

**AGREEMENT
BETWEEN WILLIAMSON COUNTY AND THE YMCA OF GREATER
WILLIAMSON COUNTY
FOR FUNDING FOR TWIN LAKES PARK PROJECT**

STATE OF TEXAS

COUNTY OF WILLIAMSON

KNOW ALL BY THESE PRESENTS:

THIS AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between WILLIAMSON COUNTY, TEXAS, a political subdivision of the State of Texas (hereinafter referred to as the "County") and the YMCA OF GREATER WILLIAMSON COUNTY, TEXAS, being a 501 (c) (3) organization of the State of Texas (hereinafter referred to as the "YMCA"); and sometimes both being collectively referred to as the "Parties."

WHEREAS, the YMCA desires to continue operating Twin Lakes Park (located at 204 East Little Elm Trail Cedar Park, TX 78613) under the initial lease agreement with Williamson County dated October 1, 1997,

WHEREAS, the YMCA is presently pursuing development of the overnight camper dining hall, cabins, parking area, and supporting infrastructure at Twin Lakes Park (the "Project").

WHEREAS, the County desires to fund park projects with money obtained through the issuance for park bonds entitled "Williamson County, Texas, Limited Tax bonds, Series 2007A" and "Williamson County, Texas, Limited Tax Park Bond Series 2013" in order to facilitate the development of such projects within its boundaries; and

WHEREAS, for adequate mutual consideration which the Parties hereby acknowledge as sufficient, the parties desire to set forth in writing the agreed terms and conditions for the use of funds related to park projects;

NOW, THEREFORE, the County and the YMCA hereby agree as follows:

1. **Description of Project.** The Project shall consist of construction necessary to convert/renovate the existing dining hall into an overnight camper dining hall with restrooms; develop overnight cabins; provide supporting site infrastructure.. The scope of the work is further described in Exhibit "A", attached hereto.
2. **Project Funding.** Subject to and in accordance with the terms and conditions of this Agreement, the County hereby agrees to provide the YMCA with funding in the amount of up to and no more than ONE MILLION FOUR HUNDRED FIFTY SIX THOUSAND AND SEVEN HUNDRED

DOLLARS (\$1,456,700) for the Project. The YMCA agrees to use such funding solely for expenses and costs directly related to the construction of the Project.

3. **YMCA's Duties and Responsibilities.** The parties agree that the YMCA shall:

- (a) Procure and administer all aspects of design and construction of the Project, including, but not limited to the procuring of all architectural and engineering services in accordance with all applicable state laws, preparation of construction plans, competitive bidding, construction and inspection of the Project.
- (b) Utilize a statutorily-allowable delivery method for construction of the Project;
- (c) In the development and construction of the Project, comply with all federal and state laws and regulations;
- (d) Post a sign at the construction site during construction of the Project identifying the County as one of the funding sources of the Project;
- (e) Provide a copy of the final design plans and specifications to County for its approval prior to the commencement of any construction on the Project;
- (f) Provide the County with any and all documentation or information that the County may reasonably require or request pursuant to this Agreement or the Project;
- (g) Provide the County with a quarterly report of the progress of the Project, including any documentation necessary to conduct a Project audit, i.e. construction contracts, supply invoices, time sheets, and the like;
- (h) Commence the Project on or before September 30, 2014 and fully and finally complete the Project by August 31, 2015. In the event the Project is not commenced by the said commencement date, County may terminate this Agreement and the County's obligations under this Agreement shall cease. In the event County already extended funding to the YMCA as of the date on which the County terminates this Agreement for YMCA's failure to commence the Project by the said commencement date, then and in that event the YMCA shall, within five (5) calendar days, reimburse and return all such funding to the County.
- (i) Inform the County in a timely manner of any substantial delays or alterations in the scope of work of the Project;
- (j) Provide overall project management and contract administration to supervise and control the day-to-day activities of any construction,

and monitor the activities of the contractor to ensure the timely and efficient completion of the Project in accordance with the plans and specifications and construction schedule subject to unforeseen delays;

- (k) Upon completion of the Project, provide County with detailed reports to support Project costs;
- (l) Provide the County with photographic record(s) of the completed Project;

In the event the YMCA determines, in its sole discretion, that fees and costs are of such an amount that completion of the Project is no longer monetarily feasible, the YMCA shall have the right to terminate this Agreement and decline funding from the County; provided, however, if the County has already extended funding to the YMCA as of the date on which the YMCA terminates this Agreement, then and in that event the YMCA shall, within five (5) calendar days, reimburse and return all such funding to the County. In the event that any of County's funding is not exhausted upon final completion of the Project, the YMCA shall return the unused funds to the County;

- (m) INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS WILLIAMSON COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF YMCA OR ANY OF ITS EMPLOYEES, CONTRACTORS AND AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF PHASE 1 OF THE PROJECT; and
- (n) In the event the YMCA constructs an informational sign or dedication sign following completion of the Project, the YMCA shall identify the County as one of the funding sources.

4. Payment of Funds.

- (a) The County shall tender the funds to the YMCA for reimbursement of the costs and expenses directly associated with the construction of the Project. Funding shall be pursuant to the Texas Prompt Payment Act and tendered in the form of partial payments upon presentation of invoices for applicable labor and construction materials, supplies and services purchased by the YMCA from the Project construction contractor in the prior month.
- (b) In no event shall the County be obligated to provide the YMCA with any funding in excess of the \$1,456,700 described herein. The YMCA shall be obligated to obtain and/or provide any funds needed in excess of County's funding in order to design and construct the Project.

- (c) Invoices shall be paid by County within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. .

In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, County shall notify the YMCA of the discrepancy. Following County's notification of any discrepancy as to an invoice, the YMCA must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. County shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. County's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

5. Term and Termination.

- (a) Term. This Agreement shall be effective from and after the date of the last party to sign ("Effective Date"), shall automatically renew for successive one year periods until the Project is completed, unless previously terminated pursuant to the provisions stated herein.
- (b) Termination for Default. If either party defaults in the performance of any of the terms or conditions of this Agreement, the non-defaulting party shall deliver written notice of such default to the defaulting party. Such notice must specify the nature of the default and inform the defaulting party that unless the default is cured within thirty (30) days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the defaulting party begins a good faith attempt to cure the default within thirty (30) days, then and in that instance, the thirty (30) day period may be extended by the non-defaulting party, so long as the defaulting party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the default. If, in the opinion of the non-defaulting party, the defaulting party does not cure the breach within thirty (30) days or otherwise fails to make any diligent attempt to correct the default, the defaulting party shall be deemed to be in default and the non-defaulting party may, in addition to seeking any other remedies available at law or in equity, terminate this Agreement.

6. General Provisions. The following general provisions shall apply to this Agreement:

- (a) **Appropriation of Funds by County.** County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. YMCA understands and agrees that the County's

payment of amounts under this Agreement is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

- (b) **County's Right to Audit.** YMCA agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of the YMCA which are directly pertinent to the services to be performed and amounts expended under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. The YMCA agrees that County shall have access during normal working hours to all necessary YMCA facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give the YMCA reasonable advance notice of intended audits.
- (c) **Amendments.** Any amendment hereof must be in writing and signed by the authorized representative(s) for each party.
- (d) **Prior Agreements.** Except as set forth herein, this Agreement shall not be construed so as to modify, supplement or otherwise alter the provisions of any other agreement between the County and the YMCA.
- (e) **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas.
- (f) **Assignment.** Neither party may assign its rights and obligation under this Agreement.
- (g) **Other Necessary Actions and Instruments.** The parties agree that each will take such other and further actions and execute such other and further consents, authorizations, instruments or documents as are necessary or incidental to effectuate the purposes of this Agreement.
- (h) **No Third Party Beneficiaries.** Except as set forth herein, nothing herein shall be construed to confer upon any person or entity other than the parties hereto any rights, benefits or remedies under or by reason of this Agreement.
- (i) **Relationship of the Parties.** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- (j) **Venue.** Venue for any suit arising hereunder shall be in Williamson County, Texas.
- (k) **Duplicate Originals.** This Agreement may be executed in duplicate originals, each of equal dignity.

- (l) **Effective Date.** This Agreement shall be effective from and after the date of due approval hereof by the respective governing bodies of the County and the YMCA, and due execution hereof by their respective authorized representative(s).
- (m) **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all prior and contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

IN WITNESS WHEREOF, the authorized representative(s) of the County and the YMCA have executed this Agreement on the dates set forth below.

WILLIAMSON COUNTY, TEXAS

By: 

Dan A. Gattis, Williamson County Judge

Date Signed: 08-27-2014

Attest: 

Nancy Rister, County Clerk

YMCA OF GREATER WILLIAMSON COUNTY, TX

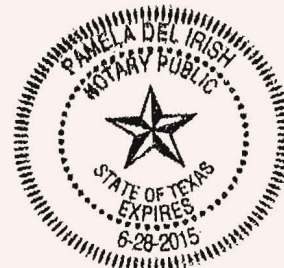
By: 

Date Signed: 8-20-14

FOR YMCA, ATTEST:

By: 

Date Signed: 8-20-14



SCOPE: 89% work included in the base bid - south roadway reconstruction, utilities, water & sewer			
Erosion Control	\$	26,687.50	
Slitework	\$	392,000.00	
Fire Lane Striping	\$	3,062.50	
Site Concrete	\$	9,425.00	
Culvert Replacement	\$	64,500.00	
Hardscape Replacements	\$	16,625.00	
Public Water - Per Plan	\$	240,625.00	
Fire Waterline	\$	148,750.00	
Domestic Waterline	\$	70,000.00	
Wastewater	\$	100,625.00	
UTI Station	\$	108,500.00	
Emergency Generator	\$	48,125.00	
SUBTOTAL	\$	1,231,125.00	
Less 11%	\$	135,423.75	
REVISED SUBTOTAL	\$	1,095,701.25	
SCOPE: Fire Loop Completion			
Erosion Control	\$	18,000.00	
Fire Waterline	\$	275,000.00	
SUBTOTAL	\$	293,000.00	
SCOPE: Primary Conduit for Electrical			
Allowance	\$	68,000.00	
SUBTOTAL	\$	68,000.00	
TOTAL BUDGETED COST		\$	1,456,701.25

