

## ***FIRST AMENDMENT***

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**THIS IS A FIRST AMENDMENT TO THE AGREEMENT** dated \_\_\_\_\_, between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as “CITY”,

And

**XPRESS YOUTH DEVELOPMENT INSTITUTE, INC.**, a Florida not-for-profit corporation, having its office and place of business at 4821 N.W. 19<sup>th</sup> Street, Coconut Creek, FL 33063, hereinafter referred to as “LICENSEE.”

**WHEREAS**, on July 13, 2018, the parties entered into an agreement for use of Mitchell/Moore Park and McNair Park for a track and field program which was approved by City Resolution No. 2018-211 (the “Original Agreement”); and

**WHEREAS**, the parties wish to amend the Original Agreement to expand LICENSEE’s Scope of Authorization thereunder, including allowing LICENSEE to operate additional youth athletic programs and also use North Pompano Park to conduct Program activities; and

**WHEREAS**, LICENSEE and CITY have mutually agreed to amend certain terms and conditions of the Original Agreement as set forth herein.

### **WITNESSETH:**

**IN CONSIDERATION** of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and LICENSEE agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The Original Agreement effective July 13, 2018, a copy of which is attached hereto and made a part hereof as Exhibit "1", shall remain in full force and effect except as specifically amended below.

3. That the first WHEREAS clause shall be amended as follows to add North Pompano Park as a City-owned venue that LICENSEE may utilize for Program activities.

**WHEREAS**, LICENSEE desires to utilize ~~the CITY's Mitchell/Moore, or McNair and North Pompano Parks which are owned by the CITY and~~ located at 901 NW 10 Street, ~~and~~ 951 NW 27 Ave. and 440 NE 18<sup>th</sup> Avenue, respectively, (collectively the "Properties") as alternate facilities to ~~the Broward County's Blanche Ely High School to provide a track and field youth athletic programs~~ (collectively the "Program" described in Exhibit "A", Scope of Authorization);

4. That Exhibit "A" of the Original Agreement shall be substituted and replaced in full with a revised Scope of Authorization, a copy of which is attached hereto and made a part hereof as Exhibit "A".

5. That the provisions of Article 19 are hereby deleted in entirety and replaced in full with the following language:

#### **ARTICLE 19 FORCE MAJEURE**

If either party is unable to perform, or delayed in their performance of any obligations hereunder due to fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, pandemic, acts of nature or any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"), such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of the Force Majeure event. In no event shall economic hardship or lack of funds be considered an event of Force Majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail said event and diligently proceed to correct the adverse effect(s) or by the parties' mutual

agreement, may reschedule performance of the Work or services to a later date. The parties agree, that to this Article, time is of the essence.

With regard to the COVID-19 pandemic or similar emergency, LICENSEE shall follow all relevant federal, state, county and City regulations and safety guidelines when conducting Program activities, including, but not limited to, those related to social distancing and personal protection equipment for all Program participants and LICENSEE's coaches, instructors and other agents hereunder and ensure prior to engaging in any Program activities, all said participants and agents execute, as applicable, the Assumption of Risk and Waiver of Liability Forms attached hereto and made a part hereof as Composite Exhibit E. In addition, LICENSEE shall develop written standard operating procedures to address the foregoing safety requirements and obtain approval from the CITY's Contract Administrator prior to conducting any Program activities hereunder. LICENSEE's inability or failure to follow any and all foregoing requirements shall constitute grounds for CITY's immediate unilateral termination of this Agreement upon written notice to LICENSEE's Contract Administrator which may be provided via email and subsequently confirmed via certified mail.

6. That the provisions of Article 27 are hereby deleted in entirety and replaced in full with the following language:

**ARTICLE 27  
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be construed to waive or affect in any way the City's rights, privileges and immunities as set forth in § 768.28, Florida Statutes, or construed as consent from either party to be sued by third parties.

7. This Amendment shall bind the parties and their respective executors, administrators, successors and assigns and shall be fully effective as though the Amendment had been originally included in the Agreement.

**THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

**CITY OF POMPANO BEACH**

By: \_\_\_\_\_  
REX HARDIN, MAYOR

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

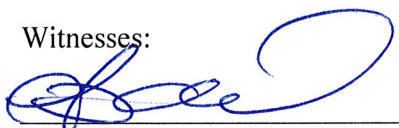
(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

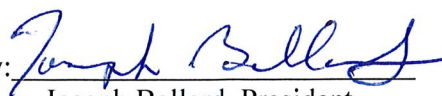
**"LICENSEE":**

Witnesses:

  
\_\_\_\_\_  
Damarcus Ballard  
Print Name

  
\_\_\_\_\_  
Nick Lazzerone  
Print Name

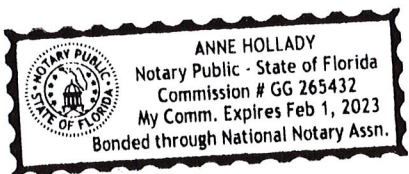
Xpress Youth Development Institute, Inc.

By:   
\_\_\_\_\_  
Joseph Ballard, President

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 15th day of October, 2020 by Joseph Ballard as President of Xpress Youth Development Institute, Inc., on behalf of said Florida non-for-profit corporation. **He is personally known to me** or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady  
(Name of Acknowledger Typed, Printed or Stamped)

GG265432  
\_\_\_\_\_  
Commission Number

FP:jmz  
10/13/20  
l:agr/rec/2021-29f

*First Amendment between the City of Pompano Beach and Xpress Youth Development Institute, Inc.*