

**FIRST AMENDED
COST PARTICIPATION AGREEMENT BETWEEN YMCA OF
CENTRAL TEXAS AND WILLIAMSON COUNTY REGARDING
THE CONSTRUCTION OF A PEDESTRIAN BRIDGE AT TWIN
LAKES PARK**

THIS FIRST AMENDED COST PARTICIPATION AGREEMENT (“Amended Agreement”) is made and entered into by and between Williamson County, Texas (the “County”) and the YMCA of Central Texas (formerly referred to as the YMCA of Greater Williamson County) (the “YMCA”), a Texas non-profit of the State of Texas and are sometimes collectively referred to as “the Parties”.

WITNESSETH:

WHEREAS, the County and the YMCA are in the process of constructing a pedestrian bridge and pavilion at Twin Lakes Park (the “Project”); and

WHEREAS, in 2019, the YMCA and the County executed a Cost Participation Agreement Between YMCA of Greater Williamson County and Williamson County Regarding the Construction of a Pedestrian Bridge at Twin Lakes Park (“Original Agreement”), wherein the parties agreed to share the cost of Design and Construction of the Project; and

WHEREAS, the YMCA and the County now desire to amend and supplant the Original Agreement with this Amended Agreement and set forth the Parties obligations as to the cost sharing of the funding of improvements for the Project; and

WHEREAS, the County and the YMCA have committed to provide funding for the construction and remaining civil engineering services for the Project and wish to set out the terms and conditions of their agreements in this Amended Agreement; and

WHEREAS, the total cost of construction and remaining civil engineering services (consisting of bidding phase and construction observation/closeout phase services) for the Project is \$1,199,679.34; and

WHEREAS, the County has committed to providing funding towards the Project in the amount of \$988,881.49 and the YMCA has committed to providing funding towards the Project in the amount of \$210,797.85; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

I.
Definitions

- A. The term “Civil Engineering Services” for the purposes of this agreement means bidding phase and construction observation/closeout phase services to be provided by Hagood Engineering Associates, Inc (“Hagood”).
- B. The term “Design Services” for the purposes of this agreement means the design, plans and specifications that the YMCA procured, at its sole cost, for the Project from Hagood prior to the execution of this Amended Agreement.
- C. The term “Construction” means the provision of all materials, equipment, labor, surveying, testing and inspection necessary to construct the Project according to the plans and specifications (the “Plans”) approved, in writing, by the YMCA and by the County prior to award of the construction contract.
- D. The term “Right-of-Way acquisition” means all engineering, surveying, appraisal, legal, title company and other services required to acquire in fee simple the parcels of land necessary to construct the Project.
- E. The term “Project” means the design and construction of a pedestrian bridge and pavilion at Twin Lakes Park, at the location shown on **Exhibit “A”**, attached hereto.

II.
Agreements of the Parties

- A. The YMCA hereby agrees to assign County all of its rights, interests and title to the work product for the Design Services procured from Hagood to be used on the Construction and completion of the Project.
- B. The County hereby agrees to execute a separate contract with Hagood to procure the Civil Engineering Services.
- C. Following execution of this Amended Agreement, County shall procure and contract for the Construction of the Project, as well as all right-of-way acquisition, if necessary, and all environmental mitigation services, if necessary.
- D. The County agrees to act as the Project Manager for the Project and to administer all aspects of the Construction for the Project including competitive bidding, construction, administration and inspection of the Project.
- E. The County shall schedule periodic progress meetings with the YMCA of not less than one per month, unless otherwise agreed by both Parties.
- F. County shall provide \$988,881.49 to be allocated towards the Construction costs of the pedestrian bridge and Civil Engineering Services for the Project (“County’s Contribution”).

In no event will the County be obligated to provide any amounts toward the construction of the pavilion to be constructed as a part of the Project.

- G. Within thirty (30) calendar days of the award of a construction contract for the Project, the YMCA shall tender the amount of \$210,797.85 to the County to be held and allocated to the payment of the Construction costs of the pavilion and pedestrian bridge ("YMCA's Contribution").
- H. The County and the YMCA shall be obligated to pay fifty percent (50%) each for (1.) changes in the work that cause increased construction costs associated with the pedestrian bridge construction; and (2.) any necessary materials testing costs associated with the pedestrian bridge construction. The YMCA's fifty percent (50%) share of any increased costs and/or materials testing associated with the pedestrian bridge shall be payable to the County after the County has deemed the construction of the Project complete. County shall provide YMCA with documentation evidencing the increased costs and/or materials testing costs associated with the pedestrian bridge and a statement for the YMCA's fifty percent (50%) share in such costs. Within thirty (30) calendar days of the County's statement, YMCA shall tender to County the funds owed pursuant to this provision.
- I. The YMCA shall be obligated to pay one hundred percent (100%) of (1.) changes in the work that cause increased construction costs associated with the pavilion construction and (2.) any necessary materials testing costs associated with the pavilion construction. The increased construction costs and/or materials testing costs associated with the pavilion shall be payable by the YMCA to the County after the County has deemed the construction of the Project complete. County shall provide YMCA with documentation evidencing the increased construction costs and/or materials testing costs associated with the pavilion and a statement for such costs. Within thirty (30) calendar days of the County's statement, YMCA shall tender to County the funds owed pursuant to this provision.
- J. Unless otherwise approved by the Parties, the County agrees not to materially amend or otherwise reduce the Plans for the Project, as approved by the Parties prior to construction.
- K. The Parties hereby agree that this Amended Agreement shall amend and supplant the Original Agreement.

III. Miscellaneous

- A. Severability. The provisions of this Amended Agreement are severable and, if any provision of this Amended Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Amended Agreement will not be affected and this Amended Agreement will be construed as if the invalid portion had never been contained herein.
- B. Payments from Current Revenues. Any payments required to be made by County under this Amended Agreement will be paid from current revenues or other funds lawfully available to the County for such purpose.

- C. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Amended Agreement.
- D. Entire Agreement. This Amended Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.
- E. Amendments. Any amendment of this Amended Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.
- F. Applicable Law; Venue. This Amended Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.
- G. Notices. Any notices given under this Amended Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:
- YMCA: YMCA of Central Texas
 P.O. Box 819
 Round Rock, TX 78680
 Attn: Jeff Andresen, President/CEO
- COUNTY: Williamson County
 710 Main Street, Suite 101
 Georgetown, Texas 78626
 Attn: Williamson County Judge
- H. Counterparts; Effect of Partial Execution. This Amended Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.
- I. Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Amended Agreement.
- J. Termination for Convenience. This agreement may be terminated by County prior to the construction contract execution date without future or prospective liability for performance upon giving thirty (30) days written notice thereof.
- K. No Waiver of Sovereign Immunity or Powers. Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of the County, the Williamson County Commissioners Court, or any officials or representatives of the County.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Amended Agreement to be effective as of the date of the last party's execution below.

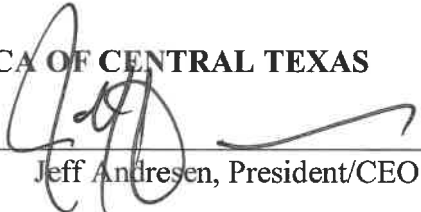
WILLIAMSON COUNTY, TEXAS

By: _____
As Presiding Officer of the
Williamson County Commissioners Court

Printed Name: _____

Date: _____, 20____

YMCA OF CENTRAL TEXAS

By:  _____
Jeff Andresen, President/CEO

Date: 8-23 -, 20 22

EXHIBIT "A"

