

MEMORANDUM OF AGREEMENT
Between
TEXAS PARKS & WILDLIFE DEPARTMENT
And
AMERICAN YOUTHWORKS
for the project titled
TPWD'S TRAILS ACROSS TEXAS 2020

This Memorandum of Agreement ("Agreement or Contract") is made and entered into by and between Texas Parks and Wildlife Department ("TPWD" or "Receiving Agency"), and American YouthWorks ("AYW" or "Performing Entity"), a non-profit 501(c)(3) organization, under the authority granted by Texas Parks and Wildlife Code, Section 11.0171(a)(1)(C).

I. STATEMENT OF WORK TO BE PERFORMED:

AYW shall conduct the project entitled "TPWD's Trails Across Texas 2020" as outlined in the attached proposal, Attachment A, attached hereto and incorporated herein for all purposes. The objective of this project is for AYW to provide up to two (2) full trail crews (Crew(s)) to perform trail building, maintenance and restoration services in Texas State Parks. The Crew(s) shall consist of 8-10 crew members (ages 17-27) including Crew leaders. AYW shall be responsible for transportation, general hand tools, administration, crew recruiting, training and other overhead costs. Crew hours shall include installation, construction, carpentry, maintenance of trails, erosion control structures, and related work under the direction of the State Park Staff and AYW's Trails Across Texas (TAT) two (2) construction manager/field coordinators/trainers.

TPWD reserves the right to amend the work plan and shift the Crew(s) to different sites to address emergency repairs that result from flooding or other natural disasters. As further projects develop and the need for additional trail, carpentry or mason work is determined, TPWD may amend this contract with prior written approval by both parties.

Entrance Fees and Campsites: TPWD will waive park entrance fees for Crew(s) performing services under this contract and will provide campsites, as available, for required overnight stays to accommodate Crew members while performing duties related to the project at State Parks. All AYW Crew members are subject to any park rules and policies. TPWD reserves the right to retract the campsites privilege from AYW based on unacceptable conduct at any time.

TPWD Property and Equipment: AYW will not be permitted to operate any property or equipment owned, leased or rented by TPWD without specific authorization from TPWD staff.

II. BASIS FOR CALCULATING REIMBURSABLE COSTS:

See Budget in Attachment A for details.

Cost Restrictions: Allowable costs are restricted to those that comply with applicable state and federal rules and law. Additional federal requirements apply when federal funds are included in the reimbursement.

Pre-Agreement Costs: Pre-agreement costs as of January 1, 2020 are allowable only to the extent that they would have been allowable if incurred after the date of execution. All pre-agreement costs incurred by the AYW are incurred at the AYW's risk.

Hourly Rates: The hourly Crew rates are based on the number of Crew members in each Crew. A full Crew consists of 8-10 members at a crew rate of \$276.00 per crew hour. If either Crew(s) falls below 8 members for any reason the following pro-rated hourly rate will be utilized for that crew:

HOURLY PRO-RATES	
Crew Member Quantity	Hourly Rate
8-10	\$276.00
7	\$241.50
6	\$207.00
5	\$172.50
4	\$138.00
3	\$ 103.50
2	\$ 69.00
1	\$ 34.50

Reimbursement Conditions: Reimbursements are conditioned on the Contract activities being performed in compliance with the Contract.

III. AGREEMENT AMOUNT:

The total amount of this Agreement shall not exceed \$ 699,936.00 (Six Hundred Ninety-Nine Thousand Nine Hundred Thirty-Six dollars). The funding comes from the National Recreational Trails Program.

The proposed project estimates up to 2536 Crew hours of services at \$276.00 per Crew hour. The Two Crew(s) shall consist of 8-10 crew members (ages 17-27) including Crew leaders. If the Crew falls below 8 members for any reason, the Hourly Pro-rated rate will be utilized as per Attachment A.

Fund availability for this Agreement is dependent on a funding source which is approved on a fiscal year (9/1 – 8/31) basis. Consequently, this Agreement is subject to cancellation, without penalty, either in whole or in part, if those funds are unavailable to TPWD.

This Agreement is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise made available, to the TPWD.

IV. PAYMENT FOR SERVICES:

TPWD shall pay for services received from appropriation items or accounts of TPWD from which like expenditures would normally be paid, based upon vouchers drawn by TPWD payable to AYW.

For payment purposes, AYW (entity receiving payment) shall submit to TPWD (agency making payment) an invoice or a Purchase Voucher (for deposit in local bank account). TPWD will enter payment information into USAS. This shall be recorded by TPWD as contracted services in USAS as expenditure code 7299.

Any excess costs over the TPWD contribution toward one awarded contract cannot be submitted for reimbursement against another contract.

V. INVOICING:

Vendor Invoice Template: Reimbursement requests shall be submitted on TPWD’s Vendor Invoice – GA123; invoice available for download at <http://tpwd.texas.gov/business/grants/>. A sample invoice is attached hereto as Attachment B.

Invoices and invoice inquiries will be sent to: [REDACTED] [@tpwd.texas.gov](mailto:[REDACTED]@tpwd.texas.gov)

Invoice Schedule: Invoices for service performed shall be billed Monthly.

Invoices submitted that cross fiscal years (9/1 – 8/31) will be returned to AYW for modification and resubmission.

All invoices must be received within 60 days of the end of each invoice quarter or termination of the Agreement. Invoices not received within this time frame may not be paid.

Documentation Requirements: Invoices shall detail each expense by Budget category in accordance with Attachment A and shall be supported by appropriate back up documentation that, in the judgment of TPWD, allows for full substantiation of the costs.

VI. CONTACT INFORMATION:

TPWD Project Coordinator

[Redacted]

TPWD Contract Point of Contact

[Redacted]

AYW Project Coordinator

[Redacted]

AYW Contract Point of Contact

[Redacted]

VII. TERM OF AGREEMENT:

This Agreement is to begin upon signature by both parties and shall terminate December 31, 2020.

An extension to this contract may be granted with prior written approval by TPWD. Any extensions shall be with the same terms and conditions, plus any approved changes.

VIII. MISCELLANEOUS PROVISIONS:

Termination: This Agreement is subject to cancellation by TPWD, without penalty, either in whole or in part, if

1. Funds are not appropriated by the Texas Legislature, or otherwise made available, to TPWD;
2. AYW fails to comply with the terms and conditions of this Agreement; or
3. AYW fails to comply with the provisions of applicable state or federal laws or regulations.

Termination for Convenience: Performing Entity may terminate this Contract with thirty (30) days written notice if circumstances beyond its control prevent its fulfillment of the Contract. Performing Entity shall notify TPWD in writing of the reasons for and the effective date of termination. TPWD will submit such documentation to the Federal Highway Administration (FHWA).

Upon its receipt or delivery of written notice to terminate, Performing Entity shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to TPWD, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Performing Entity in performing this Contract, whether completed or in process.

In the event of termination for any reason, the Performing Entity shall be paid for all work satisfactorily completed to the date of termination and for any non-cancelable obligations related to the Contract, such reimbursement not to exceed the total amount specified in this Contract.

Insurance: AYW shall obtain and maintain in full force at all times during the term of this Agreement or any extensions thereof, insurance coverage naming the State of Texas, acting through TPWD, as an additional insured and loss payee on its policies in the amounts described below.

Comprehensive General Liability in the amount of: one million dollars per occurrence and of: one million dollars in the aggregate.

Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined limit of: one million dollars per occurrence for bodily injury and property damage.

If insurance policies are not written for amounts specified above, AYW 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.

AYW shall provide and furnish evidence of each policy of required insurance within (10) days of Agreement execution to the Texas Parks and Wildlife Department, Attn: [REDACTED], 4200 Smith School Road, Austin, Texas 78744.

Insurance shall be effective and evidence of acceptable insurance furnished to TPWD, prior to commencing any operations under this Agreement.

Right to Audit / Records Retention: AYW understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. AYW further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. AYW shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the AYW and the requirement to cooperate is included in any subcontract it awards. AYW shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under AYW's funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. AYW shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. AYW shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. AYW and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. AYW's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure. In Agreements involving federal funds, the right to audit provision of the Agreement includes the right for the applicable federal agencies and the federal Office of Inspector General to audit and access records.

Public Information: AYW is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

Disallowed Costs: The Performing Entity is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

Dispute Resolution: In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies applies to this Agreement in the event of substandard performance or other failure to conform to the requirements of the Agreement or applicable law.

- a) Reject the substandard performance and request corrections without charge to TPWD.
- b) Issue a notice of substandard performance or other non-conforming act or omission.
- c) Request and receive the return of any over payments or inappropriate payments.
- d) Reject associated reimbursement requests and suspend payments, pending accepted revision of substandard performance or non-conformity. Note: Funds may be retained by TPWD for recovery

- of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.
- e) Suspend all or part of the Agreement, pending accepted revision of substandard performance or non-conformity.
 - f) Terminate the Agreement, and demand and receive return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of expended funds.

TPWD may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses arising from or caused by AYW's substandard performance or any non-conformity with the Agreement or the law.

AYW shall carry on the Agreement Activities and adhere to the progress schedule during all disputes or disagreements with TPWD unless ordered to stop the Agreement Activities. No Agreement Activities shall be delayed or postponed pending resolution of any disputes or disagreements.

Neither payment by TPWD nor any other act or omission other than an explicit written release constitutes a release of AYW from liability for losses under this Agreement.

Non-discrimination: The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color national origin, age, and sex (in educational activities) or disability. The prime contractor shall ensure that this clause is included in all subcontracts.

Civil Rights: The Performing Entity agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. To the extent applicable to this agreement, the Performing Entity shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

U.S. Department of Homeland Security's E-Verify System: By entering into this Agreement, AYW certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- a) All persons employed to perform duties within Texas, during the term of the Agreement; and
- b) All persons (including subcontractors) assigned by AYW to perform work pursuant to the Contract, within the United States of America.

The AYW shall provide, upon request of TPWD, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by AYW, and AYW's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, AYW may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification.

Other Law: In the performance of this Contract, Performing Entity shall comply with all other applicable federal, state, and local laws, ordinances, and regulations including but not limited to 2 CFR Part 200 and the following:

- a) Federal Assurances (Form SF-424D for Construction) in Attachment C, which the Performing Entity certifies by signing the Attachment.

- b) Certifications Regarding Lobbying (Form CD-512; and, if applicable, Standard Form-LLL) in Attachment D, which the Performing Entity certifies by signing the Attachment.
- c) Financial Assistance Award Terms and Conditions per <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>, to which the Performing Entity certifies by signing this Contract.
- d) Federal Contract Provisions in Attachment E, to which the Performing Entity certifies by signing this Contract.

Certification Regarding Debarment, Suspension, Ineligibility, And Voluntary Exclusion: Performing Entity certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Performing Entity is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

Whistleblower Rights and Requirements: 41 United States Code (U.S.C.) 4712, Enhancement of Recipient (Performing Entity) and Subrecipient (Sub-Contractors) Employee Whistleblower Protection: This requirement applies to all awards issued after July 1, 2013.

- a) This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
- b) Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
- c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

Cultural and/or Paleontological Resources: Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the Performing Entity, or any person working on the Performing Entity's behalf, shall be immediately reported to TPWD, FHWA, and the State Historic Preservation Officer. The Performing Entity shall stop all operations in the area of potential effect until written authorization to proceed is issued by FHWA after determination of appropriate actions to prevent the loss of significant cultural, religious, or scientific values.

Indemnification: AYW SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TPWD, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF AYW OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF AYW IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. PERFORMING ENTITY SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TPWD.

Assignment: AYW shall not assign or subcontract the whole or any part of the Agreement without TPWD's prior written consent.

Entire Agreement; Modifications: The Agreement supersedes all prior agreements, written or oral, between AYW and TPWD and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by TPWD and AYW.

ATTACHMENT A

Proposal of Services for TPWD's Trails Across Texas Project 2020

American YouthWorks/Texas Conservation Corps (AYW) proposes to provide trail building, maintenance, and restoration services at state parks for the Texas Parks and Wildlife Department in 2020.

Texas State Parks 2020: Trail Work

AYW proposes to provide up to two (2) Texas Conservation Corps crews of 8-10 members (ages 17-27), originating from Austin, TX, including crew leaders, van for transportation, general hand tools, administration, crew recruiting, training, and other overhead costs. This estimate for 2536 crew hours of services at \$276.00 per crew hour amounts not to exceed **\$699,936**. Crew hours will address: Installation, construction, maintenance of trails, erosion control structures, and related work under the direction of the State Park Staff, State Park Trails Coordinators and AYW's Trails Across Texas (TAT) two (2) Construction Manager/Field Coordinators/Trainers (one Construction Manager/Field Coordinator/Trainer with each crew provided).

Assumptions:

AYW Crew(s): 8-10 members @ \$276.00/hour ~project time. Crew day = 8 hours. (Billing adjustments based on actual number of hours worked). *Project time* includes crew travel time, including inside park commutes or hikes from campsite to project site, and travel from AYW's base to park. The *Crew Hour Rate* includes: Member stipends/fringe/per diem, crew leaders/supervision, project coordination, mileage (AYW vehicles) for roundtrips to work sites, equipment operation, liability insurance, crews trained in "leave no trace" camping ethics, hygiene, and skills.

Hourly Pro-Rate: If either AYW crew(s) falls below 8 members for any reason the following pro-rated hourly rate will be utilized for that crew:

HOURLY PRO-RATE	
Crew Member Quantity	Hourly Rate
8	\$276.00
7	\$241.50
6	\$207.00
5	\$172.50
4	\$138.00
3	\$ 103.50
2	\$ 69.00
1	\$ 34.50

The *8-hour project day* includes two 15-minute water breaks; lunch is off the clock. AYW will supply basic tools such as chainsaws, basic carpentry tools, gas powered drills or similar with bits, shovels, picks, etc. Specialized equipment (i.e., heavy machinery) will be provided by the project host.

The State Park *project host* designates at least one staff member as a point of contact/liaison to ensure communication and coordination of project materials to complete improvements such as: lumber, concrete, etc.

The State Park project host provides camping accommodations with access to bathroom/shower facilities and an electrical outlet(s) when possible. Backcountry camping with limited amenities may be required

when applicable for the project. Wherever applicable, the State Park project host will provide contact information for local friends and volunteer groups who may participate in trail construction training techniques from the TAT crew to help create a lasting impact on the project host's trail system. AYW will complete a Trail Project Set-up form that includes information on the nearest emergency facilities and the educational components to be taught by the host's staff or local experts. The Set-Up form will also include a Site Safety Hazard analysis and map of the site.

Payment:

Invoices will be submitted monthly to Texas Parks and Wildlife for payment. Payments shall be made to American YouthWorks, ATTN: [REDACTED], Program Director, at 1901 E. Ben White Blvd., Austin, TX 78741. Please reference *Trails Across Texas* on payment.

Proposed Work to be Accomplished: Scope of work to be accomplished under this proposal is as follows.

State Park Trail Improvement Program – Hand Crew and Mechanized Trail work including renovations, maintenance and new trail construction at various locations within the State Park system to be determined throughout the year as needs dictate.

Fee Summary

Project Year = Not to Exceed 158.5 days of 16 crew hours
\$276.00/Crew hrs. (2536hrs.)*

GRAND TOTAL \$ 699,936.00

* Subject to Hourly Pro-Rate

Attachment B

TPWD's Vendor Invoice – GA123 is available electronically at: <http://tpwd.texas.gov/business/grants/>

TEXAS PARKS AND WILDLIFE DEPARTMENT INVOICE							
1. VENDOR ID:		2. INVOICE DETAIL:		#			
3. RTI (if applicable):				MM/DD/YY			
4. TPWD CONTRACT/AGREEMENT NUMBER:		5. CURRENT PERIOD PAYMENT AMOUNT REQUESTED:			\$0.00		
6. RECIPIENT ORGANIZATION (NAME AND COMPLETE ADDRESS, INCLUDING ZIP CODE):		7. FINAL INVOICE:		<input type="checkbox"/> YES	<input type="checkbox"/> NO		
		8. ACCOUNTING BASIS:		<input checked="" type="checkbox"/> X	CASH		
		9. TOTAL PROJECT/GRANT PERIOD:					
		a. FROM: MM/DD/YY			b. TO: MM/DD/YY		
		10. PERIOD COVERED BY THIS REPORT:					
		a. FROM: MM/DD/YY			b. TO: MM/DD/YY		
11. EXPENDITURES BUDGET CATEGORIES:		Total Contract Budget	Period Expenditures		Cumulative Expenditures (Previous Cumulative+Period Expenditures)	**Available Balance as of: MM/DD/YY	
a. Personnel/Salary		\$0.00	*	\$0.00	\$0.00	\$0.00	
b. Fringe Benefits		\$0.00	*	\$0.00	\$0.00	\$0.00	
c. Travel		\$0.00	*	\$0.00	\$0.00	\$0.00	
d. Supplies		\$0.00	*	\$0.00	\$0.00	\$0.00	
e. Equipment		\$0.00	*	\$0.00	\$0.00	\$0.00	
f. Contractual		\$0.00	*	\$0.00	\$0.00	\$0.00	
g. Other		\$0.00	*	\$0.00	\$0.00	\$0.00	
h. Total Direct Costs (Sum a - g)		\$0.00		\$0.00	\$0.00	\$0.00	
i. Indirect Costs (if allowable)		\$0.00		\$0.00	\$0.00	\$0.00	
j. Total Amount Payable (h-i)		\$0.00		\$0.00	\$0.00	\$0.00	
12. MATCH BUDGET CATEGORIES:		Total Contract Budget	Period Expenditures		Cumulative Expenditures (Previous Cumulative+Period Expenditures)	**Available Balance as of: MM/DD/YY	
a. Total Direct Costs		\$0.00	*	\$0.00	\$0.00	\$0.00	
b. Indirect Costs (if allowable)		\$0.00	*	\$0.00	\$0.00	\$0.00	
c. Local/In Kind Match		\$0.00	*	\$0.00	\$0.00	\$0.00	
d. Total Obligation Payable (Sum a-c)		\$0.00		\$0.00	\$0.00	\$0.00	
13. PERCENTAGES		Budget %	Period %		Cumulative %		
Expenditures		#DIV/0!	#DIV/0!		#DIV/0!		
Match		#DIV/0!	#DIV/0!		#DIV/0!		
*List (Itemize) on the appropriate supplemental form all component expenses comprising the total for each of these categories.							
Please attach receipts, as required, in accordance with your agreement.							
** Negative balances in any of the budget categories should be explained in a brief accompanying narrative.							
14. CERTIFICATION I certify to the best of my knowledge and belief that the above charges accurately represent actual expenditures incurred during the period listed, that any prior approvals required for these items under the terms and condition of the subaward have been obtained, and all claimed costs are allowable under the terms and conditions of the subaward. I further certify that the costs claimed above have not been previously reimbursed.							
a. Type or Print Name and Title of Authorized Certifying Official				c. Telephone (Area code, number and extension)			
				d. Email address			
b. Signature of Authorized Certifying Official				e. Date Report Submitted (Month, Day, Year)			