

RESOLUTION

WHEREAS, the City of Memphis owns and operates, through its Division of Park Services, the entire property complex located at Jesse Turner/Bellevue Park (JTP), which includes various baseball field playing surfaces, spectator viewing areas, and parking; and

WHEREAS, the City of Memphis and Tri-State Youth Baseball Academy, Inc., (TSYBA), have established positive collaboration in serving and providing sporting, recreational and athletic opportunities to its youth and others in the Memphis community; and

WHEREAS, TSYBA has utilized the JTP for youth baseball and other related sporting events and youth activities, and desires extensive future use of the facility; and

WHEREAS, the City of Memphis and TSYBA desire to formalize and enter into this Agreement to set forth terms and conditions upon which shall govern TSYBA's continued use of JTP and related facilities; and

WHEREAS, the initial period of this agreement shall be for five (5) years from the date of execution, with three (3) consecutive five (5) year options to renew, which shall be exercised separately upon mutual approval of the parties, providing for a total potential term of twenty (20) years; and

WHEREAS, City of Memphis Ordinance No. 4763, Article 1, Section 23-1(d) requires (for Management Agreements with terms exceeding two years), the approval of the Council of the City of Memphis to enter into this Agreement.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that this Agreement between the City of Memphis and Tri-State Youth Baseball Academy, Inc., for management and operations of Jesse Turner / Bellevue Baseball Park, as agreed to by the parties, is hereby approved in accordance with the terms set forth therein.

I hereby certify that the foregoing is a true copy and document was adopted, approved by the Council of the City of Memphis in regular session on

Date _____

Deputy Comptroller-Council Records

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**AGREEMENT BETWEEN THE CITY OF MEMPHIS AND
TRI-STATE YOUTH BASEBALL ACADEMY, INC.,
FOR
MANAGEMENT OF JESSE TURNER / BELLEVUE BASEBALL PARK**

THIS AGREEMENT is made as of this ____ day of _____, 20____, by and between the City of Memphis through its Division of Park Services (hereafter "City") and Tri-State Youth Baseball Academy, Inc., (Hereafter "TSYBA") for use and management of Jesse Turner / Bellevue Baseball Park (hereafter "JTP").

RECITALS:

WHEREAS, the City of Memphis owns and operates, through its Division of Park Services, the entire property complex located at Jesse Turner/Bellevue Park, which includes various baseball field playing surfaces, spectator viewing areas, and parking; and

WHEREAS, the City of Memphis and TSYBA, have established positive collaboration in serving and providing sporting, recreational and athletic opportunities to its youth and others in the Memphis community; and

WHEREAS, TSYBA has utilized the JTP for youth baseball and other related sporting events and youth activities and desires extensive future use of the facility; and

WHEREAS, the City of Memphis and TSYBA desire to formalize and enter into this Agreement to set forth terms and conditions upon which shall govern TSYBA's continued use of JTP and related facilities.

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1. PERMITTED USES

1.01 Scope of Use. City hereby grants TSYBA the authority to manage/operate and use JTP on a non-exclusive basis (at no fee to the City) specifically for baseball, soccer, related field sports, various assemblies related to sports, cultural or community interest, band, dance, musical events, and other directly related TSYBA activities. TSYBA use is specific to the JTP large baseball field and the smaller field/open space immediately between the JTP large baseball field and the Bellevue Tennis Center complex. TSYBA shall not use or permit the

use of such designated areas for any other purpose without prior written approval from the Division of Park Services.

1.02 Use by Others. TSYBA shall allow other non-profit, youth and adult sports groups within the Memphis community and non-profit neighborhood based groups to use JTP as a meeting and recreation location. TSYBA will charge a reasonable fee for rentals and events held at JTP based on its normal and customary fee structure and scheduling availability. Annual Rate/Charge Schedules must be provided to the City and adhered to in all TSYBA rental transactions.

1.03 LeMoyne-Owen College (LOC) Use. TSYBA shall allow use of the JTP and related baseball facilities, for practice and game play, to LOC as the parties may agree. LOC will have primary scheduling priority during the months from November - May (Spring Season) and September - November (Fall Season), and TSYBA will work in close collaboration with LOC, to facilitate usage and related arrangements of all JTP facilities.

1.04 Non-exclusive Use. The City in no way relinquishes its right to assure that all citizens have equal access to JTP and hereby retains the right to allow and approve field use by others during those times when TSYBA is not scheduled to use the facility and others are not pre-scheduled by TSYBA, provided that, in such instances, the City shall be responsible for operations, cleanup and maintenance associated with each specific event, at JTP following such uses.

1.05 Special Events. Individuals and/or organizations not associated with TSYBA who desire to use JTP for special events must make application to TSYBA which shall have the exclusive right to grant or deny such application in accordance with Park Services policies. TSYBA agrees that such approval shall not be unreasonably withheld. Park Services will direct any potential applicants desiring use of JTP to TSYBA for scheduling purposes and to ensure that such application will not conflict with previously scheduled TSYBA activities. For informative purposes, TSYBA shall provide Park Services with a monthly event schedule reflecting all TSYBA and non-TSYBA events/activities.

1.06 City of Memphis - Park Services Use. The City of Memphis may schedule and use JTP for any event as desired, based on scheduling and coordination availability with TSYBA. Any City of Memphis event must be scheduled with TSYBA and coordinated appropriately with due regard to the overall JTP event programming. TSYBA agrees to allow the City to host various events per calendar year at JTP at no cost to the City, barring scheduling conflicts.

SECTION 2. TERMS AND TERMINATION

2.01 The initial period of this agreement shall be for five (5) years from the date of execution, with three five (5) year options to renew, which shall be exercised separately upon mutual approval of the parties. This agreement has a total potential term of twenty (20) years.

2.02 Either party may terminate this agreement for any reason with one-hundred and eighty (180) days written notice.

2.03 Within one hundred and eighty (180) days of the expiration or termination of this Agreement and subject to the approval of City, TSYBA may remove any permanent structure(s) built solely with TSYBA funds; provided that, such structures are removed at the sole expense of TSYBA without damage to City property. Such expense shall include restoring the facility to its original condition. TSYBA shall be responsible for any and all damage to the facility resulting from the removal of such permanent structures. Notwithstanding the foregoing, TSYBA may remove all furnishing as provided by TSYBA from such structures within the referenced one hundred and eighty (180) day period.

SECTION 3. OPERATIONS AND MAINTENANCE

3.01 Repairs, Maintenance and Operations by TSYBA. TSYBA agrees as follows:

- a) (1) Remove/Replace or Repair existing flawed bleachers to meet acceptable/ADA compatible spectator seating.
- (2) Maintain field lighting system and lights, and where necessary, make corrections or replacement of flawed systems/lights.
- (3) Ensure spectator area is ADA accessible from parking areas and appropriate signage is in place.
- (4) Provide water connections, as desired by TSYBA.
- (5) Provide public restroom facilities or portables to accommodate anticipated numbers of players and guests, per scheduled events.
- (6) Remove/Replace or Repair concessions facility to operational status to serve scheduled sporting and community events.

b) TSYBA shall provide ongoing routine maintenance to JTP properties as described below and maintain JTP facilities in good condition at its own cost and expense. Representatives from Park Services shall meet with TSYBA each year during the term of this Agreement and provide a list of projects, which in the opinion of the City, need or are anticipated to need maintenance. Those projects designated as such will be funded by TSYBA. Notwithstanding the foregoing, TSYBA shall provide the following ongoing maintenance:

- (1) Mowing: Playing field areas, where necessary and applicable.
- (2) Irrigation: Playing field areas, where necessary and applicable.
- (3) Fertilizing: Playing field areas, where necessary and applicable.
- (4) Aerating: Playing field areas, where necessary and applicable.
- (5) Dumpsters: Provide adequate dumpsters and scheduled trash collection at the expense of TSYBA.
- (6) Annual pesticide inspections and spraying of pesticides and herbicides: Spraying shall be done on an as needed basis.

c) TSYBA shall be responsible for providing daily litter control in its permitted use area during practice, league play and the tournament season and keep the area free of litter. If the City determines litter control is not being provided effectively, the City will provide 24 hours notice to TSYBA to clean up the litter. If it is not done satisfactorily, the City will provide the service and bill TSYBA for the cost of such service.

d) If the City determines there are "maintenance needs" in addition to those identified at the beginning of or during any season or year, Park Services will inform key TSYBA, by phone, electronic mail, or mail, of such maintenance needs. Response times to correct these needs shall be as follows:

- (1) Needs that do not present a safety concern must be corrected within 30 days;
- (2) Needs that present a less than significant liability/safety concern must be signed and public access restricted, as needed from the area of concern within 24 hours. The problem shall be corrected within 7 days;
- (3) Needs that present a significant liability / safety concern must be properly signed and public access restricted, to minimize potential liability. The problem shall be corrected within 24 hours;
- (4) Graffiti shall be removed within 48 hours of notification, provided the weather permits same.

If TSYBA does not correct any maintenance/vandalism needs within the time allowed, the City may have such needs corrected and bill TSYBA for the full cost of such repairs.

e) TSYBA shall be responsible for and agrees to pay all operating costs in its management/operations of JTP, which shall include utilities, general

maintenance, staffing, and all other cost incurred via the operations of JTP. In some instances or if applicable, these costs will be payable via reimbursement to the City. Moreover, TSYBA shall perform or make available the services for routine maintenance to the infrastructure, such as permanent public restroom, paved walkways, and the field lighting system.

3.02 Repairs by City. Upon written notice to TSYBA, the City reserves the right to make any repairs or undertake any maintenance it deems necessary to preserve the integrity of JTP based upon the failure of TSYBA to comply with this section. In the event the City is required to undertake such action, all resulting costs shall be invoiced to TSYBA for immediate payment. City also agrees to make following repairs, and

- (1) Will assure that water fountains are properly working, that park benches are in suitable appearance and condition, and that any fixed or portable rest rooms are in proper condition, and
- (2) Will make repairs to parking lot (i.e., pot holes, light replacement, signage, landscaping, include ADA parking spaces, and maintain general upkeep, and
- (3) Will continue to provide equivalent funding of current level expenditures for field maintenance services in the amount of \$2,450.00 annually.

SECTION 4. PARKING, TRAFFIC CONTROL & SECURITY

4.01 During TSYBA scheduled events at JTP, TSYBA will assign members of their organization as necessary to manage and control parking, prevent cars from parking in "No Parking" areas, keep fire lanes and access for emergency vehicles clear, ensure congestion in the parking lot (s) is minimized, and monitor the handicapped parking spaces for appropriate use.

4.02 TSYBA will ensure that all events at JTP authorized by TSYBA will have sufficient and adequate security and insurance coverage for the general safety and protection of the facility and all citizens participating in or attending events as spectators or guests. These provisions should also be required by TSYBA authorized third-party contractual users of JTP.

SECTION 5. AUDITS AND INSPECTIONS

5.01 Site Inspections. City shall have the right, through its authorized employees or agents, to inspect the JTP premises from time to time to determine if it is being operated and maintained in accordance with this Agreement. TSYBA shall furnish keys for all locks to the Division of Park Services for a minimum of two (2) on-site visits per year, or as may be coordinated by the parties.

5.02 Books and Records. City reserves the right to inspect and audit the records of TSYBA regarding its performance under this Agreement. TSYBA shall make and keep as the same accurate, full, complete records and books of accounts of revenue and income, costs and expenses that specifically relate to performance under this Agreement. Records and Books of account, together with any and all other memoranda pertaining thereto that may be kept, maintained or possessed by TSYBA shall be open to examination during regular business by the City or its representatives for the purposes of inspecting, auditing, verifying or copying the same or making extracts there from. TSYBA shall make and keep said records and books of accounts for a period of three (3) years after completion of the contractual obligations under this Agreement.

SECTION 6. INSURANCE & INDEMNIFICATION

6.01 TSYBA shall maintain during the term of this Agreement, at its own costs and expenses, the following insurance policies issued by insurance companies licensed in the State of Tennessee and acceptable to the City. All such insurances shall be evidenced by certificates and/or policies, as determined by the City, which shall name the City of Memphis as additional insured and shall be mailed to the City of Memphis, Attn: Risk Management as shown below.

TSYB shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. TSYBA's failure to maintain the following insurance coverage during the term hereof, shall be cause for immediate termination of this Agreement.

Each certificate or policy shall require and state in writing the following clause:

"Thirty (30) days prior to cancellation or material change in policy, notice thereof shall be given to the City of Memphis Risk Manager," by registered mail, return receipt requested to the following address:

City of Memphis
Attn: Risk Management
2714 Union Extended
Memphis, TN 38112

"The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies."

The additional insured endorsements shall be attached to the Certificate of Insurance

WORKERS COMPENSATION:

To the extent applicable, TSYBA shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employers Liability	\$100,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$100,000	Disease – Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned and hired vehicles with LIMITS OF:

\$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Comprehensive General Liability Insurance including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage.

\$1,000,000	General Aggregate
\$1,000,000	Products & Completed Operations
\$1,000,000	Personal & Advertising
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expenses any One Person

PROPERTY INSURANCE:

Any newly constructed improvements shall be added to TSYBA's property policy at TSYBA's expense. Additionally, TSYBA shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise.

TSYBA shall require all subcontractors to carry the insurance required herein as outlined above, in the event that such subcontractors are not protected by the policies carried by TSYBA.

TSYBA shall be required to provide copies of the requisite insurance contemporaneously with the execution of this Agreement and will provide policies upon request.

City reserves the right to reasonably require increases in coverage limits if same becomes necessary.

6.02 TSYBA shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by TSYBA, its employees, subcontractors, or agents, or any negligent act or omission of TSYBA, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents.

TSYBA shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in TSYBA's insurance policy from TSYBA's insurer. Such notice shall be provided to City by registered mail, return receipt requested, to the following addresses:

City of Memphis
Risk Management Department
2714 Union Extended, Suite 200
Memphis, TN 38112

City of Memphis
Purchasing Department
125 N. Main, Room 354
Memphis, TN 38103

Each certificate or policy shall state in writing the following clause:

"The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies."

The additional insured endorsements shall be attached to the Certificate of Insurance.

SECTION 7. NOTICE

7.01 All notices or requests to City shall be given in writing to **Director**, Division of Park Services, 2599 Avery Ave., Memphis, Tennessee 38112, (901) 576-4231 and copied to **City Attorney**, 125 North Main Street, Room 336, Memphis, TN 38103, Phone (901) 576-6614. Notices and requests to TSYBA shall be given to Chairman/Vice President; TSYBA, 3517 Southland St., Memphis, TN 38109, Phone (901) 581-2211, or 283-8984; Fax: (901) 766-3349.

SECTION 8. MISCELLANEOUS PROVISIONS

8.01 Surrender of Premises. Upon the expiration of this Agreement or if it terminated sooner, TSYBA shall deliver HFS to the City in good condition, reasonable use, wear and tear excepted.

8.02 Ownership of the Property and Improvements. TSYBA agrees that any and all improvements thereto, paid for in whole or in part by TSYBA, shall become the property of the City upon the expiration or termination of this Agreement. TSYBA further acknowledges JTP shall remain the property of the City of Memphis and that TSYBA shall not encumber such property or make any alterations or improvements to JTP without the prior written approval of the City's Director of Division of Park Services.

8.03 Scheduling. TSYBA shall furnish the City a schedule of all games, practices, tournaments and any and all uses of JTP two (2) months prior to the beginning of the season or as soon as practicable.

8.04 Meetings. TSYBA officials shall schedule and meet with Park Service representatives periodically for purposes of reviewing and planning JTP issues such as the number of TSYBA participants and events; maintenance needs; planned capital improvements; concerns expressed by citizens and neighborhoods; and policies and practices to be followed.

8.05 Advertising/ Annual Rate/Charge Schedules. All advertising shall be subject to approval by the City prior to placement. Annual Rate/Charge Schedules for public rental and use of JTP shall be provided to City in January of each year, and as soon a practical as changes occur. Such charges shall be reasonable and customary.

8.06 Entire Agreement. This Agreement contains the entire Agreement of all parties hereto and there are no other promises or conditions in any other

Agreements whether oral or written. This Agreement supersedes any prior written or oral Agreements between the parties pertaining to the subject matter hereof.

8.07 Third Party Beneficiaries. This Agreement does not create a relationship or any rights in favor of, any third party not expressly stated herein.

8.08 Assignment or Sale. This Agreement shall not be assigned or transferred without the prior written consent of the City, such consent not to be unreasonably withheld. Should the City desire to sell JTP during the term of this Agreement, TSYBA will receive a 'first right of refusal' to negotiate a purchase from the City, provided that such right does not conflict with an existing property sale or disposal regulations of the City.

8.09 Amendment. This Agreement may be modified or amended only by a document in writing executed by an authorized representative of the parties hereto.

8.10 Park Ordinance. TSYBA agrees to comply with applicable park rules and the City ordinances related to park hours, where applicable. Consumption or sale of alcoholic beverages is absolutely prohibited. However, night games, practice and tournament play are allowable.

8.11 Governing Law. TSYBA is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations applicable to its performance of this Agreement. This Agreement will be interpreted in accordance with the laws of the State of Tennessee.

8.12 Unenforceability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

8.13 No Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

8.14 Captions. The headings and captions contained in this Agreement are for reference purposes only and shall not limit or extend the meaning or terms of any paragraph or section herein contained.

8.15 (a) Americans With Disabilities Act (ADA) Compliance. TSYBA hereby acknowledges that JTP is not currently fully ADA compliant and agrees that any upgrades, modifications or improvements to JTP undertaken by TSYBA shall be consistent with applicable ADA guidelines. ADA requirements and all other relevant building and construction codes must be addressed during any improvements or modifications to JTP. Documents reflecting the design and final construction of such upgrades, modifications or improvements must be submitted by MCS to Park Services (Planning and Development Office) for a review, and final approval and acceptance by the City.

(b) TSYBA further acknowledges and agrees that any complaint received by City or TSYBA related to any JTP sponsored program at JTP during the term of this Agreement shall be the responsibility of TSYBA with regard to inquiries or directives issued by the United States Department of Justice ("DOJ").

8.16 Capital Upgrades, Expansion or Modification. TSYBA agrees to provide to the City and coordinate with the City all applicable plans and detailed drawings and required construction documentation that will accompany all capital upgrades, expansions or modifications to JTP. All such plans and coordination will be initially directed to the Administrator of Park Services Division Planning and Development Office and shall be subject to City's final approval.

8.17 Subject to Funding. This Agreement shall be subject to funding by the governing bodies of both parties and shall be immediately terminated in the event such funding is not made available. In the event of such termination, the terminating party shall not be deemed in breach of this Agreement.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this **AGREEMENT BETWEEN THE CITY OF MEMPHIS, DIVISION OF PARK SERVICES AND TRI-STATE YOUTH BASEBALL ACADEMY, INC., FOR NON-EXCLUSIVE USE OF THE JESSE TURNER/BELLEVUE BASEBALL PARK.**

**TRI-STATE YOUTH BASEBALL
ACADEMY, INC.**

By 
Chairman

CITY OF MEMPHIS

By _____
A.C. Wharton, Jr., Mayor

DIVISION OF PARK SERVICES

By _____
Cynthia A. Buchanan, Division Director

APPROVED AS TO FORM:

Herman Morris, Jr., City Attorney

ATTEST

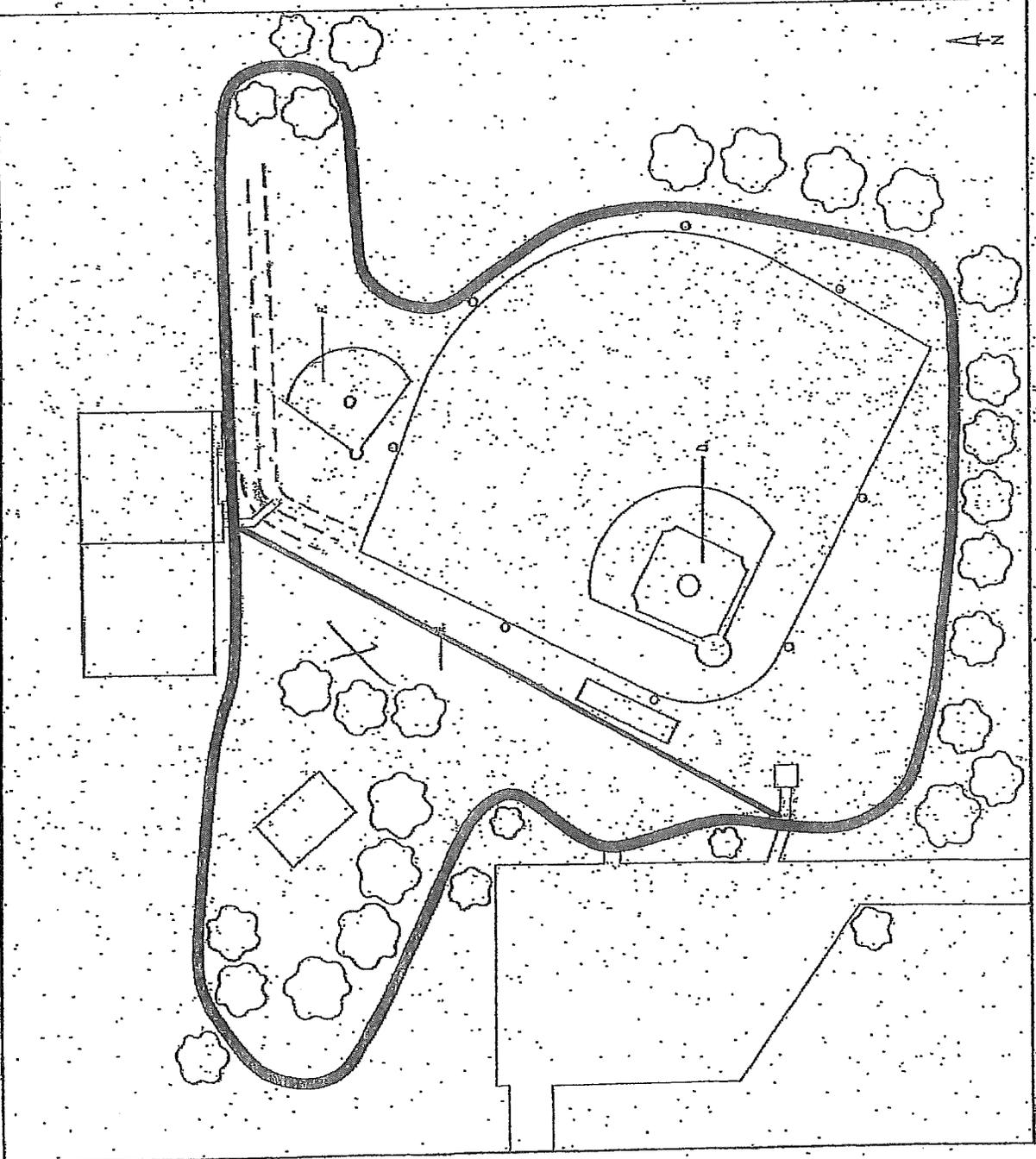
Comptroller

File:City -TSYBA Agmt October 2011



- A. INITIAL CONSTRUCTION COSTS OF \$1,500,000.00. PROPOSED CONSTRUCTION COSTS, BASED UPON THE ASSUMPTIONS LISTED IN THE "ASSUMPTIONS" SECTION, ARE \$1,500,000.00. THE ASSUMPTIONS ARE: 1. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA. 2. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA. 3. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA.
- B. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA.
- C. INITIAL CONSTRUCTION COSTS OF \$1,500,000.00. PROPOSED CONSTRUCTION COSTS, BASED UPON THE ASSUMPTIONS LISTED IN THE "ASSUMPTIONS" SECTION, ARE \$1,500,000.00. THE ASSUMPTIONS ARE: 1. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA. 2. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA. 3. THE PROJECT WILL BE FINANCED BY THE CITY OF TAMPA.
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JEFFREY TURNER PARK
 10/1/2010
 GREEN PRO LANDSCAPE





MEMPHIS CITY COUNCIL SUMMARY SHEET

Please provide a brief summary of the item, in bullet form, not to exceed one page:

1. Describe item (Resolution, Ordinance, etc.)

This is a request for Resolution for City Council Approval for the City of Memphis to enter into a contract with Tri-State Youth Baseball Academy, Inc., (TSYBA) to manage and operate Jesse Turner / Bellevue Baseball Park. The Agreement calls for a five (5) year initial term and three (3) five (5) year renewal terms, for a total of 20 years.

2. Identify initiating party (e.g., Public Works; at request of City Council, etc.)

Division of Park Services

3. State whether this is a change to an existing ordinance or resolution, if applicable.

This request requires NO changes to any ordinance or resolution.

4. State whether this requires a new contract, or amends an existing contract, if applicable.

Yes. This request provides for approval of a new Agreement between the City of Memphis and Tri-State Youth Baseball Academy, Inc.

5. State whether this requires an expenditure of funds/requires a budget amendment.

This Agreement requires (continued) annual City expenditures of \$2,450.00 for field maintenance costs. These funds will now go to TSYBA for this purpose. These funds will be subject to annual budgetary appropriations by City Council to the budget of the Division of Park Services.