

ORDINANCE NO. 2020 -25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUERO, TEXAS, APPROVING A LEASE AGREEMENT WITH C-BAT, INC. AND AUTHORIZING THE EXECUTION OF SAID LEASE AGREEMENT BY THE MAYOR OF THE CITY OF CUERO, TEXAS.

WHEREAS, C-BAT, INC., a Texas Non-Profit Corporation has requested that the City of Cuero, a Municipal Corporation, lease the Cuero Municipal Park Baseball field owned by the City to C-BAT, INC.

WHEREAS, the City Council has reviewed the lease agreement and has approved same in all respects.

WHEREAS, the City Council of the City of Cuero finds that the lease provides for sufficient retention of control by the City over the land and the lessee and that there is no improper delegation of municipal power; and

WHEREAS, the City Council of the City of Cuero finds that the use of the land to be leased is for a purpose as is maintained by the City of Cuero; there being no change in the use of the said land("parkland"); and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CUERO, TEXAS:

The City of Cuero by and through the Mayor execute a lease agreement in the form attached hereto and incorporated herein by reference at length as Exhibit A being the Cuero Municipal Park Baseball Field in and a part of the Cuero Municipal Park, to C-BAT, INC.

That all terms and conditions are provided in the Attached Exhibit A.

That the baseball season is beginning and as such it is necessary that this Ordinance be adopted immediately in order to allow this lease agreement to be in effect for the baseball season. Such facts constitute an emergency for the preservation of the public health, safety, and business demanding that the Rule which requires ordinances to be read at more than one meeting of the City Council be and the same is hereby suspended and this Ordinance shall take effect immediately upon and after its passage on first reading.

UPON MOTION OF COUNCILMEMBER _____, SECONDED BY COUNCILMEMBER _____, THAT THE ORDINANCE BE PASSED ON THIS EMERGENCY READING THE 28th DAY OF SEPTEMBER 2020. AYES: NAYES: MOTION CARRIED.

**SARA POST MEYER
MAYOR**

ATTEST:

**JENNIFER ZUFELT
CITY SECRETARY**

“EXHIBIT “A”

LEASE AGREEMENT - CITY OF CUERO WITH C-BAT, INC.

THE STATE OF TEXAS:

: KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DEWITT:

THIS LEASE AGREEMENT is made and entered into this 1st day of October 2020, by and between the **City of Cuero (“City or Lessor”)**, a Municipal Corporation, and **C-BAT, INC. (“C-Bat or Lessee”)**, a Texas Non-Profit Corporation, each acting herein by and through its duly authorized officials.

WHEREAS, the City has previously leased the Cuero Municipal Baseball Field to the Cuero Independent School District (“CISD”) for the last several years in connection with School Baseball games and practices during the High School and Junior High Baseball seasons.

WHEREAS, the **City** and **C-Bat** now enter into this lease agreement for the lease of the Cuero Municipal Baseball Field;

WHEREAS, this lease provides for sufficient retention of control by the City over the land and the lessee and that there is no improper delegation of municipal power; and

WHEREAS, the use of the land to be leased is for a purpose as is maintained by the City of Cuero, and there will be no change in the use of the said land (“parkland”); and

NOW THEREFORE, for and in consideration of the premises and the further consideration of the faithful performance by all parties hereto of the covenants, terms and conditions herein set forth, the City of Cuero, Texas, acting by and through its Mayor, has Leased, Let and Demised, and by these presents does hereby Lease, Let and Demise unto C-Bat, Inc., the use of the facilities of the Cuero Municipal Baseball Field including field, bleachers, concession stand and restrooms situated at the Western end of the Cuero Municipal Park between Main Street and Courthouse Street in Cuero, DeWitt County, Texas. This Lease Agreement is made upon the following expressed terms and conditions:

- (1) The Term of this lease shall be for a period of TWO (2) years beginning October 1, 2020, and expiring (terminating) on September 30, 2022.
- (2) In the event C-Bat is in default of this agreement, the City shall notify C-Bat of said default and provide them with 30 days to cure the default. If C-Bat does not cure same within said time period, the City reserves the right to terminate this lease agreement immediately.
- (3) Any notice to C-Bat will be at the following address:

C-BAT, INC.
P.O. Box 715
Cuero, TX 77954

C-Bat’s Obligations and Agreements:

1. Consideration for said Lease shall be the responsibility of **C-Bat** for all repairs and maintenance of facilities, including the playing field, including the mowing of same, bleachers, scoreboard,

concession stand, fencing, bathrooms. Further, Lessee shall be responsible for and timely pay all occupancy charges that may be incurred.

2. **C-Bat** agrees that all use of said facilities shall be exclusively used for baseball activities. **C-Bat** shall be responsible for scheduling all events and shall notify and obtain the consent of the City Manager in the event of activities other than baseball use or tournaments. Such notice shall be in a reasonable manner and ten (10) days prior to such events occurrence or within a reasonable time prior to the occurrence of such events.
3. **C-Bat** shall obtain, furnish and display adequate warning signs disclaiming responsibility by **City** and **C-Bat** for accidents and shall have the responsibility for the enforcement of safety and the conduct of all activities on the facilities herein leased.
4. As further consideration of execution of this lease, **C-Bat** does hereby agree to furnish the City Manager with copies of all invoices and other proof of funds expended in improvement of such facilities and copies of minutes of the meetings of **C-Bat**. **C-Bat** will provide the City Manager with an annual report of all expenditures and income statements, as well as copies of minutes of all meeting.
5. In the event the notification of any activities other than the baseball use of the facility is received by the City Manager as above provided for and in the discretion of the City Manager, and an objection is had on the part of the City both parties herein agree that prior to the continuation of any such use of the facilities, the matter shall be presented to the City Council of the City of Cuero, Texas, at the next regularly scheduled meeting and **C-Bat** herein does agree to be bound by the discretion of the City Council of the City of Cuero, Texas.
6. **C-BAT AND ITS AGENTS AND ASSIGNS SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY OF CUERO AND ITS AGENTS, OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AND ASSIGNS FROM ANY DAMAGES OR LIABILITIES FROM ANY ACCIDENT OR INJURY TO PARTICIPANTS OF ANY ACTIVITIES OCCURING ON THE LEASED PREMISES. THE CITY SHALL NOT BE LIABLE TO C-BAT OR ITS AGENTS, EMPLOYEES, OFFICERS, LICENSEES, INVITEES, CLIENTS OR ANY OTHER PERSONS USING THE SAID PREMISES FOR DAMAGES SUSTAINED EITHER TO PERSON OR PROPERTY AS A RESULT OF THE CONDITION OR USE OF THE SAID PREMISES AND C-BAT SHALL SAVE AND HOLD CITY HARMLESS FROM EVERY CLAIM, DEMAND, LIABILITY, DAMAGE (PERSONAL AND PROPERTY) OR CAUSE OF ACTION ARISING OUT OF ANY SUCH INJURY OR DAMAGE. THE UNDERSIGNED WAIVES ALL CLAIMS AGAINST CITY AND RELEASES CITY FROM ANY LIABILITY, BASED ON ANY (a) INJURY TO OR DEATH TO ANY PERSON OR (b) DAMAGE TO OR LOSS OF ANY PROPERTY BELONGING TO C-BAT OR ANY THIRD PARTY.**
7. **Maintain the insurance coverages described in Exhibit "A", Insurance Addendum to Lease.**
8. **C-Bat** will require all teams playing on the lease premises to provide C-Bat with proof of team liability insurance as well as waivers of liability signed by team members.
9. **C-Bat** may not make any alteration to the said playing fields without the approval, in advance, of the City Council. Any alterations or additions to the said premises and any permanent attachment or fixture thereto shall be deemed a part of the real estate and shall belong to **City**.

10. **C-Bat** further agrees to lock and unlock restrooms situated at Baseball Field for each event and to keep the restrooms locked at all times when activities are not held.

City's Obligations

1. **City** does hereby agree to furnish electricity and water at no charge to **C-Bat**.

General Obligations

1. **City** and **C-Bat** do agree and covenant that all improvements to the baseball field including any of the facilities erected by the **C-Bat** shall be the assets of the **City**. **C-Bat** shall maintain and receive as the property of **C-Bat** all revenue received by **C-Bat** for activities, including but not limited to, admission fees, entrance fees, application fees, the concession stand and advertisement by sponsors of events.
2. Both parties acknowledge that Cuero Independent School District may sublease the property from **C-Bat**. **C-Bat** agrees to hold the City of Cuero harmless from all accidents or injuries to any sublease, its agents or assigns.
3. If C-Bat shall in all things perform the terms and conditions of this lease as herein set forth, **City** does hereby covenant that **C-Bat** shall enjoy the leased premises during the term of this lease.
4. The **City** and **C-bat** agree that this agreement allows for fair compensation to the other.
5. The **City** and **C-Bat** agree that this agreement is for the non-exclusive use of the field and that other persons, groups, entities and organizations may use these fields and **C-Bat** will work out use times with those persons, groups, entities and organizations. This includes but is not limited to the Cuero Little League.
6. **C-Bat** may from time to time find that other Schools from other towns may want to use the field described herein for play-off games. In the event other Schools request to play games on the said field, **C-Bat** will notify the **City** of the request and obtain approval from the **City** for the other schools to play on said fields.
7. Any amendments, deletions or additions to this agreement shall be in writing and signed by both parties.
8. This lease may not be assigned without the consent of the other party.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS THE 28TH DAY OF SEPTMBER 2020, to have an effective date of OCTOBER 1, 2020.

Lessor:

CITY OF CUERO

Attest:

By: _____
Sara Post Meyer, Mayor

Jennifer Zufelt, City Secretary

Lessee:

C-BAT, INC.

By: _____

_____, **President**

Stuart F. Schiffbauer

Attest:

Secretary

**EXHIBIT A
INSURANCE ADDENDUM TO LEASE**

Maintain the property and/or liability insurance policies required below (mark applicable boxes) and such other insurance coverages and/or higher policy limits as may be required by the City during the Term and any period before or after the Term when C-Bat is present on the Premises:

Type of Insurance or Endorsement	Minimum Policy or Endorsement Limit
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General Liability Insurance Policies Required of C-Bat:

<input checked="" type="checkbox"/> Commercial general liability (occurrence basis)	Per occurrence:	\$ _____
	General aggregate:	\$2,000,000.00

Required Endorsements to Tenant's General Liability or Business Owner's Policy:

<input type="checkbox"/> Designated location(s) general aggregate limit	\$ _____
<input type="checkbox"/> _____	\$ _____

Property Insurance Policy Required of C-Bat:

<input type="checkbox"/> Causes of loss—special form	100 percent of replacement cost of (a) all items included in the definition of C-Bat's Rebuilding Obligations and (b) all of C-Bat's furniture, fixtures, equipment, and other business personal property located in the Premises
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Or

<input type="checkbox"/> Business owner's policy	100 percent of replacement cost of (a) all items included in the definition of C-Bat's Rebuilding Obligations and (b) all of C-Bat's furniture, fixtures, equipment, and other business personal property located in the Premises
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2. Comply with the following additional insurance requirements:

- a. The commercial general liability (or business owner's property policy) must be endorsed to name City as "additional insured" and must not be endorsed to exclude the sole negligence of the City from the definition of "insured contract."
- b. Additional insured endorsements must not exclude coverage for the sole or contributory ordinary negligence of the City.
- c. Property insurance policies must contain waivers of subrogation of claims against City.
- d. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by C-Bat to City before entering the Premises and thereafter at least ten days before the expiration of the policies.

3. Obtain the approval of City with respect to the following: the forms of City's insurance policies, endorsements and certificates, and other evidence of City's Insurance; the amounts of any deductibles or self-insured retentions amounts under City's Insurance; and the creditworthiness and ratings of the insurance companies issuing City's Insurance.

