

**PARKLAND IMPROVEMENT AGREEMENT**  
**(YMCA Town Lake Branch)**

This Parkland Improvement Agreement (this "*Agreement*") is made this 14th day of March, 2011 (the "*Effective Date*") between the YMCA OF AUSTIN, a Texas nonprofit corporation ("*YMCA*"), and the CITY OF AUSTIN, TEXAS, a Texas home-rule city and municipal corporation (the "*City*").

**WHEREAS**, YMCA owns and operates an exercise and recreational facility located at 1100 W. Cesar Chavez St., Austin, Texas 78703 (the "*Facility*").

**WHEREAS**, the Facility is adjacent to a City-owned park complex (the "*Park*") managed by the City of Austin Parks and Recreation Department ("*PARD*").

**WHEREAS**, YMCA desires to renovate and expand the Facility in a manner that will affect a portion of the Park (the "*Project*").

**WHEREAS**, the City desires that YMCA construct the Project because it will improve the usefulness and appeal of the portion of the Park affected by the Project and will provide additional parking for the Park's users.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises and covenants contained in this Agreement, YMCA and the City agree as follows:

**I. TERM**

The term of this Agreement will commence on the Effective Date and will terminate on the earlier to occur of the date that (a) is twenty (20) years after the Effective Date, or (b) the Facility is no longer operated exclusively as a YMCA, unless sooner terminated as provided in this Agreement (the "*Term*").

**II. DESIGNATION OF CITY REPRESENTATIVE**

The City designates the Director of PARD (the "*Director*") as its authorized representative to act on the City's behalf with respect to this Agreement. The City may change its authorized representative from time to time.

### III. RESPONSIBILITIES OF YMCA

1. YMCA shall be responsible for the construction and installation of the improvements identified and described on Exhibit A attached hereto and incorporated herein by reference (collectively, the “**Improvements**”) on that portion of the Park identified and described on Exhibit B attached hereto and incorporated herein by reference (the “**Park Improvement Area**”). The Improvements must be constructed and installed (a) in a good and workmanlike manner, (b) in compliance with all Applicable Laws (as defined below), and (c) in accordance with the plans, specifications, construction schedules and other construction-related documents, all of which must be approved by the Director before the commencement of work on the Project (collectively, the “**Project Documents**”).

2. Before commencing work on the Project, YMCA will deliver to the Director for her review and approval a proposed construction schedule for the construction and installation of the Improvements. The Director will have ten (10) business days after her receipt of YMCA’s proposed construction schedule to review and provide any comments to the schedule to YMCA. Once the Director approves the construction schedule, YMCA will adhere to the schedule, subject only to delays caused by unusually inclement weather, acts of God, strikes, shortages in labor or materials, acts of terrorism, and other causes beyond the reasonable control of YMCA.

3. YMCA shall not place liens on the Park and shall not permit any liens to be placed on the Park.

4. YMCA will coordinate all construction actively through PARD staff designated by the Director to minimize disruption of ongoing activities at the Park.

5. YMCA shall deliver to the City written notice that the Improvements have been completed (the “**Completion Notice**”). Within twenty-one (21) days after the City’s receipt of the Completion Notice, the City shall either submit to YMCA a list of items still requiring completion or accept the Improvements. Acceptance of the Improvements or any phase thereof must be evidenced by a letter of acceptance from the City (the “**Letter of Acceptance**”).

6. YMCA, its agents, contractors, consultants, subcontractors, employees, and assigns shall perform the obligations set forth in this Agreement as independent contractors.

7. YMCA will be responsible for securing all permits and approvals necessary to construct, maintain and operate the Improvements. PARD will assist YMCA as reasonably necessary in securing such permits and approvals; provided, however, PARD will not be required to incur any costs in connection with its assistance.

8. YMCA shall secure advanced approval for all removal, cutting, and pruning of trees in the Park by presenting a tree trimming plan (the “**Tree Trimming Plan**”) to the Director for approval (which approval will not be unreasonably withheld) no fewer than seven (7) days prior to the date the removal, cutting or pruning will occur. The Tree Trimming Plan will identify the trees and/or limbs to be removed, cut or pruned and the technique YMCA proposes to use in connection therewith. In addition, each tree and/or limb to be removed, cut or pruned must be marked in the field. Concurrently with the submission of the Tree Trimming Plan, YMCA will submit a tree replacement and mitigation schedule detailing the types, sizes and number of trees to be placed on the Park Improvement Area by YMCA in connection with the Project.

9. The City retains the right to inspect the construction of the Improvements and to exercise its rights and duties as a municipal body to protect persons, property or the public interest in the Park. YMCA acknowledges and agrees that the inspection, approval or acceptance of the Improvements or any portion of the Improvements by the City does not relieve YMCA from its obligation to construct or maintain the Improvements in a good and workman-like manner and in compliance with the Project Documents and Applicable Law.

10. During the Term, YMCA will obtain and maintain insurance in the types and amounts described on Exhibit C attached hereto and incorporated herein by reference.

11. The City grants YMCA, its consultants, contractors, subcontractors, employees, and agents a non-exclusive, temporary license (the “**Temporary Construction License**”) for access over, across, and upon the Park Improvement Area for constructing the Improvements. The Temporary Construction License shall commence on the date that is seven (7) days after PARD’s receipt of a written notice from YMCA stating that YMCA desires to begin construction of the Improvements (the “**Temporary Construction License Commencement Date**”). The Temporary Construction License shall expire automatically at midnight on the earlier to occur of the date that is (a) 365 calendar days after the Temporary Construction License Commencement Date, or

(b) thirty (30) days after substantial completion of the Improvements. The Temporary Construction License is granted to YMCA subject to the general public's right to use the Park Improvement Area and the Park, and all other liens, restrictions, easements and other encumbrances now or hereafter affecting the Park Improvement Area.

#### **IV. PROJECT COSTS**

YMCA will be responsible for all costs of construction, installation, maintenance and use of the Improvements, including, without limitation, consultant fees, design costs, landscaping costs, labor costs, site restoration and re-vegetation costs, materials costs, engineering costs, legal fees, utility connection fees, permits, inspection fees, insurance costs, equipment costs, construction costs, and any other costs incurred in the design, construction, use or maintenance of the Improvements.

#### **V. WARRANTIES**

YMCA must obtain from each subcontractor, materialman and supplier a written warranty acceptable to the City for any work performed or materials supplied in connection with the Improvements. Upon completion and acceptance of the Improvements, YMCA shall assign to the City, without cost, all warranties that YMCA has obtained in connection with the Improvements. The Improvements will be warranted free of defects for no less than one (1) year from the date the Improvements are accepted by the City.

#### **VI. MAINTENANCE**

During the Term, YMCA shall be responsible for all routine, preventative and capital maintenance of the Improvements at YMCA's sole cost and expense, including, without limitation, mowing, watering, pruning, replacement of dead plants and trees, litter removal, and any and all other maintenance required to keep the Improvements safe, orderly, clean and operational (collectively, the ***"YMCA Maintenance Responsibilities"***). The City hereby grants to YMCA a non-exclusive license to access the Park Improvement Area for the purpose of performing the YMCA Maintenance Responsibilities (the ***"Maintenance License"***), which Maintenance License shall last until the earlier to occur of the date (a) the Term expires, (b) this Agreement terminates for any reason other than the expiration of the Term, or (c) the City notifies YMCA in writing that YMCA is no longer responsible for the YMCA Maintenance

Responsibilities. The Maintenance License is granted to YMCA subject to the general public's right to use the Park Improvement Area and the Park, and all other liens, restrictions, easements and other encumbrances now or hereafter affecting the Park Improvement Area.

## **VII. LIABILITY AND INDEMNIFICATION**

YMCA shall indemnify, defend and hold harmless the City, its employees, officers, representatives and agents from and against all claims, causes of action, losses, costs, and damages, including, without limitation, reasonable attorneys' fees and court costs, arising from or in connection with any breach of this Agreement by YMCA or the negligent or willful acts or omissions of YMCA, its agents, employees, contractors, subcontractors, licensees or invitees in the design, construction, operation, maintenance or use of the Improvements or the Facilities. To the extent allowed by Texas law, the City agrees that it is responsible for its proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act. YMCA's obligations under this Article VII will survive the expiration of the Term or the earlier termination of this Agreement.

## **VIII. USE OF IMPROVEMENTS**

1. Upon issuance of the Letter of Acceptance, and in consideration of YMCA's payment for the construction, installation, and maintenance of the Improvements, the City hereby grants to YMCA a non-exclusive license to access and use the Park Improvement Area for the purposes described in this Agreement (the "*Use License*"). The term of the Use License shall commence on the date YMCA receives the Letter of Acceptance and shall terminate upon the expiration of the Term or the earlier termination of this Agreement. The Use License is granted to YMCA subject to the general public's right to use the Park Improvement Area and the Park, and all other liens, restrictions, easements and other encumbrances now or hereafter affecting the Park Improvement Area.

2. The Park Improvement Area shall be used by YMCA, its agents, employees, contractors, subcontractors, licensees and invitees, only for park and general recreational purposes consistent with the character of the Park and the Improvements and subject to the rules

and regulations promulgated, revised and amended by the City from time to time governing the use of the Park.

3. The City reserves the right to exercise and enjoy all of City's rights, benefits and powers as the owner of the fee simple title in and to the Park Improvement Area, subject to the terms of this Agreement.

4. YMCA accepts the Park Improvement Area in its "AS IS, WHERE IS" condition, "WITH ALL FAULTS," and without any warranties of any type or nature, either express or implied.

## **IX. RIGHT OF FIRST NEGOTIATION**

Before marketing the Facility or any part of the Facility for sale or accepting an offer to purchase the Facility or any part of the Facility, YMCA will notify the City in writing of YMCA's intent to sell the Facility, which notice will specifically identify the portion of the Facility YMCA intends to sell if YMCA intends to sell less than all of the Facility (the "***Notice of Intent to Sell***"). For a period of sixty (60) days after its receipt of the Notice of Intent to Sell (the "***Exclusive Negotiation Period***"), the City will have the exclusive right to negotiate the purchase of the Facility or the portion of the Facility identified in the Notice of Intent to Sell, as applicable, with YMCA (the "***Right of First Negotiation***"). YMCA and the City hereby covenant with one other to negotiate in good faith during the Exclusive Negotiation Period to reach agreement on the substantive terms (e.g., purchase price, diligence period, closing date, etc.) of the sale and purchase of the Facility or portion of the Facility identified in the Notice of Intent to Sell. If upon the expiration of the Exclusive Negotiation Period YMCA and the City are unable to reach agreement on the substantive terms of the sale and purchase of the Facility or portion of the Facility identified in the Notice of Intent to Sell despite their good faith efforts to do so, the City's Right of First Negotiation will terminate with respect to (and only with respect to) the portion of the Facility identified in the Notice of Intent to Sell, and thereafter YMCA will have the right to freely sell that portion (and only that portion) of the Facility identified in the Notice of Intent to Sell to a party other than the City; provided, however, if YMCA either (a) fails to sell the entire portion of the Facility identified in the Notice of Intent to Sell or (b) ceases actively marketing the portion of the Facility identified in the Notice of Intent to Sell, the City's

Right of First Negotiation will resurrect and become effective with respect to the portion of the Facility identified in the Notice of Intent to Sell that YMCA failed to sell or ceased actively marketing, as applicable. The City may record a memorandum describing the Right of First Negotiation in the Official Public Records of Travis County, Texas. The City's Right of First Negotiation will survive the expiration of the Term or the earlier termination of this Agreement.

## **X. SHARED PARKING**

1. Commencing on the Effective Date (a) YMCA and its employees, officers, agents, representatives, invitees and licensees shall have the non-exclusive right to use the drive aisles and parking spaces identified on Exhibit D-1 attached hereto and incorporated herein by reference, and (b) the general public, the YMCA, the City and the City's employees, officers, agents and representatives shall have the non-exclusive right to use the parking spaces identified on Exhibit D-2 attached hereto and incorporated herein by reference. The area described in Exhibits D-1 and D-2 shall hereinafter be referred to as the ***"Shared Parking Area,"*** and the rights granted to the City and YMCA under this Article X shall hereinafter be referred to as the ***"City's Shared Parking Rights"*** and the ***"YMCA's Shared Parking Rights,"*** respectively.

2. The Shared Parking Area shall be used on an unreserved, first-come, first-served basis, and neither the City nor YMCA shall (a) install any parking-control devices that would limit or restrict access to the Shared Parking Area, or (b) charge a fee for parking.

3. During the Term, YMCA's Maintenance Responsibilities, as defined in Article VI of this Agreement, shall include the routine, preventive and capital maintenance and upkeep of the Shared Parking Area, all at YMCA's sole cost and expense, but neither the YMCA nor the City shall be obligated to expand the Shared Parking Area..

4. The City's Shared Parking Rights and the YMCA's Shared Parking Rights shall terminate automatically upon the expiration of the Term or the earlier termination of this Agreement.

5. The City may terminate the YMCA's Shared Parking Rights upon 18 months' prior written notice to YMCA.

6. Either party may record a memorandum of the rights described in this Article X in the Real Property Records of Travis County, Texas. The memorandum will be in a form and have the substance reasonably acceptable to both parties.

7. This Article X will survive the expiration of the Term or the earlier termination of this Agreement.

## **XI. COMPLIANCE WITH LAWS**

YMCA shall comply, at its sole cost and expense, with (a) all laws, statutes, orders, ordinances, rules, regulations, and procedures of federal, state, county and municipal authorities (collectively, ***“Applicable Laws”***) relating to the design, construction, maintenance or use of the Improvements and the Park Improvement Area; (b) all directions, orders or citations made pursuant to law by any public officer requiring abatement of any nuisance or which imposes upon YMCA any duty or obligation arising from YMCA’s particular manner of occupancy or use of the Park Improvement Area or required by reason of a breach of any of YMCA’s obligations under this Agreement or by or through any other fault of YMCA; (c) all insurance requirements set forth in this Agreement; (d) all Applicable Laws governing the use, abatement, removal, storage, disposal or transport of any substances, chemicals or materials declared to be, or regulated as, hazardous or toxic under any applicable laws (collectively, ***“Hazardous Substances”***), and any required or permitted alteration, repair, maintenance, restoration, removal or other work in or about the Park Improvement Area that involves, disturbs or affects any Hazardous Substances.

## **XII. DEFAULT AND TERMINATION**

1. If YMCA fails to fulfill its obligations under this Agreement, the City shall notify YMCA in writing of its specific violations, and YMCA shall have thirty (30) days from its receipt of the notice in which to cure the violations described in the notice. If YMCA does not timely cure the violations specified in the notice, the City shall have the right to terminate this Agreement by sending written notice to YMCA.

2. This Agreement may be terminated on 180 days written notice at any time by a vote of the majority of the City Council of the City of Austin or the Board of Directors of the YMCA.



3. Upon the expiration of the Term or earlier termination of this Agreement, YMCA will relinquish unto the City, at no cost to the City, all rights in and to the Improvements located on City property, the Park Improvement Area, the Project Documents and any contract rights related to the design, construction, use or maintenance of the Improvements located on City property, and thereafter neither YMCA nor the City will have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive the termination of this Agreement. YMCA will cooperate with the City and will execute and deliver to the City all documents and instruments necessary to effect the relinquishment described in this Article XII.3. This Article XII.3. will survive the expiration of the Term or the earlier termination of this Agreement.

### **XIII. MISCELLANEOUS PROVISIONS**

1. This Agreement constitutes the entire agreement between YMCA and the City with respect to the subject matter hereof. Any written or oral agreement, assertion, statement, understanding, or other commitment made before or contemporaneously with this Agreement that is not expressly addressed in this Agreement shall have no force or effect. This Agreement may not be amended except in a writing duly executed by both YMCA and the City.

2. This Agreement is made and shall be construed and interpreted under the laws of the State of Texas, and venue for any lawsuit concerning this Agreement shall lie in the City of Austin, Travis County, Texas.

3. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

4. Any notice required or permitted under this Agreement must be in writing and will be deemed to be delivered (whether or not actually received) three (3) business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown below. Any address for

notice may be changed by written notice delivered in the manner described in this Article XIII.4.  
Notice addresses for the City and YMCA as of the Effective Date are as follows:

If to the City:

City of Austin  
Parks and Recreation Department  
Attn: Director  
P.O. Box 1088  
Austin, Texas 78767

If to YMCA:

James P. Finck  
President/CEO  
YMCA of Austin  
1402 East Cesar Chavez  
Austin, Texas 78702

5. This Agreement binds and inures to the benefit of the City and YMCA and their respective successors, assigns and legal representatives.

6. YMCA may not assign, transfer or encumber any interest in this Agreement without the prior written consent of the City, which consent the City may withhold in its sole and absolute discretion. Any assignment, transfer or encumbrance made without the City's prior written consent shall be void *ab initio*.

7. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, the remaining parts of this Agreement shall remain in full force and effect.

8. If at any time the City fails to enforce this Agreement, that failure shall not constitute a waiver or estoppel of the right to enforce it.

9. No recourse shall be had against any elected official, director, officer, attorney, agent, or employee of the City, whether in office on or after the Effective Date, for any claim based upon this Agreement.

10. This Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. Facsimile signatures appearing on this Agreement shall be as valid and binding as original signatures.

The City and YMCA have executed this Agreement to be effective as of the Effective Date.

YMCA:

YMCA OF AUSTIN, a Texas non-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY:

CITY OF AUSTIN, TEXAS

By: \_\_\_\_\_

Marc A. Ott, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Judd L. Leach

Assistant City Attorney

Date: \_\_\_\_\_

Attachments:

Exhibit A – Description of Improvements

Exhibit B – Park Improvement Area

Exhibit C – Insurance Requirements

Exhibit D-1 – Shared Parking Area (YMCA)

[The signature page(s) follow.]

**EXHIBIT A**  
**DESCRIPTION OF IMPROVEMENTS**

November 10, 2010

Mr. Greg Guernsey, Director  
Planning and Development Review  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

RE: TOWN LAKE YMCA  
1100 WEST CESAR CHAVEZ  
CITY OF AUSTIN FILE SP-2010-0198C

Dear Mr. Guernsey,

Currently the City of Austin Parks and Recreation Department and the YMCA of Austin are coordinating on creation of the "Parkland Agreement" for the Town Lake YMCA Development on file with the Planning and Development Review Department. This Parkland Agreement will not only address shared parking, access to the Town Lake YMCA through City of Austin Parkland, but will also make the following provisions to allow for the proposed construction:

1. Temporary erosion control and tree protection fence during construction.
2. Relocation of existing City of Austin public waterline to allow for Plaza/Wall Improvements, reconnection of existing YMCA water meters, fire hydrant installation, and installation of six (6) inch waterline stub for ball field use.
3. Concrete pavers across access drive for pedestrian use to YMCA facility and signage relating to pedestrian crossing.
4. Landscaping/irrigation for Plaza Area.
5. Portion of Plaza and Walls.
6. Stairs/Lighting to Plaza Area.
7. Striping of Fire Lane along access drive.

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We are vigorously pursuing approval of the Parkland Agreement, however, the YMCA of Austin is in need of obtaining their Site Development Permit to allow for the construction of improvements to begin and would appreciate any assistance from your Department on issuance of the Site Development Permit.

If you have any questions or need further information, please do not hesitate to call.

Sincerely,

Sara L. Hensley, CPRP, Director  
Parks and Recreation Department  
City of Austin

**EXHIBIT B**  
**PARK IMPROVEMENT AREA**





**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

## EXHIBIT C

### Insurance Requirements

**Section 1** During the Term of this Parkland Improvement Agreement, YMCA shall carry insurance in the following types and amounts:

- 1.1 Commercial General Liability Coverage 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 and endorsements in favor of the City:
  - 1.1.1 Blanket Contractual liability coverage for liability assumed under the **Parkland Improvement Agreement**
  - 1.1.2 Products and completed operations coverage;
  - 1.1.3 Independent contractors coverage;
  - 1.1.4 Personal and Advertising injury coverage;
  - 1.1.5 Additional Insured endorsement (Form CG 2010);
  - 1.1.6 Waiver of Subrogation endorsement (Form CG 2404); and
  - 1.1.7 30-Day Notice of Cancellation endorsement (Form CG 0 205).
- 1.2 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
  - 1.2.1 Additional Insured endorsement (Form TE 9901B);
  - 1.2.2 Waiver of Subrogation endorsement (Form TE 2046A); and
  - 1.2.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 1.3 Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the **Parkland Improvement Agreement** and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the **Parkland Improvement Agreement** and for not less than twenty-four (24) months following the end of the **Parkland Improvement Agreement**. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the **Parkland Improvement Agreement**. YMCA shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

**Section 2** From the Effective Date until the expiration of the Term or earlier termination of the **Parkland Improvement Agreement** YMCA shall cause any contractor or subcontractor constructing improvements to the Property to carry insurance in the following types and amounts:

- 2.1 Employers Liability and Workers' Compensation Insurance. Minimum policy limits for Employers' Liability shall be \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. Workers' Compensation coverage shall be consistent with statutory benefits described in the Texas Workers' Compensation Act, Section 401. Coverage shall apply to the State of Texas. The policy shall contain the following endorsements in favor of the City:
  - 2.1.1 Waiver of Subrogation (Form WC 420304); and
  - 2.1.2 30-Day Notice of Cancellation (Form WC 420601).
- 2.2 Commercial General Liability Coverage 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 and endorsements in favor of the City:
  - 2.2.1 Blanket Contractual liability coverage for liability assumed under the contract with the contractor or subcontractor in question ;
  - 2.2.2 Products and completed operations coverage;
  - 2.2.3 Independent contractors coverage;
  - 2.2.4 Personal and Advertising injury coverage;
  - 2.2.5 Additional Insured endorsement (Form CG 2010);
  - 2.2.6 Waiver of Subrogation endorsement (Form CG 2404); and
  - 2.2.7 30-Day Notice of Cancellation endorsement (Form CG 0205).
- 2.3 Business Automobile Liability Insurance for all owned, non -owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
  - 2.3.1 Additional Insured endorsement (Form TE 9901B);
  - 2.3.2 Waiver of Subrogation endorsement (Form TE 2046A); and
  - 2.3.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 2.4 Builders' Risk Insurance on an all risk physical loss form in the amount of the maximum contractor amount for any improvements made to the Property. Coverage shall commence upon the date any work with respect to such improvements begins and shall continue until the work is complete and a final certificate of occupancy is issued with respect to the improvements. The City shall be a mortgagee/loss payee on the policy. If off -site storage is permitted with respect to the work, coverage shall include transit and storage in an amount sufficient to protect any property being transported or stored.

**Section 3** YMCA shall provide the City at least thirty (30) calendar days written notice of erosion of the aggregate limit below the minimum required combined single limit of coverage.

**Section 4** YMCA shall not acquire any property or commence work under the **Parkland Improvement Agreement** until it has obtained all required insurance and until the Risk Management Division of the City has reviewed and approved such insurance coverage.

Section 5 All insurance required to be obtained under this Exhibit C must be written by a company licensed to do business in the State of Texas at the time the policy is issued , and the company must be rated by A.M. Best at B+ VII or better and reasonably acceptable to the City. Employers Liability and Workers' Compensation Insurance policies written by the Texas Workers' Compensation Fund are acceptable.

Section 6 All endorsements, waivers, notices of cancellation, notices of non-renewal or any other endorsements as well as the Certificate of Insurance shall:

6.1 Name the City at the following notice address:

City of Austin, Texas

Attn: [\_\_\_\_\_]

P.O. Box 1088

Austin, Texas 78767-1088

6.2 Obligate the insurance company to notify in writing the City at its notice address of any non-renewal, cancellation or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

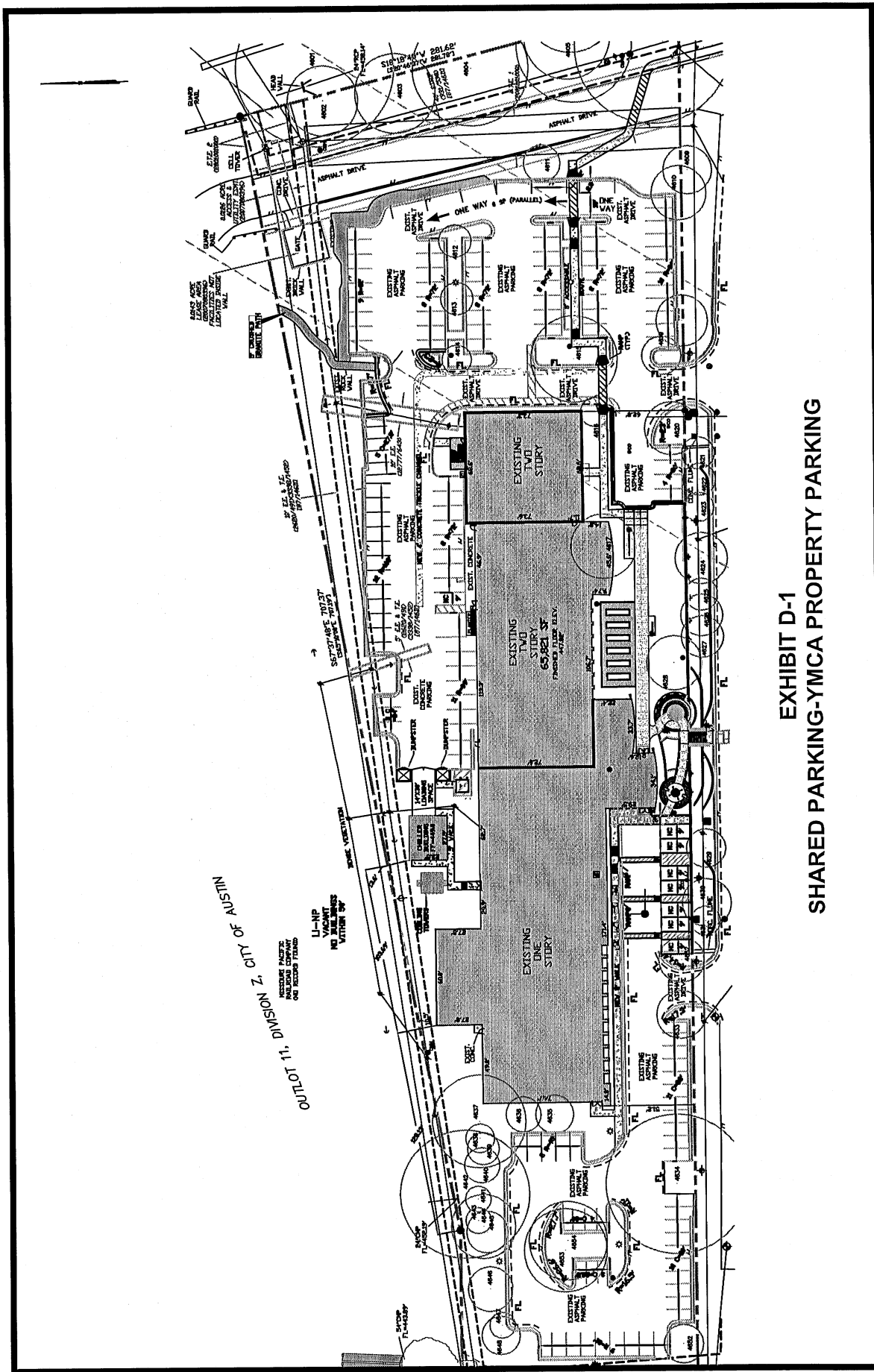
Section 7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on the policy. It is intended that the policies required in the **Parkland Improvement Agreement** shall be considered primary coverage.

Section 8 YMCA shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the **Parkland Improvement Agreement** or the twenty-four month period following completion, in the case of a claims-made policy.

Section 9 The City reserves the right to review the insurance requirements described in this Exhibit C during the Term and to make reasonable adjustments to insurance coverages, and their limits, when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history or financial condition of the insurance company or YMCA.

Section 10 The City shall be entitled, upon request, and without expense to the City, to receive copies of the requisite insurance policies and all endorsements thereto and to 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 regulation binding upon either of the parties hereto or the underwriter on any of such policies).

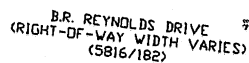
**EXHIBIT D-1**  
**SHARED PARKING AREA (YMCA)**



**EXHIBIT D-1**  
**SHARED PARKING-YMCA PROPERTY PARKING**

**EXHIBIT D-2**  
**SHARED PARKING AREA (CITY)**





**EXHIBIT D-2 PARKLAND SHARED PARKING**