



**First Amendment to
Parkland Improvement and Use Agreement
between
City of Austin and
West Austin Youth Association**

This First Amendment to Parkland Improvement and Use Agreement (“*First Amendment*”) is made to the August 2013 Parkland Improvement and Use Agreement for the ball fields and improvements on the City-owned parcel of land known as Lamar Beach and Town Lake Metropolitan Park (the “*Original Agreement*”).

This First Amendment is entered into between the City of Austin, a home-rule municipal corporation of the State of Texas, acting by and through its Assistant City Manager (the “*City*”) and the West Austin Youth Association (“*WAYA*”) through its duly authorized representative.

The parties agree to amend the Original Agreement as follows:

I. Section III, Subsection A is amended as follows:

- A. WAYA shall be responsible, at its sole cost, for the design, permitting, bidding, and construction of the Improvements. The Improvements shall be installed and constructed within the Park in accordance with the Timeline (defined below) and according to the plans, specifications, site plan and construction documents prepared by WAYA and reviewed and approved by the City prior to start of construction (the “Design Development Plan”) as the Design Development Plan may be amended or waived from time to time by WAYA with approval from the City (collectively, the “Construction Project”). The Parties agree and acknowledge that the description of the Improvements provided in this Agreement as **Exhibits “A” and “B”** is conceptual and preliminary in nature and the details of such description (such as the description of buildings or amenities such as batting cages, etc.) is subject to change, depending on regulatory requirements or planning restraints. The Parties agree that if a portion of the Park is required by the City for the construction of the Pressler Street extension project or for other uses as set forth in the adopted Lamar Beach Metro Park Master Plan, then that portion of the Park shall not be available for construction of the Ball Fields and Improvements described in Exhibits “A” and “B.” With the exception of the limitation explicitly set forth in the previous sentence, the foregoing sentence does not limit (nor does it extend) any WAYA rights under the Original Agreement and its exhibits, including without limitation any WAYA rights to build the Ball Fields and Improvements as described in Exhibits “A” and “B.”

II. Section III, Subsection D is amended as follows:

- D. Following the City’s review and approval of the Design Development Plan, approval of a site plan for the Construction Project, and prior to receipt of an approved building permit to install and

construct the Construction Project in the Park, WAYA shall present to the City, for its review and approval, a construction schedule for construction and installation of the Construction Project (the "Timeline"), approval by the City not to be unreasonably withheld. The Parties agree that WAYA shall complete the Construction Project not later than ten years after the Lamar Beach Metro Park Master Plan is adopted by City Council [~~within six years of the Effective Date of this Agreement~~]. The time within which the Construction Project must be complete is tolled during any time when there is a material and substantial denial of access as a direct result of the Pressler Street extension project that materially and substantially interferes with WAYA's ability to complete the Construction Project. Following the City's approval of an acceptable Timeline, WAYA shall thereafter adhere to that approved schedule. Changes to the Timeline may be made by written mutual agreement between WAYA's President and the Director without a formal amendment to this Agreement. Construction work on the Construction Project shall not commence until the City has issued a written "Notice to Proceed". All construction work shall meet or exceed City standards. This Agreement may be terminated by the City if the Improvements are not completed within ten years after the Lamar Beach Metro Park Master Plan is adopted by City Council.

III. Section IX, Subsection A is amended as follows:

- A. This Agreement shall have an effective date that is the last date this Agreement is executed by a party (the "Effective Date"). The term of this Agreement shall extend 25 years from the completion date established in the initially approved Timeline [~~Effective Date~~] (the "Term"), unless the Agreement has otherwise been terminated as provided in Section III, Subsection D or otherwise. Amendment to the Timeline after initial approval shall not further extend the Term. The [~~Director~~] City may extend the Term for one period of up to twenty five [~~ten~~] years, by providing WAYA at least six months prior written notice of the extension prior to the expiration of the preceding term of this Agreement. The option to extend is at the City's sole discretion. Any such extension shall be on the same terms as herein provided of the original term of this Agreement unless officially amended.

IV. The third bullet under Section 22 in Exhibit D (*Ball Fields Maintenance Standards*) is amended as follows:

- Parking Lots: Inspect monthly, Maintain surface with minimal holes. Resurface and repaint stripes as needed [~~every two years~~].

V. Section VI is amended to add a new subsection H to read as follows:

H. As directed in Resolution No. 20140807-114, the City will negotiate a mutual parking and controlled access agreement which provides for adequate parking areas during WAYA scheduled programming.

VI. All other terms and conditions of the Original Agreement remain in full force and effect.

VII. This First Amendment is effective upon execution by all parties and remains in effect until the Original Agreement terminates.

This First Amendment to Parkland Improvement and Use Agreement is executed by:

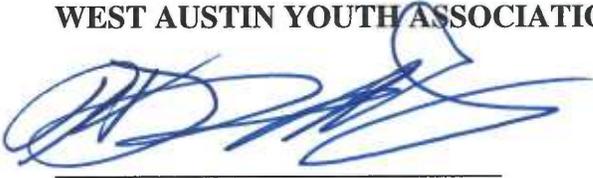
CITY OF AUSTIN:



Bert Lumbreras
Assistant City Manager

Date: 08/26/15

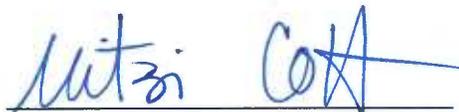
WEST AUSTIN YOUTH ASSOCIATION, INC.:



Wayne Brumley
President

Date: 9-1-15

Approved as to form:



City of Austin Law Department

RECEIVED
AUG 27 2015
LAW DEPARTMENT

**PARKLAND IMPROVEMENT AND LAND USE AGREEMENT
BETWEEN THE CITY OF AUSTIN
AND WEST AUSTIN YOUTH ASSOCIATION**

This Parkland Improvement and Land Use Agreement (“Agreement”) is entered into by and between the City of Austin, a Texas home-rule municipal corporation (the “City”) and the West Austin Youth Association, a Texas non-profit 501(c)(3) organization (“WAYA”) acting by and through its president and duly authorized representative, Wick Alexander. The City and WAYA are collectively referred to as the “Parties.”

I. FINDINGS AND STATEMENT OF PUBLIC PURPOSE

The City finds that the services provided by WAYA benefit the public by providing opportunities to the youth of Austin to participate in sports, fitness, and recreational programs.

The City further finds that WAYA receives donations from various individuals to provide these services and that these services performed by WAYA promote the well-being of Austin's youth.

The City and WAYA have a shared interest in providing opportunities to the youth of Austin to participate in sports, fitness, and recreational programs, and have worked cooperatively on youth services for more than 30 years and wish to continue that relationship into the future.

The City and WAYA have identified needed improvements to the ball fields at Lamar Beach and Town Lake Metropolitan Park that, if completed, would benefit the youth participating in WAYA programming and the public at large for years to come.

WAYA, in furtherance of its mission, seeks to continue collaborating with the City to provide youth services to the City as set forth in this Agreement.

Because of the above-stated public benefits, the City finds that partnering with WAYA to provide improvements to the ball fields at Lamar Beach and Town Lake Metropolitan Park and to provide recreational opportunities to the youth of Austin serves a public purpose.

II. DEFINITIONS

- A. **BALL FIELDS** means the athletic playing fields and related facilities known as Kocurek Field, Bishop Field, Sayers Field, Bechtol Harper Field, Chalmers Field, Williams Field and McEachern Field as these fields exist on the Effective Date and may be reconfigured or renamed in the future.

- B. BUIDINGS means the concession stand, field press box, and other structures, existing on the Effective Date or in the future, associated with the Ball Fields.
- C. DIRECTOR means the director of the City's Parks and Recreation Department or a designee identified by the director of the City's Parks and Recreation Department.
- D. IMPROVEMENTS means the modifications described in the attached **Exhibit "A"** and **Exhibit "B"**.
- E. PARD or DEPARTMENT means the City's Parks and Recreation Department.
- F. PARK means the City-owned parcel of land known as Lamar Beach and Town Lake Metropolitan Park, located at 1200 W. Cesar Chavez St.
- G. SEASON means the annual scheduled time necessary for WAYA to conduct its youth recreational activities, including periods anticipated for the rest and renovation of playing fields. The duration of the Season shall be mutually agreed upon between the City and WAYA. The City will not unreasonably withhold its approval of WAYA's proposed Season.

III. WAYA CONSTRUCTION RESPONSIBILITIES

- A. WAYA shall be responsible, at its sole cost, for the design, permitting, bidding, and construction of the Improvements. The Improvements shall be installed and constructed within the Park in accordance with the Timeline (defined below) and according to the plans, specifications, site plan and construction documents prepared by WAYA and reviewed and approved by the City prior to start of construction (the "Design Development Plan") as the Design Development Plan may be amended or waived from time to time by WAYA with approval from the City (collectively, the "Construction Project"). The Parties agree and acknowledge that the description of the Improvements provided in this Agreement as **Exhibits "A"** and **"B"** is conceptual and preliminary in nature and the details of such description (such as the description of buildings or amenities such as batting cages, etc.) is subject to change, depending on regulatory requirements or planning restraints.
- B. WAYA shall engage a professional consultant to prepare a preliminary Design Development Plan, including a rendering of the Construction Project and preliminary total construction cost estimate (the "Preliminary Cost Estimate") (collectively, the "Preliminary Plan"), for the City's review and approval. The Director shall promptly issue a written response to the submittal stating that the preliminary Design Development Plan and Preliminary Cost Estimate are approved or disapproved, in which case the Director shall state the corrections or modifications required to be made to the preliminary Design Development Plan. Failure by the Director to respond to the preliminary Design Development Plan within 21 days after its submittal to the Director by WAYA shall be deemed

acceptance of the preliminary Design Development Plan by the Director. The Preliminary Cost Estimate will be adjusted by WAYA annually for the City's review and approval until the Notice to Proceed (defined below) is issued.

- C. WAYA must finalize for the City's review and approval the final Design Development Plan, including updating or revising the Preliminary Cost Estimate to reflect current cost conditions. The Director shall promptly issue a written response to the submittal stating that the final Design Development Plan is approved or disapproved, in which case the Director shall state the corrections or modifications required to be made to the final Design Development Plan. Failure by the Director to respond to the final Design Development Plan within 21 days after its submittal to the Director by WAYA shall be deemed acceptance of the final Design Development Plan by the Director. The final Design Development Plan shall identify a Park Improvement and Maintenance Area and an Access and Staging Area as further described below. Following completion of the final Design Development Plan, WAYA, if necessary, will conduct a capital fund-raising campaign or other means which must result in (1) funds on deposit in a financial institution with withdrawal requirements acceptable to the City in writing, plus (2) the dollar value of committed donated services evidenced by letters of commitment from the contributors or other evidence reasonably demonstrating WAYA's financial ability to fund no less than one-hundred percent of the Cost Estimates. The Parties agree and acknowledge that the Director shall promptly approve the preliminary Design Development Plan or the final Design Development Plan if they are substantially similar to the description of the Improvements as provided in Exhibits A and B. After the final Design Development Plan is approved by the Director, WAYA shall be required to submit to the City and diligently pursue the approval of a site development permit application along with any other related permits or applications required for the construction of the Improvements.

- D. Following the City's review and approval of the Design Development Plan, approval of a site plan for the Construction Project, and prior to receipt of an approved building permit to install and construct the Construction Project in the Park, WAYA shall present to the City, for its review and approval, a construction schedule for construction and installation of the Construction Project (the "Timeline"), approval by the City not to be unreasonably withheld. The Parties agree that WAYA shall complete the Construction Project within six years of the Effective Date of this Agreement. Following the City's approval of an acceptable Timeline, WAYA shall thereafter adhere to that approved schedule. Changes to the Timeline may be made by written mutual agreement between WAYA's President and the Director without a formal amendment to this Agreement. Construction work on the Construction Project shall not commence until the City has issued a written "Notice to Proceed". All construction work shall meet or exceed City standards.

- E. WAYA agrees to follow all City ordinances, and other rules and regulations

regarding permits and approvals related to activities and construction of the Construction Project, as well as those of any other governmental entity having jurisdiction. WAYA agrees to comply with the minority-owned and female-owned business enterprise procurement program requirements as set forth in the attached **Exhibit “C”** (the “M/WBE Requirements”), the non-discrimination requirements of City Code, Title 5, the City’s Worker Safety Requirements as set forth in Resolution No. 20110728-106, and the City’s prevailing wage requirements as set forth in Resolution No. 20080705-047. The City is authorized to monitor and enforce WAYA’s compliance with these governmental ordinances, rules, and regulations. Nothing in this section shall prevent or prohibit WAYA or the City from seeking or securing available exceptions from, variances to, or waivers of governmental ordinances, rules, and regulations.

- F. WAYA shall comply with the City's “Construction in Parks Specifications”, which are incorporated by reference for all purposes, as applicable, and as the Construction in Parks Specifications may be amended or waived by the Director from time to time for purposes of this Agreement and/or the construction of the Construction Project (the "Park Specs"). Nothing in this section shall prevent or prohibit WAYA or the City from seeking or securing available exceptions from, variances to, or waivers of the Park Specs.

- G. WAYA shall have no right to place liens on the Park, and shall not allow any liens to be placed against the Park by any contractors.

- H. WAYA and its contractors shall perform the obligations set forth in the Agreement as independent contractors.

- I. In completing the Construction Project, WAYA shall hire, at its sole cost, licensed and insured construction professionals, including but not limited to designer, architect, construction contractor, etc. meeting the minimum City standards.

- J. WAYA agrees to diligently pursue completion of the Construction Project and to coordinate all construction activity with designated PARD staff following issuance of the Notice to Proceed to minimize disruptions to the Park's usage and to ensure that construction meets City standards.

- K. WAYA shall assume all responsibilities for the on-going maintenance and day-to-day operation of the Construction Project, including maintaining the Improvements, providing all utilities to the Construction Project and providing for the ongoing annual expenses necessary to provide the staff and operational requirements of the Construction Project (the “WAYA Maintenance Responsibilities”) within the Park Improvement and Maintenance Area. The City acknowledges and agrees that no

public access shall be allowed within the limits of construction of the Construction Project while it is in progress. Unless the City determines and notifies WAYA in writing that its WAYA Maintenance Responsibilities are no longer necessary or desired, the City grants to WAYA during the Term the right to enter and a license to access the Park for the purpose of carrying out the WAYA Maintenance Responsibilities.

- L. WAYA shall be responsible for securing all permits and approvals necessary to construct the Construction Project. PARD staff shall assist WAYA in the submission of the permits and shall cooperate with WAYA as needed to apply for the permits. WAYA and/or their contractors shall coordinate with PARD staff to secure any information in the possession or control of PARD which is necessary to facilitate the applications for permits and approvals.
- M. WAYA shall secure advance approval for all removal, cutting, and pruning of trees on City property. To secure said approval, WAYA shall present a tree trimming plan (the "Tree Trimming Plan") to the City no fewer than seven days prior to the day the pruning will occur. The Tree Trimming Plan shall identify the trees and/or limbs to be removed, cut, and pruned. The Tree Trimming Plan must identify the technique that shall be utilized to prune each tree. In addition, each tree and/or limb to be removed, cut, and pruned must be marked in the field.
- N. Upon completion of the Construction Project, WAYA shall deliver to the City written notice that the Construction Project has been completed on a form approved by the City (the "Completion Notice").
- O. Upon completion of the Construction Project, WAYA shall, at its own expense, remove all construction equipment from the Park Improvement and Maintenance Area and the Access and Staging Area and shall restore these areas to the condition at the time the Notice to Proceed was given or to the condition required by the Design Development Plan, whichever is better.
- P. Upon completion and acceptance of the Construction Project, WAYA must obtain from each of its contractors a written warranty, acceptable to the City, that the Improvements will be free of defects for at least one year from the date the Improvements are accepted by the City for any work performed or materials supplied with respect to the Construction Project. Each warranty shall be assigned to the City, without further recourse against WAYA.

IV. WAYA PARK USE RESPONSIBILITIES

- A. The City shall have first priority right to use Williams Field at all times for public use. WAYA may use Williams Field at times when not in use by the public.
- B. WAYA shall have first priority right to use the Ball Fields, except for Williams Field, and Buildings at all times during the Season for WAYA athletic or youth programs. The WAYA athletic or youth programs shall include any such programs that are operated directly by WAYA or its affiliates, and such programs shall include, without limitation, any programs operated by WAYA, Western Hills Little League, Sportball, Soccer Shots, Champs League, FitKids, Touchdown Kids or similar programs or activities. The City may use the other Ball Fields besides Williams Field for public use outside of the Season at times mutually agreed upon by the Parties.
- C. Programs offered by WAYA or its affiliates as described in this Agreement shall serve predominantly City of Austin residents aged 19 years or younger and be open to all City of Austin youth regardless of race, color, religion, national origin, sexual orientation, or athletic ability. "Predominantly" is defined as a minimum of 75% City of Austin residents. City of Austin resident may include, without limitation, a participant's parents or guardian that has a permanent address, owns property, or is the owner of a business within the City of Austin limits.
- D. WAYA shall adhere to current Youth Sports Provider Administrative Rules throughout the term of this Agreement.
- E. Programs offered by WAYA or its affiliates as described in this Agreement shall be consistent with WAYA's mission and designed to allow all youth who register the ability to play in programs that match their age and skill.
- F. WAYA shall not rent, barter, or allow the use of the Ball Fields or Buildings to or by any other entity or organization except as may be described herein or through the course of regular scheduled Season play and/or tournaments without the express written consent of the City.
- G. A WAYA employee or volunteer representative authorized by WAYA shall be on-site at the Ball Fields at all times the Ball Fields are in use for practices, games, tournaments or other sports related activities.
- H. WAYA shall have no responsibility or liability for any damage to property or injury to persons resulting from the public's use of the Ball Fields outside of WAYA programs or activities.
- I. Because the Buildings will be used to store equipment belonging to WAYA, at no time may the Buildings, including the concession area, press box or storage building, be accessed or used by the public without the direct supervision of WAYA or the City.

- J. WAYA shall provide year-round maintenance of the Ball Fields, including Williams Field as long as it continues to exist as an athletic field, in accordance with the City's Ball Fields maintenance standards as outlined in **Exhibit "D"** and WAYA shall provide general litter control and clean-up duties related to the Ball Fields. WAYA shall ensure Ball Fields and Buildings are reasonably safe for public use and construction is kept in reasonably good repair and condition, normal wear and tear excepted, throughout the term of this Agreement to prevent undue deterioration. The City acknowledges and agrees that WAYA shall not incur any additional, unreasonable costs due to the use of Williams Field by the public or the City.
- K. WAYA, at its sole expense, is permitted to operate concessions within the Buildings in accordance with any and all City of Austin Health Code requirements.
- L. WAYA, at its sole expense, is permitted to display sponsorship signage on the interior of the Ball Fields (ie: on Ball Field fencing or on the Buildings), however, no signage may be displayed that is primarily related to the consumption of alcohol or adult-oriented businesses.
- M. WAYA may erect signage at the Ball Fields providing that public use of the Ball Fields is by written permission from the City of Austin only.
- N. WAYA must comply with City's water and energy conservation rules and regulations for its improvement, use, and maintenance of the Ball Fields and Buildings and must switch off all lighting at the conclusion of each night's programs. Any violation of the water and energy conservation rules may result in an assessment against WAYA.
- O. WAYA is responsible for the costs of all utilities (electric, water, waste water, etc.) associated with operations of the Ball Fields, except Williams Field, and Buildings in excess of the annual City utility stipend described under Section VI.B.
- P. WAYA may not use two-cycle equipment, such as chain saws, weed eaters, small lawn mowers, and blowers, on Ozone Action Days.
- Q. Except as specifically allowed herein, WAYA must receive advance written approval from the City to erect any permanent signage in or on the Ball Fields, Buildings, or the Park.
- R. WAYA must conduct annual background checks consistent with the City's procedures and policies on all volunteers and employees who will interact with youth. City shall provide WAYA with a copy of these procedures and policies.
- S. WAYA must not permit alcoholic beverages, tobacco, or illegal drugs to be consumed on or around the Ball Fields or within the Park. WAYA may not allow weapons of any kind on the Ball Fields or within the Park during its use of the Ball

Fields. WAYA is authorized to eject, or have ejected by City of Austin personnel, from the Ball Fields any person consuming an alcoholic beverage, using tobacco products or illegal drugs, bringing weapons of any kind on a field, or whose behavior is disrupting WAYA's programs.

- T. Except for vehicles associated with maintenance or repairs, WAYA must not allow any vehicle on the Ball Fields.
- U. WAYA must regularly send a representative to attend PARD-sponsored Youth Sports Programs meetings and to reasonably participate or cooperate with PARD at such meetings if required to fulfill the purposes of this Agreement.
- V. WAYA shall provide notice to the City immediately upon becoming aware of any significant damage, vandalism, necessary repairs, or safety issues at the Ball Fields or Buildings.

V. WAYA REQUIRED DOCUMENTATION

- A. WAYA must provide documentation of its non-profit 501(c)(3) status, attached as **Exhibit "E"**. WAYA shall provide documentation of its continuing non-profit 501(c)(3) status by October 1st annually.
- B. WAYA must provide a Certificate of Insurance naming the City as an Additional Insured, attached as **Exhibit "F"** by October 1st annually.
- C. WAYA must provide the City with an annual report not later than May 1st of each year this Agreement is in effect which shall include the following items:
 - 1. a general schedule of the Season, as defined in Part II of this Agreement, for the upcoming year, subject to the City's approval which shall not be unreasonably withheld;
 - 2. a list of activities funded under the Agreement;
 - 3. a status report on the progress of the Construction Project, if it has not yet been completed;
 - 4. documentation of the residency of youth participants and the number of youth served using the registration summary form provided by the City, attached as **Exhibit "G"**;
 - 5. documentation of WAYA's continuing compliance with the Insurance Requirements;
 - 6. financial information as to revenue collected and expenses incurred to include but not be limited to player fees, sponsorships, concession sales, tournament fees, donations, miscellaneous fund raising efforts, uniform expenses, building/field maintenance, tournament expenses, concession supplies, administrative costs and other miscellaneous expenses; and

7. any other information required to update the exhibits to this Agreement.

VI. CITY RESPONSIBILITIES

- A. For the term of this Agreement, the City shall never charge, assess or otherwise require payment from WAYA for WAYA's use the Ball Fields as described and allowed by this Agreement.
- B. City shall provide to WAYA an annual payment of utility charges as provided under City Code Subsection 8-1-83(B) and as established through the annual City of Austin Budget process, subject to annual approval by the Austin City Council. The City shall verify the stipend amount, if any, in writing by October 1st annually.
- C. The City shall provide sanitation service for the Park and Ball Fields as is customary for the City's park system.
- D. The City shall provide general supervision of Williams Field when the public is utilizing the Park for practices, games, tournaments, or other sports-related activities.
- E. The City grants WAYA and its contractors the right to enter those areas of the Park generally shown on the approved final Design Development Plan as the limits of construction (the "Temporary Right of Entry") and a temporary license for access over, under, across, and upon the areas shown on the approved final Design Development Plan as the Access and Staging Area for the purpose of constructing the Construction Project (the "Temporary Access License"). The Temporary Right of Entry shall begin on the date that is thirty days after the delivery by WAYA to the City of a written notice stating that WAYA desires to begin construction (the "Temporary Right of Entry Beginning Date") and the Temporary Access License shall begin on the date the Notice to Proceed is issued by the City to WAYA (the "Temporary Access License Beginning Date"). The Temporary Right of Entry and Temporary Access License, unless extended in writing by City, shall expire automatically at midnight on the earlier of the date (1) of City Acceptance (defined below), or (2) this Agreement is terminated.
- F. The City retains the right to inspect construction and to exercise its rights or duties in order to protect persons, property or the public interest in the Park.
- G. Within 21 calendar days following City's receipt of the Completion Notice, the City shall respond to WAYA by either submitting a list of items still requiring completion or by accepting the Construction Project. Acceptance of the Construction Project or any phase thereof, which acceptance shall not be unreasonably withheld, shall be evidenced by a letter of acceptance from the City (the "Acceptance Letter"). Failure by the City to issue an Acceptance Letter to a

Completion Notice within the 21-day period shall be deemed acceptance by the City (the "City Acceptance").

VII. INSURANCE

- A. During the Term, WAYA and its contractors, at their sole cost and expense, will obtain, provide and keep in force the insurance in the types and amounts indicated in **Exhibit "H"** (the "Insurance Requirements").
- B. WAYA understands and acknowledges that the City does not insure any items stored on the subject field, in concession stands, office, or storage buildings.

VIII. WAIVER; INDEMNITY

WAYA agrees to defend, indemnify, and hold the City, its officers, agents, servants, and employees harmless against any and all claims, lawsuits, actions, costs and expenses of any kind, including, but not limited to, those for property damage or loss and/or personal injury, including death, that may relate to, arise out of, or be occasioned by (i) WAYA's breach of any of the terms or provisions of this agreement or (ii) any negligent act or omission or intentional misconduct of WAYA, its officers, agents, associates, employees, contractors or subcontractors related to construction of facilities or the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the City, and in the event of joint and concurrent negligence of both WAYA and City, responsibility, if any, shall be apportioned in accordance with the laws of the State of Texas.

IX. TERM; TERMINATION

- A. This Agreement shall have an effective date that is the last date this Agreement is executed by a party (the "Effective Date"). The term of this Agreement shall extend 25 years from the Effective Date (the "Term"). The Director may extend the Term for one period of ten years, by providing WAYA at least six months prior written notice of the extension prior to the expiration of the preceding term of this Agreement. Any such extension shall be on the same terms as herein provided of the original term of this Agreement unless officially amended.
- B. If any party materially breaches its obligations under this Agreement, the non-breaching party shall notify the other party in writing of the specific violations of the Agreement and a reasonable description of the necessary measures required to cure such breach. The breaching party shall have 30 days from receipt of this notice in which to cure any such violations. If the violation cannot be reasonably cured within the 30-day period, and the breaching party has diligently pursued such remedy as shall be reasonably necessary to cure violation, then the parties may agree in writing to an extension of the period in which the violation must be cured.

- C. If, however, the breaching party has not cured any such violation as specified in the written notice or any extension within the time provided, then the non-breaching party, shall have the right to either: (1) specifically enforce the obligations of the breaching party; or (2) terminate this Agreement in which event the Parties shall have no further rights or obligations hereunder. This termination shall be made by sending a written Notice of Termination to the breaching party. This Notice of Termination shall be effective for all purposes when deposited in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested.
- D. If WAYA defaults under this Agreement, upon depositing the Notice of Termination with the U.S. Mail as specified above, the City may assume control and possession of WAYA's contract documents, rights and improvements relating to the performance of this Agreement. WAYA shall be relieved of liability for any claims, injuries or losses resulting from negligent acts or omissions of the City, its employees or agents, and for the negligent acts or omissions arising out of the construction of the Improvements as of the date of the Notice of Termination.
- E. Upon termination of this Agreement for any reason, WAYA shall remove its gear, equipment and other above-ground fixtures which are not permanently attached to the ground and which are removable at a reasonable cost to WAYA, as directed by the City, and ensure the Ball Fields and Buildings are returned in reasonably good condition considering normal wear and tear.

X. GENERAL PROVISIONS

- A. The City designates the Director as its authorized representative to act on the City's behalf with respect to this Agreement.
- B. WAYA designates its President of the Board of Directors as its authorized representative to act on WAYA's behalf with respect to this Agreement.
- C. WAYA may only assign or transfer any interest in the Agreement with the written consent of the City.
- D. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. mail. All Notice shall be addressed to the following:

As to the City:

City of Austin
Director, Parks and Recreation
200 South Lamar
Austin, Texas 78704

With a copy to:

City of Austin,
Division Manager, Central Program Division
200 South Lamar
Austin, Texas 78704

As to WAYA:

West Austin Youth Association
Attn: President
P.O. Box 50198
Austin, Texas 78763

With a copy to:

Sammie Joseph
1813 Rockmoor Ave.
Austin, Texas 78703

- E. This Agreement shall be construed by and governed by the laws of the State of Texas. Any and all legal action necessary to enforce the Agreement shall be held in Travis County.
- F. In the event that any section, paragraph, sentence, clause or provision of the Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
- G. This Agreement represents the entire understanding between the Parties, and supersedes all other negotiations, representations or agreement, written or oral, relating to this Agreement.
- H. Except as otherwise provide for in this Agreement, this Agreement may be modified and amended only by written instrument executed by both Parties.
- I. No waiver of any provisions of this Agreement shall be effective against any party unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
- J. This Agreement may be executed by the Parties in multiple counterparts, each counterpart signature deemed to be an original, and signatures to this Agreement may be made, attached or added to the Agreement and transmitted electronically.
- K. Dispute Resolution.

- i. If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
 - ii. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and WAYA agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session, and WAYA agrees it will compel participation of its vendors in mediation if applicable to the dispute. The City and WAYA will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
- L. **Survivability of Obligations.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to any warranty, indemnity, or confidentiality obligations of the parties, shall survive the expiration or termination of this Agreement.
- M. **Compliance with Health, Safety, and Environmental Regulations.** In the process of constructing the Improvements, WAYA, its vendors, and their respective employees and subcontractors, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In

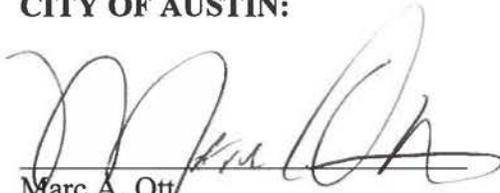
case of conflict, the most stringent safety requirement shall govern. WAYA shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of WAYA's obligations under this paragraph.

Exhibits:

- Exhibit A – Description of the Improvements
- Exhibit B – Sketch of the Improvements
- Exhibit C – M/WBE Requirements
- Exhibit D – Ball Fields Maintenance Standards
- Exhibit E – Proof of WAYA Non-Profit Status
- Exhibit F – Certificate of Insurance naming the City as an Additional Insured
- Exhibit G – Sample Registration Summary Form
- Exhibit H – Insurance Requirements

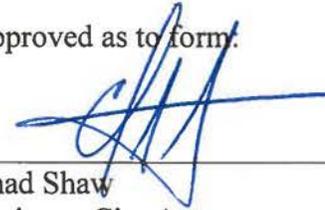
This Agreement is entered into and executed by:

CITY OF AUSTIN:



Marc A. Ott
City Manager

Date: 8/1/13

Approved as to form:


Chad Shaw
Assistant City Attorney

WEST AUSTIN YOUTH ASSOCIATION, INC.:



Wick Alexander
President

Date: 7/17/13

EXHIBIT A

DESCRIPTION OF THE IMPROVEMENTS

The conceptual site plan for the renovation of the baseball fields on Cesar Chavez calls for three full size Little League baseball fields centered around a building that would house a press box overlooking each field and one master concession stand and bathrooms on the ground floor. Park benches and picnic tables would be built along with a playscape area directly behind the three fields. Six batting cages and practice pitching areas would be built to service the three fields.

There would also be one smaller field for youth players, ages 4-8, built in the far northwest end of the West Cesar Chavez Fields. Two batting cages and a practice pitching area would be built to serve the smaller field and one of the three larger fields.

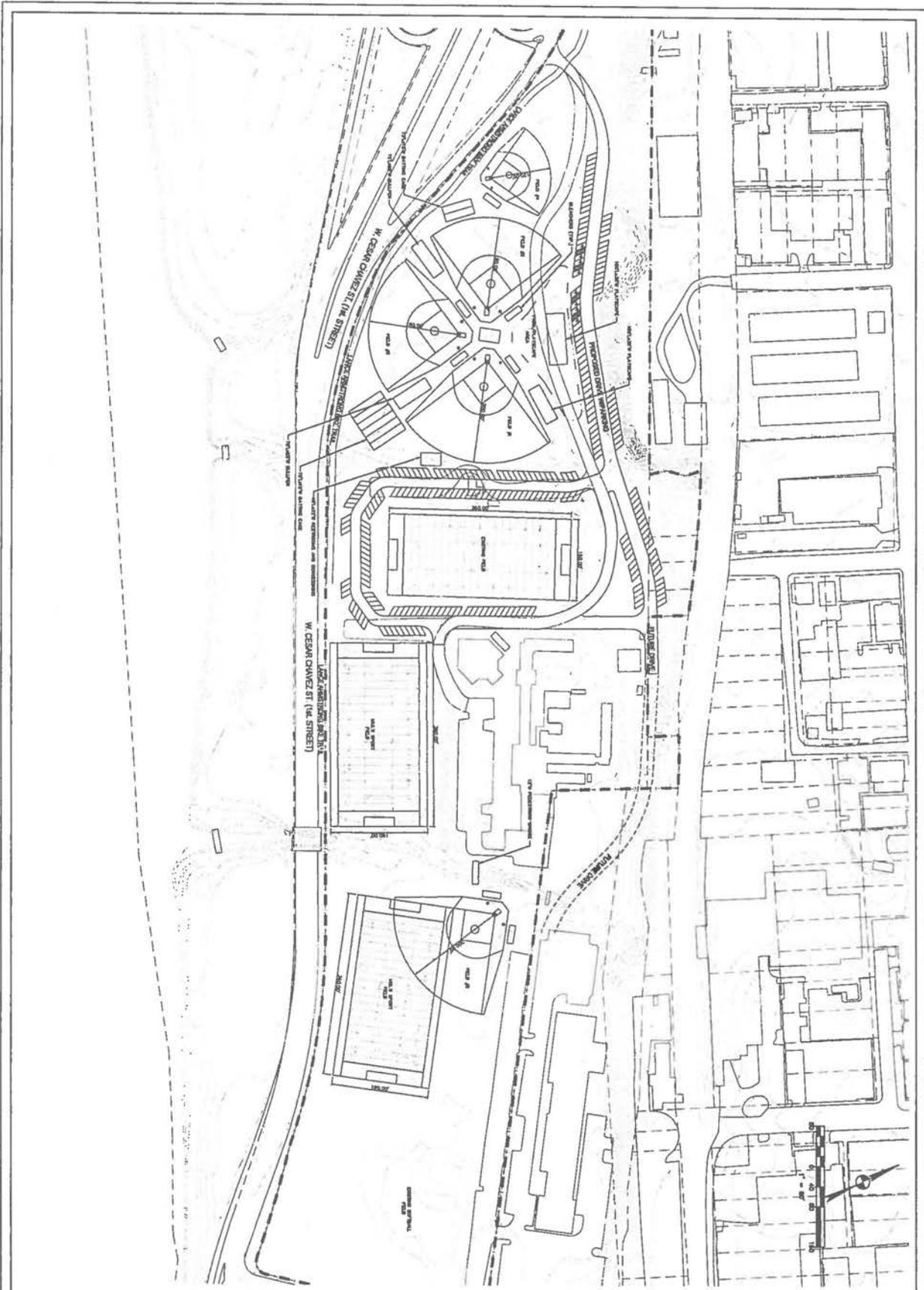
Parking as allowed would be added around the proposed new entry way into the fields. Additional parking would also be reconfigured around Dick Chalmers Football field.

EXHIBIT B

SKETCH OF THE IMPROVEMENTS



Lamar Beach at Town Lake Metro Park: WAYA Field.



HXH
SHEET

DESIGNED BY: RVM
 DESIGNED BY: DMS
 REVIEWED BY: DMS
 PROJECT NO.: P2101231-002

**CESAR CHAVEZ SPORTS PARK
 AUSTIN, TEXAS**

CONCEPTUAL SITE PLAN

Bury+Partners
 201 Oak Park Blvd, Suite 200
 Austin, Texas 78701
 Tel: (512) 452-4000 Fax: (512) 225-0000
 1875 Southview Parkway, Suite 7-1000
 Bury+Partners, Inc. ©Copyright 2012

EXHIBIT C

M/WBE REQUIREMENTS

Commencing on the Effective Date, with respect to the design and construction of the Improvements, WAYA and its contractors will meet the following annual ethnic and gender specific participation goals or demonstrate their good faith efforts to meet these goals:

| | Professional Services Participation Goals | Construction Participation Goals |
|---|--|-------------------------------------|
| African-American –owned Business Enterprises | 1.7% | 1.7% |
| Hispanic-owned Business Enterprises | 9.5% | 9.7% |
| Asian-American and Native American-owned Business Enterprises | 5.3% | 1.5% |
| Women-owned Business Enterprises | 14.2% | 12.6% |

The City will provide a list of certified firms to WAYA from which WAYA shall solicit participation in the design and construction of the Improvements; WAYA may solicit participation from firms not on the list, but only firms certified by the City in the particular scope of work solicited can be used towards meeting participation goals or demonstrating good faith efforts. The City will assist WAYA to identify potential scopes of work, establish the bid packages available, schedule and host outreach meetings, and assist WAYA in soliciting M/WBE firms to provide bids. The foregoing shall not require WAYA to solicit participation during a period in which WAYA is not designing or constructing the Improvements, but rather, requires WAYA to incorporate the standards and principles of the M/WBE Ordinance into its development process as and when such process exists. Additionally, WAYA's agreement to meet the M/WBE goals or demonstrate a good faith effort to meet the M/WBE goals does not require WAYA to modify or amend any contract or agreement that WAYA has entered into prior to the Effective Date. Any contract or agreement that WAYA has entered into relating to the construction of the Improvements contemplated by this Agreement, prior to the Effective Date, may, subject to the review and approval of the City be applied in the calculation of the participation goals provided above.

Beginning at the end of the first quarter expiring after the Effective Date, WAYA shall provide quarterly reports to allow the City's Small and Minority Business Resources Department describing in detail (A) the design or construction work completed during the previous quarter, including dollar amounts spent, or that no work was commenced or completed; (B) the utilization on a percentage basis of minority-owned and women-owned business enterprise

firms in the design and construction of the Improvements; and (C) WAYA's efforts to implement the standards and principles of the City's ordinances, program rules, and Resolution No. 20120112-058, as may subsequently be amended, relating to M/WBE compliance. The City shall provide the forms to be used by WAYA in submitting these reports.

EXHIBIT D

BALL FIELDS MAINTENANCE STANDARDS

Level 3

Maintenance at an adequate level to provide good, safe, athletic fields. Associated with amateur sports venues (baseball, softball, and soccer) developed to provide safe athletic surfaces for local teams and organizations.

1. Maintenance Calendar

- Develop an annual maintenance calendar a minimum of 6 months prior to the beginning of each calendar year.
- Calendar will include all fixed and daily work schedules.

2. Turf Care

- Athletic field turf to be Common Bermuda or Mid-Iron.
- Mowed in accordance with species and variety of grass, generally no less than every 7 days at 1" – 1 ½" height during the summer growing season using a 5-gang fairway mower or rotary deck mower.

3. Rest/Restoration

- An annual rest and renovation program is scheduled at all sites to maintain field sustainability.
- All athletic field space will have a minimum of one month per year in rest.
- Fields heavily used will be rested a minimum of 8 hours for every 40 hours of use.
- Fields will be scheduled to rest in coordination with the annual league calendar.

4. Turf Edging

- Edge all turf edges located in the field of play using a power mechanical edger.
- Chemical edging permitted.
- Edge turf edges around warning tracks once per year during growing season.
- Edge around skinned infield area once per season, including base paths and mounds.
- Add infield and warning track material as needed to maintain smooth transition from soil to turf.
- Use a mechanical edger on turf edges to prevent a lip from developing at least twice a year or more often around problem.
- Edge turf edges not in the field of play (along sidewalks, pathways, fences, and buildings) and in high visibility areas are to be edged using a power monofilament type trimmer once per season.

5. Overseeding

- Not recommended.

6. Fertilizer

- Proper fertilization applied to turf to provide minimal growth and plant health creating safe playing conditions.
- Perform soil analysis once per year.
- General guidelines should include granular applications high in Nitrogen, once during the growing season.

7. Aerifying

- Aerify turf once per year using a core aerifier, or as field conditions warrant.
- Top dress fields with sand at least once every five years and sweep into core holes using mat drag.

8. Disease/Pest and Weed Control

- If needed, apply granular pre-emergent in turf areas for weed control in early spring and early fall.
- Treat rodent populations (gophers and ground squirrels) to maintain zero populations.
- Should they develop, remove mounds immediately and collapse and back fill tunnels.
- Apply liquid pre-emergent in landscapes areas every winter.

9. Infield Preparation (baseball and softball)

- Maintain skinned infields providing a smooth consistent playing condition.

- Use custom screened granite infield mix such as Hill-topper or Stabilizer.
 - Drag infields daily using a fine mat drag with front float.
 - Drag infields once per month when not in use.
 - Water infield areas following each dragging using a quick coupler or automatic infield rotor heads.
 - Nail drag infields as needed during heavy use times, to ensure consistent playing conditions.
- 10. Home Plate Area and Pitchers Mounds (baseball and softball.)**
- Construct home plate area and pitchers mounds of Pitching Mound Clay Mix.
 - Repair monthly by adding new clay, tamping, dragging, and watering area.
 - Check pitching rubbers and plates monthly and replace or rotate as needed.
 - Check the slope and height of baseball pitching mounds at least twice per year with a carpenter's level to ensure rubbers and mounds are level with playing surface and at the correct height.
- 11. Field Lining and Painting**
- Identify field markings using 4" wide white athletic field marker.
 - Mark foul lines for softball and baseball once per week to ensure clear visible markings using athletic field marker.
 - Mark infield foul lines and batter boxes using athletic field marker.
 - Touch up soccer goal area markings as needed to ensure clear, visible lines.
- 12. Outfield Fences, Foul Poles, Dugouts, Backstops, Bleachers, Soccer Goals and Corner Flags**
- Check fence material on outfield fences, backstops, and dugouts monthly for loose pieces or hazardous conditions.
 - Inspect bleachers and backstop kickboards monthly to check for loose bolts, slitting wood, or hazardous conditions.
 - Check soccer goals and foul poles monthly for any rusting metal or sharp edges and paint every three years.
- 13. Irrigation**
- Irrigate turf and landscape areas using a computerized or automated irrigation system.
 - Set irrigation schedules for optimum growing conditions based on climate and maintenance schedules.
 - Check irrigation heads, quick couplers, and valve boxes weekly to ensure proper and even water distribution and safety.
 - Routinely check heads for proper adjustment to compensate for dry areas or excessively wet areas.
- 14. Tree Maintenance**
- Weed Control: Mechanical grass trimming around trees shall be accomplished in a way that will not scar the trunk in any way. No chemical removal of turf and weeds is permissible under drip line.
 - Mulching: Mulch base of tree to a minimum of six (6) foot diameter circle, to a depth of three (3) inches, maintaining one to two (1-2) inch clearance from perimeter of trunk.
 - Trimming: All trees will be evaluated for pruning as needed.
 - Pruning: All trees shall be annually pruned of sucker growth. Trees shall be pruned during the winter months, unless a limb has broken or is posing a safety hazard. Trees shall be pruned according to the International Society of Arboriculture standards (1995) and ANSI A300, 1995.
 - Staking: All newly planted trees shall be staked if needed. All nursery stakes will be removed at time of planting. All stakes are to be removed within the first year.
- 15. Litter Control**
- Empty trash receptacle once per day, seven days per week.
 - Spray/wash dug-outs, picnic areas, seating area and food service areas bi-monthly to remove food stains.
- 16. Sustainability**
- Recycling: Provide receptacles to collect aluminum and plastic recyclables.
 - Irrigation: Audit control system annually for water conservation efforts.

- Lighting: Audit control system annually for electricity conservation efforts.
- Invasive Species: Develop a program to monitor.
- Chemicals: Use "green" chemicals for cleaning and disinfecting restrooms and surfaces when available.
- Fuels: Use "clean" fuels to maintain turf and structures when available.

17. Hardscape Surfaces

- Blow and/or sweep and clean concourse and hard surfaces once per month.
- Safety repairs take priority over appearance.

18. Restrooms/Drinking Fountains

- Restrooms may be either permanent structures or may involve contracted service for portable toilets (porta potty).
- If permanent:
 - Restrooms are to be serviced at least once a week.
 - Servicing period should ensure adequate supply of toilet paper and paper towels, and that the restrooms are reasonably clean, sanitary, and free of bad odors.

If contracted:.

- Perform weekly check to ensure contracted cleaning service is performed.
- Sanitize drinking fountains at least once per week.
- Inspect drinking fountains weekly for proper water flow.

19. Lighting

- Replacement or repair of fixtures when observed or reported as not working.
- Submit work order requests indicate a "2" priority.

20. Signs:

- All signs shall be designed and installed based on the department Park Sign Manual.
- Replacement signs and new signs shall be in conformance with standard park signage.
- Any changes from the standard will require Assistant Director's approval
- Install signs at strategic locations to provide adequate information to park patrons to include identification signs, wayward signs, park rules, etc.

21. Graffiti

- Inspect site monthly for appearance of graffiti.
- Once discovered, remove within 24 hours.

22. Building and Site Maintenance

- Structures: Notify Park District Manager of any structure (gazebo, shade structures, maintenance shops, etc.) that requires repair.
- Initiate work order requests indicate a "3" priority for lamp replacement and needed repairs. Includes HVAC, plumbing, electrical and structural components.
- Parking Lots: Inspect monthly. Maintain surface with minimal holes. Resurface and repaint stripes every two years.

23. Equipment Maintenance

- Maintain Fleet Equipment to fleet standards.
- Maintain Small Engine Equipment
- Maintain Utility Vehicles

24. Special Features

- Should be maintained for safety, function and high quality appearance as per established design.

EXHIBIT E

PROOF OF WAYA NON-PROFIT STATUS

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: AUG 24 2009

Person to Contact:
David Slaughter#02-03346
Toll Free Telephone Number:
877-829-5500
Employer Identification Number:
74-2108180

WEST AUSTIN YOUTH ASSOCIATION
PO BOX 50198
AUSTIN TX 78763-0198

Dear Sir or Madam:

This is in response to your request of July 27, 2009, regarding your tax-exempt status.

Our records indicate that a determination letter was issued in July 1985 that recognized you as exempt from Federal income tax, and reflect that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records also indicate you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(2).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Cindy Westcott
Manager, Exempt Organizations
Determinations

EXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Tax ID # 74-2108180

Name of purchaser, firm or agency

West Austin Youth Association

Address (Street & number, P.O. Box or Route number)

1314 Exposition/P.O. Box 50198

Phone (Area code and number)

512-473-2528

City, State, ZIP code

Austin, Texas 78763

I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

Seller: _____

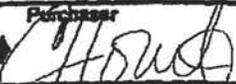
Street address: _____ City, State, ZIP code: _____

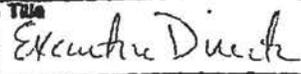
Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of sales or use taxes which may become due for failure to comply with the provisions of the Tax Code; Limited Sales, Excise, and Use Tax Act; Municipal Sales and Use Tax Act; Sales and Use Taxes for Special Purpose Taxing Authorities; County Sales and Use Tax Act; County Health Services Sales and Use Tax; The Texas Health and Safety Code; Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and, depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

sign here ^{Purchaser} 

Title ^{Executive Director} 

Date 9/17/04

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.
THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.
Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do not send the completed certificate to the Comptroller of Public Accounts.

EXHIBIT F

CERTIFICATE OF INSURANCE NAMING
THE CITY AS AN ADDITIONAL INSURED

Taxable Entity Search Results

Franchise Tax Certification of Account Status

This Certification Not Sufficient for Filings with Secretary of State

Obtain a certification for filings with the Secretary of State.

It takes up to two weeks for this search to update when payment is made through the mail or at a taxpayer service office. This agency may manually issue a Certificate of Account Status (good standing) when an entity makes a payment to bring its account current. The paper certificate issued by our office is valid and represents the entity's status with our office as of the date of the certificate.

| Certification of Account Status | Officers And Directors Information |
|------------------------------------|---|
| Entity Information: | WEST AUSTIN YOUTH ASSOCIATION PO BOX 50198 AUSTIN, TX 78763-0198 |
| Status: | IN GOOD STANDING - EXEMPT ENTITY |
| Registered Agent: | COURTNEY HOUSTON 1314 EXPOSITION AUSTIN, TX 78703 |
| Registered Agent Resignation Date: | |
| State of Formation: | TX |
| File Number: | 0051510701 |
| SOS Registration Date: | April 14, 1980 |
| Taxpayer Number: | 17421081807 |

texas.gov Statewide Search from the Texas State Library State Link Policy Texas Homeland Security

Susan Combs, Texas Comptroller • Window on State Government • Contact Us
Privacy and Security Policy Accessibility Policy Link Policy Public Information Act Compact with Texans



CERTIFICATE OF LIABILITY INSURANCE

WESTA-5 OP ID: BH

DATE (MM/DD/YYYY)

11/27/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|---|---------------------|--|
| PRODUCER Frost Insurance - Houston 3707 Richmond Avenue Houston, TX 77048 Kenny Waldt | Phone: 713-388-1250 | CONTACT NAME Cheryl Smith, Acct Manager |
| | Fax: 713-388-1238 | PHONE (A/C, No, Ext): 713-388-1256 FAX (A/C, No): 713-388-1238 |
| | | E-MAIL ADDRESS cheryl.smith@frostinsurance.com |
| | | INSURER(S) AFFORDING COVERAGE |
| | | INSURER A: First Nonprofit Ins Co |
| | | INSURER B: |
| | | INSURER C: |
| | | INSURER D: |
| | | INSURER E: |
| | | INSURER F: |

INSURED
West Austin Youth Association
P O Box 50198
Austin, TX 78763-0198

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

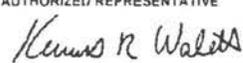
| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--------------------|---------------|-------------------------|-------------------------|--|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | TMP4220347-12 | 10/28/12 | 10/28/13 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | TMP4220347-12 | 10/28/12 | 10/28/13 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10000 | | UXL4208254-12 | 10/28/12 | 10/28/13 | EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 AM & Prof \$ 1,000,000 |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N N/A | | | | WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The referenced CGL policy includes a Blanket Additional Insured endorsement providing this provision to the Certificate Holder if required by written contract per the terms and conditions of the referenced CGL. Umbrella follows form of underlying. Coverage is provided under this policy only for sponsored/supervised activities of the Named Insured.

CERTIFICATE HOLDER

CANCELLATION

| | |
|---|--|
| City of Austin PO Box 1088 Austin, TX 78701 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE  |

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SUMMARY OF INSURANCE

Prepared: 11/28/12

Page 1

For: West Austin Youth Association
 Courtney Houston
 P O Box 50198
 Austin, TX 78763-0198
 Phone: 512-473-2528

Frost Insurance
 3707 Richmond Ave.
 Houston, Texas 77046
 Phone: 713-388-1250

| Coverage | Amount | Company | Policy No | Eff | Exp |
|--|---------------|---------------------------|-----------|----------|----------|
| COMMERCIAL PACKAGE POLICY | | First Nonprofit Insurance | | 10/28/12 | 10/28/13 |
| <u>Premise #1</u> 1312-1314 Exposition Blvd Austin, Tx 78703 | | | | | |
| <u>Premise #2</u> 3505 Enfield Rd Austin, Tx 78703 | | | | | |
| <u>Premise #3</u> 1104 W Cesar Chavez St Austin, Tx 78703 | | | | | |
| <u>Property Coverage Part</u> | | | | | |
| <u>Premise #1 – WAYA Office/Facility</u> | | | | | |
| Building | 2,228,000 | | | | |
| Business Personal Property | 1,000,000 | | | | |
| Business Income/Extra Expense | 1,275,000 | | | | |
| <u>Premise #2 – Joseph Field</u> | | | | | |
| Building (Concession Building) | 47,000 | | | | |
| Business Personal Property | 13,000 | | | | |
| <u>Premise #3 – Chalmers/Kocurek</u> | | | | | |
| Building (Concession Shed) | 5,000 | | | | |
| Building (Crows Nest) | 20,000 | | | | |
| Business Personal Property | 13,000 | | | | |
| <u>Premise #1-#3 – Specified Property</u> | 511,000 Total | | | | |
| WAYA Parking Lot Lights | 30,000 | | | | |
| Joseph Field Lights | 48,000 | | | | |
| Joseph Field Fence | 24,000 | | | | |
| Joseph Field Scoreboard | 18,000 | | | | |
| Joseph Field Bleachers | 13,000 | | | | |
| Brunley Field Lights | 88,000 | | | | |
| Brunley Field Fence | 24,000 | | | | |
| Brunley Field Scoreboard | 18,000 | | | | |
| Brunley Field Bleachers | 12,000 | | | | |
| Chalmers Field Fence | 12,000 | | | | |
| Chalmers Field Scoreboard | 18,000 | | | | |
| Chalmers Field Bleachers | 12,000 | | | | |
| McEachern Field Fence | 18,000 | Previously Humane Field | | | |
| McEachern Field Scoreboard | 18,000 | | | | |
| Kocurek Field Fence | 10,000 | | | | |
| Kocurek Field Scoreboard | 18,000 | | | | |
| Kocurek Field Bleachers | 12,000 | | | | |
| Bechtel Hayes Field Fence | 20,000 | | | | |
| Bechtel Hayes Field Scoreboard | 18,000 | | | | |
| Bishop Field Fence | 10,000 | | | | |
| Bishop Field Scoreboard | 18,000 | | | | |
| Bishop Field Bleachers | 12,000 | | | | |
| Sayer Field Fence | 10,000 | | | | |
| Sayer Field Scoreboard | 18,000 | | | | |
| Sayer Field Bleachers | 12,000 | | | | |

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SUMMARY OF INSURANCE

Prepared: 11/28/12

Page 2

For: West Austin Youth Association
 Courtney Houston
 P O Box 50198
 Austin, TX 78763-0198
 Phone: 512-473-2528

Frost Insurance
 3707 Richmond Ave.
 Houston, Texas 77046
 Phone: 713-388-1250

| Coverage | Amount | Company | Policy No | Eff | Exp |
|--|--------------|---|--|----------|----------|
| <u>Property Coverage Part Continued</u> | | | | | |
| Valuation | RCV | | | | |
| Cause of Loss | Special Form | | | | |
| Deductible | 1,000 | | | | |
| Business Income Deductible | 72 Hours | | | | |
| Schedule of Property | Attached | | | | |
| Property Enhancement Endorsement | Included | | | | |
| Equipment Breakdown | Included | | | | |
| <u>Crime</u> | | | | | |
| Employee Theft Per Employee | 50,000 | | | | |
| Employee Theft Per Incident | 100,000 | | | | |
| Forgery or Alteration | 50,000 | | | | |
| Deductible Per Employee | 500 | | | | |
| Deductible Per Incident (more than 1 EE) | 1,000 | | | | |
| <u>Business Auto</u> | | | | | |
| Auto Liability | | | | | |
| Hired & Non-Owned Autos Only | | | | | |
| Combined Single Limit | 1,000,000 | | | | |
| <u>Commercial General Liability</u> | | | | | |
| Occurrence Based Policy | | | | | |
| General Aggregate | 3,000,000 | | | | |
| Products/Completed Oper. Aggr. | 3,000,000 | | | | |
| Personal & Advertising Injury | 1,000,000 | | | | |
| Each Occurrence | 1,000,000 | | | | |
| Fire Damage (Any One Fire) | 100,000 | | | | |
| Medical Payments | | | | | |
| Per Person | 5,000 | | | | |
| Per Occurrence | 25,000 | | | | |
| Annual Aggregate | 75,000 | | | | |
| Sexual Abuse Liability | | | | | |
| Per Occurrence | 1,000,000 | | | | |
| Professional Liability | 1,000,000 | | | | |
| Premium Basis | See Attached | | | | |
| Activity and Number of Participants | | | | | |
| GYMNASTICS LIABILITY | | | | | |
| Occurrence Based Policy | | Lexington Insurance (New Hampshire Ins. Co.) | Master Policy 9471951 (44272155) | 10/28/12 | 10/28/13 |
| General Aggregate | 2,000,000 | | | | |
| Products/Completed Oper. Aggr. | 1,000,000 | | | | |
| Personal & Advertising Injury | 1,000,000 | | | | |
| Each Occurrence | 1,000,000 | | | | |
| Fire Damage (Any One Fire) | 300,000 | | | | |
| Premises Medical Expense (Any One Person) | None | | | | |
| Participant Legal Liability | 1,000,000 | | | | |

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Prepared: 11/28/12

Page 3

For: West Austin Youth Association
 Courtney Houston
 P O Box 50198
 Austin, TX 78763-0198
 Phone: 512-473-2528

Frost Insurance
 3707 Richmond Ave.
 Houston, Texas 77046
 Phone: 713-388-1250

| Coverage | Amount | Company | Policy No | Eff | Exp |
|---|-------------------------------------|----------------------------|-----------------------------|----------|----------|
| GYMNASTICS ACCIDENT MEDICAL Per Accident Limit Accident Death & Dismemberment Retention | 1,000,000 5,000 500 | National Union Fire Ins. | SRG9110447 Master Policy | 10/28/12 | 10/28/13 |
| WORKERS COMPENSATION & EMPLOYERS LIABILITY Named States: TX Employer's Liability Each Accident Disease - Policy Limit Disease - Each Employee Experience Modifier .86 * See Attached Rating Information | 1,000,000 1,000,000 1,000,000 | Texas Mutual Insurance Co. | TSF0001123230 | 10/28/12 | 10/28/13 |
| ACCIDENT & HEALTH Full Excess Aggregate Limit Medical Expense Benefit Aggregate Accidental Death & Dismemberment Loss of Life Deductible - \$500.00 Benefit Period - 52 Weeks | None 100,000 10,000 10,000 | Mutual of Omaha | T5MP096912 | 10/28/12 | 10/28/13 |
| COMMERCIAL UMBRELLA LIABILITY Policy Aggregate Limit Each Occurrence Limit Retained Limit <u>Underlying Liability</u> Commercial General Liability Hired & Non-Owned Auto Liability Employers Liability A/M Liability Professional Liability | 2,000,000 2,000,000 10,000 | First Nonprofit Insurance | | 10/28/12 | 10/28/13 |

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SUMMARY OF INSURANCE

Prepared: 11/28/12

Page 4

For: West Austin Youth Association
 Courtney Houston
 P O Box 50198
 Austin, TX 78763-0198
 Phone: 512-473-2528

Frost Insurance
 3707 Richmond Ave.
 Houston, Texas 77046
 Phone: 713-388-1250

| Coverage | Amount | Company | Policy No | Eff | Exp |
|--|--------|----------------|-----------|----------|----------|
| DIRECTORS & OFFICERS LIABILITY WITH EMPLOYMENT PRACTICES LIABILITY Limit of Liability Per Loss 2,000,000 Aggregate 2,000,000 D&O Deductible Per Claim Insuring Agreement A 0 Insuring Agreement B & C 1,000 Employers Practices Liability Deductible per claim 2,500 Third Party EPL per claim 5,000 | | Travelers Ins. | 105701410 | 10/28/12 | 10/28/13 |

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Prepared: 11/28/12

Page 4

For: West Austin Youth Association
Courtney Houston
P O Box 50198
Austin, TX 78763-0198
Phone: 512-473-2528

Frost Insurance Agency
3707 Richmond Ave.
Houston, Texas 77046
Phone: 713-388-1250

Workers Compensation - Rating Information

Policy No. TSF0001123230

| Address | Class Code | Classifications | # Emps | Remuneration | Rate |
|---|------------|-------------------------|--------|--------------|------|
| 1312-1314 Exposition Blvd. Austin, TX | 9063 | YMCA & YWCA Institution | | 435,101 | 1.91 |
| 1104-1200 W. Cesar Chavez Street Austin, TX | 8810 | Clerical Office EE | | 23,333 | .36 |

This is only a summary of your insurance program. This summary does not alter terms of the policies. Read your policies for their full terms, conditions, and exclusions. All policy provisions will prevail.

EXHIBIT H

INSURANCE REQUIREMENTS

WAYA shall carry insurance in the types and amounts indicated below for the duration of the Agreement:

(1) **Property Insurance** on all WAYA owned/leased property being stored, maintained or used for this contract and/or at the premises as designated under this Agreement. The coverage shall be written for full replacement cost value on an all risk of loss basis.

(2) **Commercial General Liability Insurance** with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverages A & B. The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this project.
- (b) Completed Operations/Products Liability for the duration of the Warranty period.
- (c) Explosion, Collapse, and Underground (X, C, & U) coverage.
- (d) Independent Contractors coverage.
- (e) City of Austin listed as an additional insured, endorsement CG 2010.
- (f) 30 day notice of cancellation in favor of the City of Austin, endorsement CG 0205.
- (g) Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.

(3) **Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation endorsement CA 0444
- (b) 30 day Notice of Cancellation endorsement CA 0244
- (c) Additional Insured endorsement CA 2048

Contractor and all subcontractors providing maintenance and/or construction services at the park shall carry insurance in the types and amounts indicated below for the duration of their Contract, which shall include items owned by the City in the care, custody and control of the Contractor prior to and during the construction and warranty period:

Specific Requirements for Contractors and Subcontractors

(1) **Workers' Compensation and Employers' Liability Insurance** coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for employers liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, form WC 420304
- (b) 30 day Notice of Cancellation, form WC 420601.

(2) **Commercial General Liability Insurance** with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this project.
- (b) Completed Operations/Products Liability for the duration of the Warranty period.
- (c) Explosion, Collapse, and Underground (X, C, & U) coverage.
- (d) Independent Contractors coverage.
- (e) City of Austin listed as an additional insured, endorsement CG 2010.
- (f) 30 day notice of cancellation in favor of the City of Austin, endorsement CG 0205.
- (g) Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.

(3) **Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation endorsement CA 0444
- (b) 30 day Notice of Cancellation endorsement CA 0244
- (c) Additional Insured endorsement CA

(4) **Builders' Risk or Installation Insurance** shall be provided for building or renovation projects, Contractor shall maintain on an all risk physical loss form in the amount of the contract price for such improvements. Coverage shall continue until the project is accepted by the City. The City of Austin shall be a loss payee on the policy.

For contracts requiring the use of an architect, engineer or consultant, the following insurance requirement is added to those shown above:

(5) **Professional Liability Insurance** with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to all professional services provided in due course of the Work of this Contract. This policy shall include coverage with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the Design Consultant and their Subcontractors. The policy shall provide for 30 day notice of cancellation in favor of the City of Austin.

General Requirements (applies to WAYA and Contractors/Subcontractors)

Contractor must complete and forward a certificate of insurance to the City before the Contract is executed. The Contractor shall not commence work until he/she has obtained the required insurance and until such insurance has been reviewed by the City's Project Manager and Contract Administration Office. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.

All insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

Contractor must submit certificates of insurance for all Subcontractors to the City prior to them commencing work on the project. Insurance shall be written by companies licensed to do business in the State of Texas and at a minimum with A.M. Best ratings of B+VII or better.

- (a) All endorsements naming the City of Austin such as additional insured, waivers, and notices of cancellation endorsements as well as the attached certificate shall indicate: City of Austin, Parks and Recreation Department, P.O. Box 1088, Austin, Texas 78767-8828.
- (b) Contractors and subcontractors insurance shall provide coverage for the City of Austin and WAYA as Additional Insureds, with a Waiver of Subrogation and Thirty Day Notice of Cancellation issued in favor of the City and WAYA

The "other" insurance clause shall not apply to the City where the City of Austin is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

If insurance policies are not written for amounts specified above, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

The City reserves the right to review the insurance requirements set forth during the effective period of this Parkland Improvement and Land Use Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance attached.

The Contractor shall provide the City 30 days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.

If City-owned property is being transported or stored off-site by the Contractor, the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the City's property.

The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of the Contractor.