

# AGREEMENT

This Agreement ("Agreement") is entered into between the CITY OF SHAWNEE, a municipal corporation ("City") and the Troy and Dollie Smith Family YMCA, a non-profit Oklahoma corporation ("YMCA"), collectively the ("Parties").

WHEREAS the City is the owner of public property and facilities known as Lions Club Park, in the City of Shawnee, Pottawatomie County, State of Oklahoma, and;

WHEREAS the City recognizes that the sports fields and facilities located at Lions Club Park shall be used for certain recreational purposes for the benefit of the health, safety and welfare of the residents of the of the City of Shawnee, and;

WHEREAS, it is the desire of the parties to set out in detail the rights and responsibilities of the parties regarding the operations of the youth sports program and the use of City property.

NOW, THEREFORE, in consideration of the covenants, terms and conditions herein contained, the City and the YMCA agree as follows:

1. The City hereby grants the right and privilege to the YMCA to use the facilities and property located generally at Lions Club Park, City of Shawnee, Pottawatomie County, State of Oklahoma, hereinafter jointly referred to as the "Property", and specifically, the areas marked on the attached maps."

2. This Agreement shall commence on August 19, 2013 and end on December 31, 2013 unless sooner terminated in accordance with the express provisions of this Agreement or renewed as provided in this section. This Agreement shall automatically renew for successive one (1) year terms at the end of the Original Term and each subsequent renewal term, unless revoked in writing by the City or the YMCA, by November 1st of the then-current renewal term. It is further agreed that either of the Parties shall have the right and privilege of terminating this Agreement at any time in the event of a material default by the other Party, upon giving sixty (60) days notice, in writing, delivered by certified mail, to the other Party of its intention to terminate provided the other party fails to cure, or commence the taking of actions designed to cure, such default within such sixty (60) day time period. In the event this Agreement is terminated, all rights and interests of the Parties hereto shall thereupon cease. Upon termination of this Agreement, the YMCA shall retain all rights to maintenance equipment, concession equipment, and all other items not considered permanent structural improvements or not purchased by the City. Any and all structures which have been placed or constructed on the Property by the YMCA shall become the property of the City unless otherwise mutually agreed to in writing by the City and the YMCA. The Parties acknowledge that the YMCA shall pay to the City a sum of one dollar (\$1.00) on the first day of January every calendar year as lease payment for use of the Property. The Parties acknowledge that at the time of execution of this agreement there have been no permanent improvements constructed by the YMCA.

3. Before any changes are made in the improvements and structures, and before the

construction of any permanent building, the YMCA shall obtain approval from the City's Parks Department for such changes or construction costing Twenty-five Thousand Dollars (\$25,000) or less. All changes or construction costing in excess of Twenty-five Thousand Dollars (\$25,000.) shall require the approval of the City Commission.

4. It is agreed that the Property area is to be used by the YMCA solely for the purposes of recreation and education, and development of sports skills, primarily for the purpose of playing, training and promoting various sports, and associated supportive services. Any other use of the Property area must be approved by the City. If the YMCA makes the property available for use by others, the YMCA shall prepare fields for play and determine costs and assess such costs against such entities using the property.

5. The YMCA shall not assign this Agreement, or any interest herein, or sublet any portion of the Property area without the consent of the City Operations Director or designee. The YMCA may grant permission and authority to any entities to occupy and use the Property area for any supportive services necessary for YMCA or for the conduct of a sport not sponsored by YMCA. YMCA will be responsible for informing all other entities using the City fields of the rules and obligations for the use of the fields.

6. The YMCA will hold the City harmless and exempt from any damage or injury to persons or any damage to property of every kind arising from the management and use of the Property area by the YMCA, its invitees, employees, representatives and

successors from the failure of the YMCA to keep the Property and ball fields area and structures in good condition and repair or for any negligent or intentional act committed by YMCA, its employees, officers, successors and assigns resulting in injury of any kind.

7. The YMCA, at its expense, shall keep in force, during the term of this Agreement, general liability insurance issued by an insurance company authorized to conduct business in Oklahoma by the Oklahoma Insurance commissioner. The insurance will be in a form acceptable to the City Attorney and City Manager for the City, for the protection of the City and the YMCA against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered from City, on account of any matter or thing which may occur on the Property, excluding Participants who will not be covered during the actual participation in an event, in a general liability policy or policies in the amount of one million dollars (\$1,000,000.00). The use of the fields by any entity other than YMCA will require that entity to comply with the requirements of this paragraph for the obtaining of insurance. The insurance obtained will include a rider for the City and YMCA to be covered by the policy.

8. The YMCA will provide all maintenance to all game fields, including restrooms, the concession areas and the areas adjacent thereto; all janitorial and sanitizing service and supplies; refuse receptacles and liners to be disposed of on an as needed basis; field supplies and service including chalk, paint, and other equipment; turf and infield supplies. Major repairs to facilities such as replacing buildings, roofs, sewer lines, major water line breaks, parking lot repairs, painting of buildings, and fencing

replacement, and other repairs traditionally within the responsibility of the "landlord", will be the responsibility of the City at no cost to the YMCA. The YMCA will be responsible for repair of sprinkler heads when necessary, minor repairs to the concession building, replacement of food preparation equipment, minor plumbing repairs such as clogged toilets, clogged sink drains, toilet and sink replacement and light bulb replacement. The YMCA shall be responsible for ensuring that trash is picked up from dugouts, bleachers and grounds after games and deposited into containers provided by the YMCA. The setting and purchase of bases, yardage markers, flags and such equipment as is necessary shall be the responsibility of the YMCA. Field maintenance equipment such as infield drags, motorized carts, shovels, rakes mowers and the like, purchased by the YMCA, shall remain the property of the YMCA. The YMCA shall exercise a high degree of care in ensuring playing surfaces are continually in good repair during the term of this agreement. The City shall be charged for electric services, solid waste services, sewer and water for the Property, including, but not limited to, field lighting, concession building and field storage facilities. The YMCA will exercise reasonable efforts to conserve electric and water usage. For night games, the YMCA will use lights for only those fields in which games will be played and for the safety of the participants.

9. The YMCA will exercise reasonable efforts to make its customers aware of parking regulations during YMCA activities to assist the City in an effort to insure that the ground and vegetation of the Property, and adjacent premises, is not damaged by vehicles being driven or parked in places other than those defined by signage or in the plan as road or parking areas.

10. The YMCA agrees to provide activities, primarily for Shawnee area schools and City of Shawnee youth, within age groups designated by the YMCA, without discrimination as to race, religion, color, creed, sex or national origin. Said activities will include leagues for all levels of play to include open and recreational leagues, for all sports. Under normal conditions, YMCA activities will not be scheduled to start after the hours of 10:30 p.m., on Sundays through Thursdays, and 11:00 p.m., Fridays and Saturdays.

11. If any person believes that the YMCA has violated the provisions of this Agreement, and has exhausted all appeal procedures through the YMCA Board, that person may file a written complaint with the Director of Operations or designee. The Director of Operations or designee shall so advise the YMCA, provide it with a copy of the complaint, and give the YMCA ten (10) days to consult with counsel and file a written response with the Director or designee. Thereafter, the Director of Operations may, if he/she deems prudent, conduct an investigation into the situation, and within thirty (30) days of the response by the YMCA, advise of a ruling on the matter by either a written report to the Community Service Contract Review Committee or to be handled internally by the Director of Operations, if possible. If a written report is submitted to the Community Service Contract Review Committee, the Committee will make a recommendation which will be submitted to the City Commission to resolve the dispute or rectify the situation. Failure of the YMCA to follow the directions so given by the City Commission or Director of Operations may result in the termination of this Agreement (without further notice).

12. The City Operations Department may designate one (1) person to serve as a

non-voting, advisory to the YMCA Board. Alternatively, the YMCA may designate one (1) person to serve as liaison between the YMCA and the City Parks Department to address issues regarding maintenance and program administration. The YMCA will provide the City and the Director of Operations, semi-annual financial statements and reports of business activities. The YMCA shall inform the Director of Operations of changes to league rules and By-Laws in its semi-annual report after the change becomes effective. There shall be ultimate City Commission review for capital improvements in excess of twenty five thousand dollars (\$25,000.00). The YMCA shall permit City or City's designee to conduct a financial review of its operations at any time per discretion of the City.

13. The YMCA shall maintain a local contact, accessible to the City and the public at reasonable hours and otherwise make arrangements to accommodate the working public to the extent necessary for registration and similar activities. The contact will be responsible for disseminating all administrative and operational functions to include management, registration, access to all records that are subject to disclosure pursuant to Title 51 O.S. §24A.1, et seq., known as the Oklahoma Open Records Act, and access to the operational staff.

14. This Agreement shall only be amended in writing by the mutual consent of the YMCA and the City. In the event that anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the other provisions of the Agreement shall not be affected. The Agreement shall be construed as if the valid, legal, or enforceable provisions for the Agreement were not affected, and the Agreement shall be construed as if the invalid, illegal, or

unenforceable provisions had never been contained therein. No terms inconsistent with this Agreement shall be deemed binding on the parties. This Agreement contains all essential terms necessary to accomplish the purposes expressed by the parties and any other prior agreements, written or oral, consistent or inconsistent with the terms herein, are hereby rendered null and void. The parties also agree that this Agreement is fully integrated, embracing all essential terms necessary to carry out the purpose stated herein.

IN WITNESS HEREOF the City of Shawnee, and Troy and Dollie Smith Family YMCA, by their representatives, set their hands to this Agreement on the \_\_\_\_day of August, 2013.

The City of Shawnee, Oklahoma

BY: \_\_\_\_\_  
Brian E. McDougal, City Manager

ATTESTED:

\_\_\_\_\_  
Phyllis Loftis, CMC, City Clerk

The Troy and Dollie Smith Family YMCA

By: \_\_\_\_\_  
PRESIDENT/CHAIRMAN

ATTEST:

\_\_\_\_\_  
CLERK

APPROVED AS TO FORM AND LEGALITY ON THE 19<sup>TH</sup> DAY OF AUGUST, 2013  
BY MARY ANN KARNS, CITY ATTORNEY.

\_\_\_\_\_  
MARY ANN KARNS, CITY ATTORNEY