

AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Authorize the County Judge to execute a letter amendment to the Agreement For The Development of Park Facilities between Hays County and North Hays County Optimist Foundation Sports Complex.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	March 19, 2013	

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry Borcharding	JONES	N/A

SUMMARY

This letter amendment will include the additional agreed benefit in which Hays County will spread and prepare materials provided by TxDOT onsite.

FILED: **03 19 13**
HAYS COUNTY COMMISSIONERS' COURT
Resolution # 28856 VOL V PG 112

FIRST AMENDMENT TO
AGREEMENT FOR THE DEVELOPMENT OF PARK FACILITIES
BETWEEN HAYS COUNTY AND NORTH HAYS COUNTY OPTIMIST FOUNDATION
SPORTS COMPLEX.

This 1ST Amendment to the Agreement For The Development Of Park Facilities executed on April 16, 2008 ("Amendment") is made this 19th day of March, 2013, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and North Hays County Optimist Foundation Sports Complex.. (hereinafter referred to as "Operator"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

II. Term of Agreement shall be amended to extend the Agreement with a new termination date of June 30, 2013.

IV. The County's Rights and Duties, Section 4.5 of the Agreement shall be added to reflect the additional agreed benefit in which Hays County will offer labor and equipment to help spread, prepare, and pack materials provided by Texas Department Of Transportation in order to create/improve a parking lot on North Hays County Optimist property. Location to be determined by North Hays County Optimist.

EXCEPT FOR THE ABOVE MODIFICATION, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 1st Amendment to the Agreement For The Development Of Park Facilities is hereby executed this 19th day of March, 2013, as is evidenced by the authorized signatures of the Parties, below.

Operator

COUNTY

Name: _____
President

Bert Cobb

HAYS COUNTY, TEXAS
BERT COBB, M.D.
HAYS COUNTY JUDGE



ATTEST: Liz Q. Gonzalez

LIZ Q. GONZALEZ
HAYS COUNTY CLERK

AGREEMENT FOR THE DEVELOPMENT OF PARK FACILITIES
NORTH HAYS COUNTY OPTIMIST FOUNDATION SPORTS COMPLEX

This Agreement is made and entered into by Hays County, a political subdivision of the State of Texas (hereinafter "the County") and the North Hays County Optimist Foundation, Incorporated, a Texas nonprofit corporation exempted under Section 501(c)(3) of the United States Internal Revenue Code (hereinafter "Operator"). The above-cited parties are hereinafter collectively referred to as "the Parties to this Agreement" or "the Parties."

For and in consideration of the mutual agreements herein exchanged, County and Operator hereby contract as follows:

I. Property, Purpose, and Legal Authority.

- 1.1 The property that is the subject of this Agreement (hereinafter "the Property") consists of land in Hays County, Texas, being part of the John Stewart Survey, Abstract No. 14, further being a part of an 18.287 acre tract conveyed to Albert F. Busse, Jr. by deed recorded in Volume 345, Page 814, of the Official Records of Hays County, Texas, and further being described in Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- 1.2 The purpose of this Agreement is to provide for the design and construction of a public park facility on property owned by Operator and located at 2880 Goforth Road near Kyle, Texas that will include a sports complex further described in Exhibit "B", attached hereto and incorporated herein by reference and collectively referred in this Agreement as "the Project."
- 1.3 The County's obligations under this Agreement include, after the performance of certain conditions precedent as cited in Section V of this Agreement, the funding of the construction of the Project, as a public park, from the proceeds of bonds issued with the approval of the voters of Hays County, Texas at an election held on May 12, 2007 (hereinafter the "Bond Funds"), authorizing the issuance of general obligation bonds in the amount of \$30,000,000.00 for parks, natural areas, open space, and related projects, and the

preservation of water quality, aquifer recharge areas, and wildlife habitat. The Hays County Commissioners Court, at its regular meeting on or about the 18th day of March, 2008, committed to provide funding for the Project pursuant to the terms and conditions of this Agreement.

- 1.4 All of the duties and obligations of the County under this Agreement shall be performed from lawfully available current revenues.

II. Term of Agreement.

- 2.1 This Agreement is made for a term beginning on the 16th day of April 2008 (hereinafter "Effective Date") and shall remain in effect until April 17, 2010, or until the Project has been completed and final payment of Funds to Operator (reaching the not-to-exceed amount cited in Section 4.1) has been made by the County as provided in Section 3.3(i) below, whichever occurs earliest. Certain terms and conditions of this Agreement shall survive termination of this agreement, as further described in Section 13.1.

III. Operator's Rights and Duties.

- 3.1 Operator shall:
- a. Provide the County with the account and routing numbers of a bank account exclusively controlled and accessible by Operator that shall be dedicated to the deposit of payments by the County under this Agreement (hereinafter the "Designated Bank Account").
 - b. Place any and all monies paid by the County under this Agreement (hereinafter "Project Funds") into the Designated Bank Account and dedicate the monies in said account only to expenditures that further the design and construction of the Project.
 - c. Immediately notify the County when it has secured Matching Funds, whether in cash or in-kind, for the benefit of the Project, so that the County may make preparations to perform its duties under Article IV of this Agreement after Operator has submitted a request pursuant to Section 3.2.

- d. Provide to the Hays County Auditor, within ten (10) business days of any expenditure under 3.1(a), above, a copy of the receipt(s) and/or invoice(s) for which the expenditure was made, as well as a copy of the check, cashier's check, or money order that represents said expenditure.
- e. Not, *under any circumstance*, represent that it is an agent, employee, volunteer, or contractor of Hays County in its performance of the terms and conditions of this Agreement, in its oversight of the improvements made on the Project, or in its ongoing operation of the Sports Complex.
- f. Where and when practicable, seek competitive bids for contracted work on the Project, evaluate the responsiveness of the bids received, and determine the ability of the lowest responsible bidder to complete Project work on time and on budget.
- g. Ensure that any individual or entity performing work on the Project i) carries commercial general liability insurance that meets or exceeds the industry standards for the type of work being performed, and ii) secures any and all required permits for the type of work being performed.
- h. Allow representatives of the County to come onto the Property to i) inspect work being performed on the Project, and ii) investigate the presence of purchased materials on the Property. The County may assert the rights and privileges cited in this Section, after providing Operator with at least twenty-four hours' notice, any time during the performance of this Agreement by the Parties.
- i. Allow representatives of the Hays County Auditor's office to perform an audit of Operator's financial statements, provided that the Hays County Auditor's office provides at least three (3) business days' notice of said audit. The County may assert the rights and privileges cited in this Section any time during the performance of this Agreement by the Parties.

- j. Perform the terms and conditions described as "Conditions Precedent" cited in Article V of this Agreement.
- 3.2 Operator may, from time to time, submit a written request for incremental payments of Bond Funds. Any payment request shall be accompanied by a) Operator's written, sworn statement that "the amount being requested is based upon Operator's possession of or legal right to immediately access cash or in-kind funds from a source other than the County equal to the amount being requested" and b) a full written explanation of the source, the amount, and the conditions, if any, placed upon Operator's receipt and/or use of those Matching Funds. Such payment requests shall be subject to the terms and conditions cited in Article IV, below.
- 3.3 Operator shall, within ten (10) business days after receiving a written notice from the County under Section 4.4 of this Agreement, deposit monies into the Designated Bank Account in the amount of the Unauthorized Expenditure(s) stated in said written notice. Operator understands that its failure to comply with this Section 3.3 may result in the County's declaration of Operator's default under Section 4.4. Operator also understands that its default under this Agreement may lead to the placement of a lien on the Property by the County.

IV. The County's Rights and Duties

- 4.1 The County shall pay increments of funding from lawfully available and current Bond Funds, the sum of which shall not exceed five hundred, eighty-one thousand dollars in United States currency (\$581,000.00 USD) for the construction of the Project. After Operator performs all terms and conditions required under Article V of this Agreement, which Operator recognizes are conditions precedent to the County's duties under this Agreement, the amount and timing of incremental payments under this Section shall be determined by Sections 4.2 and 4.3, below.

- 4.2 After the County confirms, in the County's sole determination, that Operator has presented, pursuant to Section 3.2 of this Agreement, sufficient evidence of Operator's possession of or legal right to immediately access cash or in-kind funds equal to an incremental payment being requested ("Matching Funds"), the County shall issue a check to Operator made payable to "North Hays County Optimist Foundation, Inc."
- 4.3 The County agrees that the first incremental payment, totaling two-hundred-and-nineteen thousand, four-hundred-and-forty-four dollars in United States currency (\$219,444.00 USD) shall be paid on or about the Effective Date and shall be based upon the agreed per-acre value of the Property, which for the purposes of Matching Funds is twelve thousand dollars (\$12,000.00 USD) per acre.
- 4.4 The Hays County Auditor's Office shall diligently review all receipts presented by Operator pursuant to Section 3.1(d) of this Agreement. If the County finds, in its sole determination, that any expenditure of Project Funds by Operator was not authorized by this Agreement (hereinafter and heretofore "Unauthorized Expenditure"), then the County shall provide written notice of said Unauthorized Expenditure and request that Operator deposit monies equal to the Unauthorized Expenditure in Operator's Designated Bank Account.

V. Conditions Precedent.

- 5.1 The Operator hereby agrees to transfer the permanent Park and Recreational Easement, attached hereto as Exhibit "C" and incorporated herein for all purposes, to the County, as holder. The Easement shall be properly recorded in Hays County's Official Public Records at or about the time of transfer. The parties recognize that the Easement attached as Exhibit "C" obligates the property owner to dedicate the Property to recreational use by the public (subject to reasonable limitations of time, place, and manner) without discrimination on the basis of race, color, religion, sex, national origin, disability, or age. This Section shall be a condition precedent to the County's obligations under Articles I and IV of this Agreement.

VI. Amendments.

- 6.1 This Agreement can be amended only by written approval of the Hays County Commissioners Court and Operator. Any amendment of this Agreement shall become effective only upon the authorized signatures of the Parties.

VII. Authorization to Sign.

- 7.1 Elizabeth "Liz" Sumter, Hays County Judge, is authorized to sign this Agreement on behalf of Hays County, Texas. Lee Perry, President of North Hays County Optimists Foundation, is authorized to sign this Agreement on behalf of the Operator.

VIII. Representations.

- 8.1 Operator and County each make the following representations to each other as inducements to enter into this Agreement:
- a. That it has the legal authority to enter into this Agreement for the purposes stated herein and to perform the obligations it has undertaken hereunder;
 - b. That it has been represented by legal counsel and/or has had legal counsel available to it for consultation prior to entering into this Agreement;
 - c. That the officer who signed this Agreement has the legal authority to sign documents on its behalf;

IX. Severability.

- 9.1 If any clause, Section, sentence, paragraph or Article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

X. Entire Agreement.

10.1 This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by Operator and County and approved in the manner provided in Section VI above.

XI. Survival

11.1 The following Sections shall survive breach or termination of this Agreement: 1.1, 1.2, 1.4, 2.1, 4.4, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1, 13.1, 13.2, and 14.1.

XII. Authorized Contact Persons.

12.1 The following individuals are authorized to receive written notice and correspondence provided by the Parties to this Agreement. Unless otherwise agreed by the Parties in writing, written notice under this Agreement shall be made by certified mail, return receipt requested. Authorized Contact Persons are:

For the County: Elizabeth "Liz" Sumter
Hays County Judge
111 E. San Antonio Street, Suite 300
San Marcos, Texas 78666

With Copy to: LaMarr Peterson
Hays County Contracts Administrator
111 E. San Antonio Street, Suite 100
San Marcos, Texas 78666

For Operator: Lee Perry
President, North Hays County Optimist Foundation, Inc.
P.O. Box 1695 2278
Buda, Texas 78640

4

Kyle

XIII. Default, Cure, Remedies.

13.1 If either Party is found or believed to be in default under this Agreement, the non-defaulting Party shall provide the defaulting Party with written notice, describing the applicable provisions of this Agreement that apply to the default. If, within ten (10) business days of receiving notice under this

Section, the defaulting Party is able to cure said default to the satisfaction of the non-defaulting Party, then the non-defaulting Party shall not assert remedies under Section 12.2 of this Agreement. If the defaulting Party is unable to cure said default to the satisfaction of the non-defaulting Party within ten (10) business days of receiving notice under this Section, then the non-defaulting Party may assert remedies under Section 12.2 of this Agreement. The Parties recognize that some defaults may take longer than ten (10) days to cure. In the event that a defaulting Party may not practicably cure a default within ten (10) business days of receiving notice under this Section, the non-defaulting Party may provide written notice of additional time for the defaulting Party to cure if the defaulting Party is making affirmative, diligent steps toward cure of the default.

13.2 The Parties agree to follow the provisions, below, when raising claims or disputes under this Agreement:

- a) Claims, disputes, or other matters in question between the Parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Arbitration Rules of the American Arbitration Association currently in effect.
- b) In addition to and prior to arbitration, the Parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- c) Demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.
- d) The agreement to arbitrate in this Section 13.2 (and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement) shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

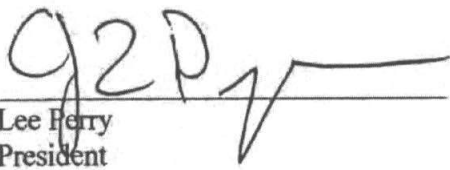
13.3 The Parties agree that, among all other available legal remedies that the County may assert under this Agreement, the County may assert a lien on the Property as a remedy for any violation of Sections 3.3 and 4.4 by Operator. The County's action under this Section shall give rise to any and all lienholder rights available under Local, State, and Federal laws.

XIV. Applicable Law and Venue


14.1 This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

This Agreement for the Development of Park Facilities for the North Hays County Optimist Foundation Sports Complex is hereby executed in duplicate originals this the 16th day of April, 2008 as is evidenced by the authorized signatures below.

OPERATOR


Lee Ferry
President

HAYS COUNTY, TEXAS


Elizabeth "Liz" Sumter
Hays County Judge



ATTEST:

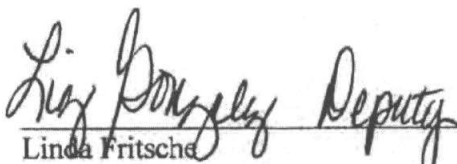

Linda Fritsche
Hays County Clerk

Exhibit A
Legal Description of the Property

EXHIBIT "A"

Land in Hays County, State of Texas, being part of the John Stewart Survey, Abstract No. 14, further being part of an 18.287 acre tract conveyed to Albert F. Busse, Jr., by deed recorded in Volume 345, Page 813, of the Deed Records of Hays County, Texas, and still further being described by metes and bounds as follows:

Commencing at a 1/2" rebar found for the southerly corner of the aforementioned 18.287 acre tract;

Thence North 46°27'58" West, along the southwesterly line of the aforementioned 18.287 acre tract, a distance of 256.42 feet to a 5/8" rebar set for the point of beginning of the real estate described herein;

Thence North 46°27'58" West, along the southwesterly line of the aforementioned 18.287 acre tract, a distance of 256.98 feet to a 5/8" rebar set for the westerly corner of the aforementioned 18.287 acre tract;

Thence North 44°30'00" East, along the northwesterly line of the aforementioned 18.287 acre tract, a distance of 1547.98 feet to a 1/2" rebar found for the northerly corner of the aforementioned 18.287 acre tract;

Thence South 47°13'44" East, along the northeasterly line of the aforementioned 18.287 acre tract, a distance of 257.52 feet to a 5/8" rebar set;

Thence South 44°31'00" West a distance of 1551.41 feet to the point of beginning;

Containing in all 9.149 acres; subject, however to all legal rights-of-way and easements.

Certified this 12th day of December, 1996:

Marshall Neil Franklin
 Marshall Neil Franklin
 Reg. Prof. Surveyor No.
 State of Texas



Exhibit "A-1"

Land in Hays County, State of Texas, being part of the John Stewart Survey, Abstract No. 14, further being part of an 18.287 acre tract conveyed to Albert F. Busse, Jr., by deed recorded in Volume 345, Page 813, of the Deed Records of Hays County, Texas, and still further being described by metes and bounds as follows:

Beginning at a 1/2" rebar found for the southerly corner of the aforementioned 18.287 acre tract;

Thence North 46°27'58" West, along the southwesterly line of the aforementioned 18.287 acre tract, a distance of 256.42 feet to a 5/8" rebar set;

Thence North 44°31'00" East, a distance of 1551.41 feet to a 5/8" rebar set for a point on the northeasterly line of the aforementioned 18.287 acre tract;

Thence South 47°13'44" East, along the northeasterly line of the aforementioned 18.287 acre tract, a distance of 256.95 feet to a 1/2" rebar found for the easterly corner of the aforementioned 18.287 acre tract;

Thence South 44°32'00" West along the southeasterly line of the aforementioned 18.287 acre tract, a distance of 1554.85 feet to the point of beginning;

Containing in all 9.149 acres; subject, however to all legal rights-of-way and easements.

Certified this 12th day of December, 1996:

Marshall Neil Franklin
Marshall Neil Franklin
Reg. Prof. Surveyor No.
State of Texas



**Exhibit B
The Project**

Sports Complex with Amenities – Total Project Funds not to exceed \$581,000 USD

- ★ One (1) football field, including irrigation systems and field lighting;
- ★ One (1) Baseball field, including irrigation systems and field lighting;
- ★ Public Park Area Improvements;
- ★ Landscaping and Covered Decking;
- ★ Lighting and Fencing;
- ★ Bleacher and Field Stands Areas;
- ★ Playscape(s);
- ★ Batting Cages and Scoring Tables.

NOTE: All work shall be designed and constructed to meet applicable State, County, and/or Municipal codes & standards, if any.

FIRST AMENDMENT TO A GRANT DEED OF CONSERVATION EASEMENT

FOR PARK AND RECREATIONAL PURPOSES

THIS FIRST AMENDMENT TO A GRANT DEED OF CONSERVATION EASEMENT is made this ___ day of ___, 2008, hereby amending the Grant Deed of Conservation Easement executed on or about the 16th day of April, 2008 (hereinafter "the Original Easement"), by The North Hays County Optimist Foundation, Incorporated, whose primary place of business is located at 2880 Goforth Road, Kyle, Texas 78640 ("Grantors"), in favor of Hays County, a political subdivision of the State of Texas, having a primary address at 111 E. San Antonio Street, Suite 300, San Marcos, Texas 78666 ("Grantee").

The Original Easement is hereby amended as follows:

Exhibit A to Exhibit C, which was attached to the Original Easement and incorporated therein by reference, shall be amended to include the Property attached hereto as "Exhibit A-1 to Exhibit C," which is hereby incorporated into the Original Easement along with this First Amendment to a Grant Deed of Conservation Easement. After the incorporation of "Exhibit A-1 to Exhibit C" into the description of the Property that is the subject of this Easement, the total area that is subject to the terms and conditions of this Easement shall be 18.287 acres.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever. IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above-written.

GRANTORS:
NORTH HAYS COUNTY OPTIMIST FOUNDATION, INC.

BY: [Signature]
Lee Perry
President
2880 Goforth Road
Kyle, Texas 78640

6/26/08
Date

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on this the 26th day of June, 2008, by Lee Perry, President of the North Hays County Optimist Foundation, Incorporated, on behalf of said corporation.

[Signature]
NOTARY PUBLIC, State of Texas

GRANTEE:
HAYS COUNTY, TEXAS
BY: [Signature]
Elizabeth "Miz" Sumter
Hays County Judge
111 E. San Antonio, Suite 300
San Marcos, Texas 78666

July 8, 2008
Date



ATTEST: [Signature]
Linda Fritsche, Hays County Clerk



**FIRST AMENDMENT TO
AGREEMENT FOR THE DEVELOPMENT OF PARK FACILITIES
NORTH HAYS COUNTY OPTIMIST FOUNDATION SPORTS COMPLEX**

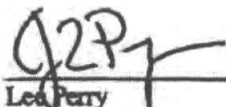
This Amendment to an Agreement made and entered into by Hays County, a political subdivision of the State of Texas (hereinafter "the County") and the North Hays County Optimist Foundation, Incorporated, a Texas nonprofit corporation exempted under Section 501(c)(3) of the United States Internal Revenue Code (hereinafter "Operator") on or about the 16th day of April, 2008 is hereby made and entered into by the same Parties on or about the ___ day of ___, 2008. The above-cited parties are hereinafter collectively referred to as "the Parties to this Amendment" or "the Parties."

The parties hereby amend the above-cited Agreement as follows:

Exhibit A, which was attached to the Agreement and incorporated therein by reference, shall be amended to include the Property attached hereto as Exhibit "A-1," which is hereby incorporated into the Agreement along with this Amendment. After the incorporation of Exhibit "A-1" into the description of the Property that is the subject of this Agreement, the total area that is subject to the terms and conditions of the Agreement shall be 18.287 acres.

This Amendment is hereby executed this the 8th day of July, 2008, as is evidenced by the authorized signatures of the Parties, below.

OPERATOR



Lee Perry
President

HAYS COUNTY, TEXAS



Elizabeth "Liz" Sumner
Hays County Judge



ATTEST:



Linda Fritsche
Hays County Clerk