

**CITY OF STILLWATER
STILLWATER MEDICAL CENTER AUTHORITY
SPLASH PAD AGREEMENT**

THIS AGREEMENT, entered in to this ___ day of _____, 2016 is for the donation of certain property, between the City of Stillwater, a municipal corporation ("City"), Stillwater Utilities Authority, a public trust ("SUA"), and the Stillwater Medical Center Authority, a public trust ("SMC"),

WITNESSETH:

WHEREAS, the SMC Board of Directors has tendered an offer to the City of Stillwater to fund and construct "splash pads" on certain City-owned property; and

WHEREAS, it is the intention of SMC, City, and SUA to enter into an agreement setting forth the terms and conditions of this donation; and

WHEREAS, by motion duly made, seconded, and passed by the Stillwater City Council on the ___ day of _____, 2016, this agreement was approved and the execution thereof by the Mayor and attestation by the City Clerk was duly authorized; and

WHEREAS, by motion duly made, seconded, and passed by the Stillwater Utilities Authority Board of Trustees on the ___ day of _____, 2016, this agreement was approved and the execution thereof by the Chair and attestation by the Secretary was duly authorized; and

WHEREAS, by motion duly made, seconded, and passed by the Stillwater Medical Center Authority Board of Trustees on the ___ day of _____, 2016, this agreement was approved and the execution thereof by the Chairman and attestation by the Secretary was duly authorized.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER SET FORTH, THE CITY OF STILLWATER, STILLWATER UTILITIES AUTHORITY AND STILLWATER MEDICAL CENTER AUTHORITY, DO HEREBY AGREE AS FOLLOWS:

Project Funding: SMC agrees to fully fund the design and construction of "Splash Pads" at "Boomer Lake Park" and "Southern Woods Park" in Stillwater, Oklahoma.

Building Site: City shall make one site available at Boomer Lake Park and one site available at Southern Woods Park for the construction and operation of a splash pad at each location as provided in this agreement.

Construction Standards: SMC shall construct each splash pad in accordance with accepted industry safety standards and applicable Stillwater City Codes. City shall assist SMC with the development of design and other specifications for each splash pad and pad construction site.

Competitive Bidding: SMC shall competitively bid the acquisition of materials and construction of each splash pad in accordance with the Public Competitive Bidding Act, 61 O.S. §101, *et seq.*

Site Preparation: City shall prior to commencement of construction, clear and prepare the building site at each splash pad location and establish suitable access for construction vehicles and equipment thereto. All cost of such preparation shall be borne by City.

Extension of Utilities: SUA shall extend water and electric utilities to each splash pad building site prior to construction and shall install any necessary connection apparatus. All such extension and connection costs shall be borne by SUA.

Bonds, Insurance: Prior to entry onto either building site, SMC shall provide to City performance, maintenance and statutory bonds for its selected contractor equal to the successful bid price for acquisition of materials and construction as set forth above. Said maintenance and statutory bonds shall bind the "City of Stillwater, a municipal corporation," be issued by a company licensed to issue such instruments in the State of Oklahoma, and written on a form acceptable to City. SMC shall also provide to City evidence of said contractor's Workmen's Compensation insurance policy in the statutorily-prescribed amounts, and a general liability insurance policy, naming the "City of Stillwater, a municipal corporation," as an additional insured in amounts equal to the liability limitations set forth in the Oklahoma Governmental Tort Claims Act, 51 O.S. §151, *et seq.* SMC shall require the contractor to maintain a "builder's risk" policy that includes coverage for theft and/or damage to equipment and materials until each splash pad is accepted by City.

Site Access: City shall provide SMC access to the building sites for purposes in accordance with this agreement during daylight hours. The City Manager shall have the right to deny SMC access to the building sites whenever weather or other conditions render such areas unsafe or because such entry will cause damage to City-owned property.

Security: SMC shall be responsible for securing the building sites until each splash pad is accepted by the City. City and SUA disclaim all liability for any damage to vehicles, equipment, or materials owned by SMC, its contractors or sub-contractors, employees, and/or agents at either building site caused by the actions of third persons during construction of the splash pads.

Inspection, Acceptance of Improvements: City shall have the right to inspect the splash pads prior to acceptance. Such inspection may include non-destructive material and/or structural/foundation testing as deemed necessary by City. City shall notify SMC of its final acceptance in writing.

Title, Warranty: Upon written acceptance by City, SMC shall transfer any evidence of title to the splash pads (i.e., equipment) it may possess to City. SMC shall also transfer any manufacturer warranty or guarantee to City, or provide that any such warranty or guarantee be issued to the City by the manufacturer(s) or seller(s).

Operation, Maintenance: Upon written acceptance as provided herein, City assumes all liabilities and responsibilities associated with maintenance and operation of the splash pads and appurtenances, and to the extent permitted by Oklahoma law, agrees to hold SMC harmless against any claims made which in any way result from the maintenance or operation of the splash pads arising on or after said acceptance.

Site Markers: SMC and other benefactors shall retain the right to place a sign or marker evidencing the donation and dedication, with the sign or marker to be designed by SMC, and costs associated with its construction and placement to be borne by SMC, and its location and placement at the sites to be determined and made as may be mutually agreed upon by SMC and City. All site markers shall be constructed in accordance with Stillwater City Codes and any applicable park land grant or project restrictions.

Removal, Salvage: City shall have the right to remove either splash pad from its original location as it deems necessary, regardless of the condition thereof. City shall have the right to surplus/salvage either splash pad.

Notice: Any notice required or permitted under this agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

City/SUA City of Stillwater
City Clerk/Trust Secretary
723 South Lewis/P.O. Box 1449
Stillwater, Oklahoma 74076

SMC: Stillwater Medical Center
Chief Executive Officer
1323 West 6th Avenue
Stillwater, Oklahoma 74074

Third Parties: This agreement does not confer any right upon any third party and shall not be enforceable by any person, group, or entity except City, SUA, and/or SMC.

Headings: The headings used in this lease agreement are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision thereof.

Governing Law: This agreement is governed by the statutes and laws of the State of Oklahoma and the charter and ordinances of the City of Stillwater.

Final Agreement: This agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This agreement may be modified only by a further writing that is duly executed by City, SUA and SMC.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

CITY OF STILLWATER, OKLAHOMA
a municipal corporation

STILLWATER UTILITIES AUTHORITY
a public trust

Gina J. Noble, Mayor/Chair

(SEAL)
ATTEST:

Elizabeth Chrz, City Clerk/Secretary

Approved as to form and legality this ___ day of _____, 2016.

John E. Dorman
City Attorney/General Counsel

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STILLWATER MEDICAL CENTER AUTHORITY

Chairman

(SEAL)
ATTEST:

Secretary

Legal Description
999 W. 12th Avenue
(600008992)
Deed recorded at 229 DR 567

A tract of land in the Northeast Quarter (NE/4) of the Southeast Quarter (SE/4) of Section Twenty-two (22), Township Nineteen North (T19N), Range Two East (R2E), of the Indian Meridian, Payne County, Oklahoma more particularly described as follows: Beginning at the Northeast Corner (NE/c) of the Southeast Quarter (SE/4) of said Section Twenty-two (22), thence South 89°57'40" West (assumed bearing) along the North line of the Southeast Quarter (SE/4) of said Section Twenty-two (22), a distance of 527.98 feet, thence South 0°53'30" East a distance of 46.31 feet, thence left along a curve of 240 feet radius a distance of 373.73 feet, thence North 89°53'10" East a distance of 86.50 feet, thence right along a curve of 160 feet radius a distance of 251.65 feet, thence due East a distance of 40.00 feet to the East line of said Section Twenty-two, thence due North along said East line a distance of 442.76 feet to the point of beginning, less and except the East 33.00 feet thereof, and existing right-of-way; subject to all easements and right-of-ways of record