STATE OF SOUTH CAROLINA  )   
)   SJWD AGREEMENT
COUNTY OF SPARTANBURG   )

This AGREEMENT is made and entered into on this _____ day of _________ 2013, by and between the COUNTY OF SPARTANBURG, a political subdivision of the State of South Carolina, having its principal place of business at 366 North Church Street, Spartanburg, SC 29303 ("County"), and _SJWD Water District_, located at _307 Spartanburg Hwy., Wellford, SC 29385_ ("SJWD").

WHEREAS, the County enjoys excellent potential to improve the area quality of life by facilitating access to its natural resources; particularly rivers and lakes, and

WHEREAS, SJWD has noted that there is a need to develop greater public appreciation for the Spartanburg County’s natural resources, so that the resources can be protected and preserved, and

WHEREAS, by working together, SJWD and County can develop improved facilities for outdoor recreation and environmental education, in a way that lowers the total expense for such capital and operating investments,

WHEREAS, SJWD and the County both desire to utilize property and/or facilities owned by SJWD at Lake Cooley Park, located at 200 Cooley Dock Rd., Inman, SC 29349, for the recreational and educational needs of the citizens of Spartanburg County.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, SJWD and the County, each for itself and it successors and assigns, intending to be fully and legally bound, agree as follows:

1. CONTRACT DOCUMENTS. The entire contract entered into by the County and SJWD shall incorporate the Mutual Expectations, attached hereto as Exhibit A and incorporated herein by reference and the Map/Survey of the property addressed by this agreement, attached hereto as Exhibit B and incorporated herein by reference.

2. PURPOSE. The purpose of this agreement is to provide to County property and/or facilities owned by SJWD that may be used specifically for the delivery of agreed-upon recreation and education programs and services.

3. PRIORITY. The County shall be responsible for scheduling use of facilities at the park. Should SJWD desire to use facilities, SJWD shall schedule through the County.

4. COMPENSATION/COST RECOVERY. County will not be charged any compensation for the use of SJWD property and/or facilities. However, County may establish equipment rental, facility rental, and program charges sponsored by the County to recover reasonable cost related to regular operation of the property and/or facility.
5. PROGRAM AND SERVICE FEES. County agrees to limit the fees charged to the public to the approximate cost of delivering recreation programs and services to the public and will not seek to profit, in the aggregate, from the delivery of recreation programs and services which utilize the property and/or facilities of SJWDs. Quarterly reports will be made available to SJWD staff and Commissioners.

6. FACILITY SAFETY: When SJWD or County identifies perceived unsafe conditions or actions associated with the property and/or facility being utilized, it will timely notify, in writing, the property/facility owner or program sponsor of the unsafe conditions or actions. If the unsafe condition or action is not corrected in a reasonable time, the issue will be elevated to the County Administrator or SJWD’s Chief Executive Officer.

7. INDEMNIFICATION. Within the limits of the S. C. Tort Claims Act and other applicable laws of the State of South Carolina, SJWD and the County hereby further agree, and bind their heirs, personal representatives, successors and assigns, to assume any and all liability for accidents or injuries to persons, or damage to property (collectively “Liabilities”), that may be caused by SJWD or the County or its agents in connection with any “event”, occupation and use of the property and/or facilities contemplated herein, and SJWD and the County agree further to be responsible for those claims and/or costs associated with such Liabilities. Neither the execution of this application nor the issuance of any permit, however, shall be construed to expand the legal obligations of the applicant to any third party.

8. INSURANCE. Each party shall provide evidence of liability insurance naming the other party as an additional insured. Liability insurance shall be maintained in the amount of One Million and 00/100 ($1,000,000.00) Dollars.

9. AMENDMENT. The parties may mutually waive, amend, or modify parts of this Agreement. Such amendments, changes, modifications, or waivers shall not be binding unless they are in writing and signed by personnel authorized to bind the parties. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

10. CHOICE OF LAW AND VENUE. This Agreement will be governed by the laws of the State of South Carolina, both as to interpretation and performance. Any actions at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement may be instituted only in a court of competent jurisdiction in the State of South Carolina, County of Spartanburg.

11. SEVERABILITY. In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, condition or application of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable. If any provision of this lease conflicts with any law, conflict shall not affect the other provisions of this lease which can be given effect without the conflicting provision, and to this end the provisions of this lease are declared severable.
12. INTEGRATION CLAUSE. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement supersedes all previous communications, representations or agreements, either oral or written, between the parties.

13. TERM AND TERMINATION. The term of this agreement shall be from the date hereof and shall extend until terminated. Any party hereto may terminate this Agreement upon at least thirty (30) days advance written notice to the other parties.

14. ANNUAL CONSULTATION. The parties agree to review the operation of this Agreement annually or as needed.

15. PROPERTY AND EQUIPMENT. No fixed assets or personal or real property will be jointly or cooperatively acquired, held or disposed of pursuant to this Agreement.

16. DISPUTES. In the event that a dispute arises under this Agreement, it will be resolved jointly by the Director of Parks and Recreation and the designee of SJWD Chief Executive Officer. If the dispute cannot be resolved, it will be elevated to the County Administrator and Chief Executive Officer of SJWD.

17. NOTICES. All notices and any payments hereunder may be delivered or mailed. If mailed, they shall be sent to the contacts at the following respective addresses:

To: County:  County Administrator
          Spartanburg County
          P.O. Box 5666
          Spartanburg, SC 29304

          SJWD:  Executive Director
                  P.O. Box 607
                  Lyman, SC 29365

Copy to: Parks and Recreation Director
          Spartanburg County Parks Department
          9039 Fairforest Road
          Spartanburg, SC 29301

          County Attorney
          Spartanburg County
          P.O. Box 5666
          Spartanburg, SC 29304
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

For SJWD:

WITNESSES:

Billy C. Davis

[Signature]

Barb Grable

[Signature]

Michael Caston
Executive Director

For County:

WITNESSES:

[Signature]

James H. Hipp,
Deputy County Administrator

ATTEST:

Debbie C. Zeigler
Clerk to County Council

APPROVED AS TO FORM
SUSAN B. BROWN
20TH JUDICIAL CIRCUIT
DATE: 12/12/12
Exhibit A
SJWD Agreement

1. Spartanburg County will utilize the improved Lake Cooley Park as a center of operations for its Outdoor Recreation Program.

2. Spartanburg County will fully fund construction and design of an initial series of mutually agreeable improvements to Lake Cooley Park to include office space, class/meeting space, and equipment storage building. The County shall submit a complete site development plan with a schedule of implementation to SJWD. Failure to execute the plan at any point will nullify this agreement.

3. The County shall submit architectural drawings and specifications for any structure or other improvements for SJWD review.

4. All improvements made to the Park will be owned and insured by SJWD.

5. Should SJWD decide to terminate agreement within 20 years of the date first above written, SJWD will reimburse the County for the full appraised value of the aforementioned improvements for the first 10 years of the agreement term and for 50% of the appraised value of the improvements for the last 10 years of the agreement term.

6. Cost sharing of additional future park improvements and/or infrastructure replacements shall be mutually agreed upon the County and SJWD and documented as an amendment to this Agreement.

7. The County will bear sole responsibility for all mowing and landscaping activities.

8. The County will bear sole responsibility for electrical utility costs.

9. Due to the sensitivity and complexity of Lake Cooley’s primary use as a public drinking water supply, SJWD will bear primary responsibility for monitoring the lake for security. SJWD will also bear primary responsibility for developing and ensuring implementation of policies and procedures related to water supply security. The County shall not allow any activity in the opinion of SJWD that jeopardizes water quality in the lake. The County shall provide security during time of their operation.

10. SJWD and its designee, such as the South Carolina Department of Natural Resources, shall bear sole responsibility for the patrolling and enforcing all lake and wildlife regulations.

11. The new office space will have a workstation reserved for a SJWD employee to utilize at any time.

12. The County will bear sole responsibility for the scheduling of all park facilities, events, and programming, and will communicate the addition of new scheduling activities on at least a monthly basis to SJWD staff.
13. The County will develop a reasonable rental fee for use of the large picnic pavilion, as well as any new improvements.

14. The County will retain all rental, event, and program fees charged and sponsored by the County excluding boat permit fees.

15. The County will schedule staff presence for a minimum of 40 hours per week during the “high season” of April 1 – September 30, and will communicate this schedule to SJWD in advance.

16. The County will schedule staff presence for a minimum of 20 hours per week during the “Low Season” of October 1 – March 31, and will communicate this schedule to SJWD in advance.

17. SJWD is responsible for staffing the park for hours in addition to those stated above.

18. The County will work with SJWD and other partners to ensure watershed education is significant component of all programming at the facility.

19. Contract Administrator for County:
   a. Name: John Woodsby, Recreation Manager
   b. Email: jon.woodsby@spartanburgparks.org
   c. Phone: 864-904-0275

20. Contract Administrator for SJWD:
   a. Name: Mitch Turner Director of Maintenance, Property and Risk Management
   b. Email: mturner@sjwd.com
   c. Phone: 864-949-2830
STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  

AMENDMENT TO SJWD AGREEMENT

This AMENDMENT TO SJWD AGREEMENT is made and entered into on this 24th day of April 2015, by and between the COUNTY OF SPARTANBURG, a political subdivision of the State of South Carolina, having its principal place of business at 366 North Church Street, Spartanburg, SC 29303 ("County"), and the SJWD Water District ("SJWD"), located at 307 Spartanburg Highway, Wellford, SC 29385.

WHEREAS, SJWD and the County have entered into an Agreement which incorporates the Mutual Expectations, attached hereto as Exhibit A and incorporated herein by reference, and

WHEREAS, SJWD and County desire to modify the mutual expectations so that Sections 2 and 3, as adopted, are replaced, as follows:

2. Spartanburg County will fully fund design and construction of an initial series of mutually agreeable improvements at Lake Cooley Park to include office space, class/meeting space and equipment storage. SJWD shall develop a budget and preliminary plan, incorporating requirements expressed by the Spartanburg County Parks Department staff. Upon County Council approval of the preliminary plan, SJWD shall construct the improvements through a design/build process, utilizing qualified contractors of their choosing.

3. Periodically, SJWD shall submit well-documented requests for progress payments, until the project is completed to the satisfaction of SJWD and Spartanburg County, at which time the final payment will be made by the County to SJWD.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

For SJWD:

WITNESSES:

[Signatures]

Michael Caston,
Executive Director

For County:

[Signatures]
WITNESSES:

[Signatures]

James H. Hipp,
Deputy County Administrator

ATTEST:

[Signatures]

Debbie C. Ziegler
Clerk to County Council

APPROVED AS TO FORM
SPARTANBURG COUNTY ATTORNEYS OFFICE
DATE: 4/06/16