming blocks throughout the day for the proposed Bryan Tennis Center during the regular season (i.e., September to May) for both weekdays and weekends. It should be noted that programming is not estimated to be fully utilized during individual scheduling blocks; details on usage rates for each programming type will be estimated in the following report section. It should also be noted that utilization for local groups, including the Brazos Valley Tennis Association and City of Bryan Parks & Recreation, are not specifically delineated and are instead included as part of Reserved Court Time blocks.

Additionally, for Texas A&M match days, Texas A&M will reserve the use of the entire facility (for four hours) up until the day of the match, at which point it could be released should weather permit.

During the regular season, this Texas A&M reservation strategy will be utilized for all match days, estimated at seven percent of all regular season weekdays and 32 percent of all regular season weekend days. If, due to good weather, the use of the court is released on match day, it is estimated that typical regular season schedules will be utilized.



Texas A&M Reserved Match Time (weather dependent)

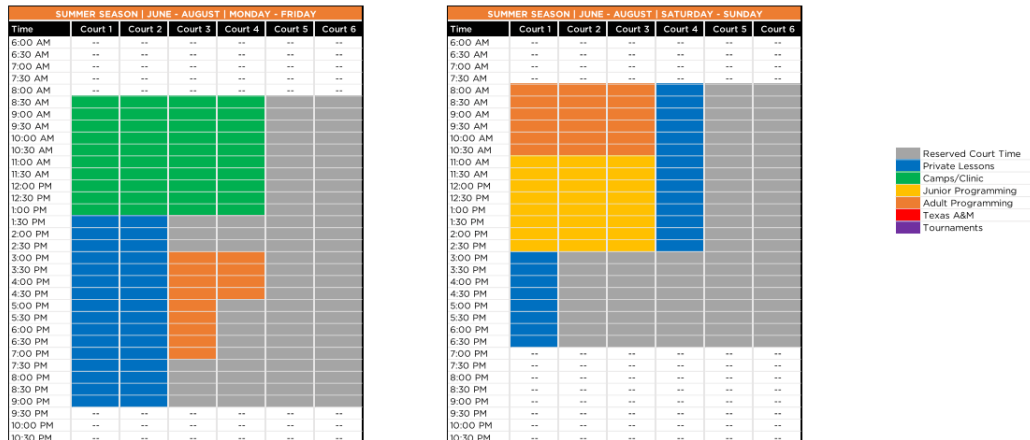
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5. ESTIMATED UTILIZATION

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SUMMER SEASON SCHEDULE

The schedules below depict estimated programming blocks throughout the day for the proposed Bryan Tennis Center during the summer season (i.e., June to August) for both weekdays and weekends. It should be noted that programming is not estimated to be fully utilized during individual scheduling blocks; details on usage rates for each programming type will be estimated in the following report section.



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