

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the parties herein named, it is hereby agreed as follows:

ARTICLE I. INCORPORATION OF PREAMBLE

The parties affirm that all of the matters set forth in the preamble are true and correct and hereby incorporate said preamble as a material part of this Agreement.

ARTICLE II. SERVICES

- 2.01 Contractor shall perform all services outlined in Exhibit A, attached hereto and incorporated by reference.
- 2.02 Contractor shall use the Community Center for the purpose of operating its programs and for no other event and/or activity that is not sponsored by Contractor or not otherwise permitted or sanctioned under its articles of incorporation, charter, and/or by-laws.
- 2.03 Notwithstanding anything contained herein to the contrary, under no circumstances *whatsoever* will Contractor allow any activity and/or event that is not an organized, supervised youth activity and/or event to take place in the Community Center or on its grounds.
- 2.04 Contractor will only use the Community Center for organized, supervised youth programs such as character and leadership development, education and career development, health and life skills, artistic training, sports, fitness and recreation.
- 2.05 Contractor will at all times comply with any and all orders, regulations and policies, and amendments thereto, issued by County for the purpose of maintaining an orderly and compatible use of the Community Center by all parties involved.
- 2.06 In the event that events and/or activities other than those normally organized and supervised by Contractor are conducted at the Community Center, Contractor will, at least thirty (30) days prior to each event and/or activity, submit to the Fort Bend County Parks Director for prior written approval, said approval not to be unreasonably withheld or delayed, a list of the names of the groups, performers and/or organizations desiring to use the Community Center:
 - A. The list should include the name of the group, performer and/or organization, its owner, the products or services offered, and copies of all permits and licenses required to offer such goods and/or services.
 - B. The Contractor will handle all the publicity and public relations for each event.
 - C. Notwithstanding anything contained herein to the contrary, any event and/or activity must comply with § 2.04, supra.
- 2.07 Any event or activity permitted under the terms of this Agreement to be conducted upon the Community Center shall be supervised by Contractor's personnel, all of whom shall be properly trained, adequate in number and who shall remain in the Community Center during the entire course of the event or activity.

ARTICLE III. CONSIDERATION

- 3.01 As consideration for this Agreement, County will pay to Contractor an amount not to exceed **ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000)**. Payment shall be tendered to contractor in quarterly payments of **Thirty Five Thousand Dollars (\$35,000)**.

- 3.02 County will pay the first quarterly payment to Contractor within thirty (30) days of the execution of this Agreement at the address provided in section 9.01.

ARTICLE IV. TERM

- 4.01 This Agreement shall be effective on **October 1, 2016** and shall terminate on **September 30, 2017**.
- 4.02 This Agreement may renew annually, with express written consent of the Commissioners Court.
- 4.03 This Agreement may be terminated without cause prior to the expiration of the term herein at the option of either County or Contractor upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
- 4.04 The termination of the Agreement will be effective upon the last day of the month in which the expiration of the thirty (30) day period occurs.

ARTICLE V. CONTRACTOR'S RESPONSIBILITIES AND OBLIGATIONS

- 5.01 During the term of this Agreement, Contractor's obligations and/or responsibilities hereunder, in addition to others specified herein, shall include the employment of:
- A. One (1) full-time Branch Director who will coordinate all Contractor Staff on-site and shall be responsible for the overall success of the program.
 - B. One (1) part-time Education Director who will coordinate the educational, health and life skills programming.
 - C. One (1) part-time Athletic Director who will coordinate the fitness, recreation and sports program.
 - D. One (1) part-time Membership Coordinator who will coordinate membership and maintain on-site records.
- 5.02 Contractor will be responsible for any and all costs and expenses in connection with the operation of the Community Center, including, but not limited to: personnel salary and expenses, telephone, food, beverages, materials, supplies, etc., incidental to the operation of the Community Center.
- 5.03 In addition to utilities as set forth above, Contractor shall pay all items of cost incident to the operation of the Community Center, including, but not limited to, security of the Community Center, installation and maintenance of all Contractor's necessary equipment, together with all the wages and salaries of all employees retained by Contractor, for the portion of the Community Center occupied by Contractor.
- 5.04 Contractor shall also be solely responsible for all program supplies necessary to fulfill the requirements of Article II and V above.
- 5.05 Contractor will not allow any illegal activity to take place at the Community Center and will immediately report any and all illegal activity to law enforcement.
- 5.06 Breach of any provision of this Article shall be grounds for immediate termination of this Agreement.

ARTICLE VI. ACCESS TO COMMUNITY CENTER BY COUNTY

- 6.01 County may enter the Community Center at any and all times:
- A. To inspect same;

- B. To determine whether Contractor is complying with the provisions of this Agreement;
 - C. To post notices; and/or
 - D. For any reason that County may, in its sole discretion, deem worthy.
- 6.02 County may inspect all phases of Contractor's operation including, but not limited to, the condition of the property and equipment and/or the operation and management of Contractor's programs and/or the Community Center.
- 6.03 County shall have the right to impose regulations, policies and/or restrictions upon the Community Center from time to time as County, in its sole discretion, deems appropriate.

ARTICLE VII. ASSIGNMENT

- 7.01 Contractor will not, in whole or in part, transfer, assign, all or any portion, abandon, or otherwise dispose of its rights under this Agreement, without the prior express written consent of County.
- 7.02 Any such transfer, assignment, abandonment or other disposition, without the prior written consent of County, or any assignment of Contractor's rights hereunder by operation of law, is void and of no force and effect as against County.
- 7.03 Subject to the above requirement that County written consent first be obtained upon the assignment or transfer of rights under this Agreement by Contractor, the party to which such rights are assigned or transferred shall be bound by the terms and provisions of this Agreement to the same extent as Contractor, and the instrument of assignment or other written evidence of the transfer of rights under this Agreement shall include a provision to such effect.

ARTICLE VIII. INSURANCE AND LIABILITY COVERAGE

- 8.01 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:
- A. Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000
 - B. Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000
- The required commercial general liability policy will be issued on a form that insures Contractor's or its subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- C. Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;
- D. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration or cancellation of this Agreement.

8.02 Contractor will deliver to County evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any services by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

8.03 All insurance policies, with the exception of worker's compensation, employer's liability, and professional liability will be endorsed and name the County as Additional Insured for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. The Commercial General Liability Additional Insured endorsement including on-going and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

8.04 Contractor hereby waives all rights of subrogation against the County. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the County. No policy will be canceled until after thirty (30) days' unconditional written notice to the County. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to County thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy.

8.05 Contractor is responsible to pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by County prior to the performance of any services by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

8.06 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following County contact:

Name: Wyatt Scott, Director of Risk Management
 Address: 301 Jackson St., Suite 224, Richmond, TX 77469
 Facsimile Number: 281-341-3751
 Email Address: RiskMgmt@fortbendcountytexas.gov

8.07 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by the County. Contractor's or subcontractor's insurance

will be kept in force until all services have been fully performed and accepted by County in writing.

ARTICLE IX. NOTICE

9.01 Any notice required or permitted hereunder to be given, shall be given by registered or certified United States Mail, return receipt requested, postage prepaid, addressed to:

To County:

Fort Bend County Judge
401 Jackson
Richmond, Texas 77469
Phone (281) 341-8608
Fax: (281) 341-8609

To Contractor:

Boys and Girls Clubs of Greater Houston, Inc.
Administrative Office
~~1520-A Airline Drive~~ 815 Crosby St
Houston, Texas ~~77009~~ 77019
Attn: ~~Chief Operating Officer~~ President & CEO
Phone: (713) 868-3426
Fax: (713) 868-3703

With Copies To:

Fort Bend County Attorney
401 Jackson Street
Richmond, Texas 77469
Phone: (281) 341-4555
Fax: (281) 341-4557

Douglas M. Selwyn:
3850 One Houston Center
1221 McKinney Street
Houston, Texas 77010-2028
Phone: (713) 650-3850
Fax: (713) 650-3851

- 9.02 Such notice will be considered given and completed upon deposit of notice in the U.S. Mail.
- 9.03 Notwithstanding anything to the contrary herein contained, County is not precluded from giving actual notice to the Contractor in any manner.
- 9.04 Any change to Contractor's addresses will be in writing, signed by the Contractor, and will be delivered to the Commissioners Court of the County.

ARTICLE X. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS AND DEFEND THE COUNTY, ITS OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES (WHETHER 1ST PARTY OR 3RD PARTY) AND RELATED COSTS, ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE PERFORMANCE OF THE CONTRACTOR'S RESPONSIBILITIES UNDER THIS AGREEMENT, CAUSED BY THE CONTRACTOR'S SOLE NEGLIGENCE OR ITS SOLE INTENTIONAL ACT OR OMISSION; OR IS CAUSED BY THE JOINT NEGLIGENCE OF THE CONTRACTOR AND ANY OTHER PERSON, OR ENTITY OR THE JOINT INTENTIONAL ACT OR OMISSION OF THE CONTRACTOR AND OTHER PERSON OR ENTITY.

ARTICLE XI. PUBLIC ACCESS

- 11.01 Contractor expressly states that it understands that the Community Center is a public facility, open to the public, and that at times this fact may impose a hardship on Contractor.
- 11.02 Contractor expressly states that it understands that there will be times when County or its designee shall need to use the Community Center during the time period that Contractor would normally occupy the Community Center and Contractor expressly agrees to accommodate such disruptions.
- 11.03 County agrees that it will endeavor to inform Contractor, as far in advance as possible of an event that would cause it to displace Contractor from the Community Center.
- 11.04 County agrees that it will endeavor to assist Contractor to make reasonable accommodations when it requires Contractor to vacate the Community Center.
- 11.05 Contractor expressly states that it understands that, notwithstanding that the primary purpose of the Community Center is to provide organized and supervised youth activities, no member of the public may be precluded from using the Community Center, subject to Contractor's disciplinary policies and procedures.

ARTICLE XII. RIGHTS AND REMEDIES

- 12.01 All rights and remedies provided hereunder shall be cumulative and none shall exclude any other provision of this Agreement.
- 12.02 All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 12.03 A waiver by either party of a breach of this Agreement by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.

ARTICLE XIII. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

- 13.01 In the performance of work or services under this Agreement, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers or volunteers performing work required hereunder shall be deemed solely as employees of Contractor, or where permitted, its subcontractors.
- 13.02 Contractor and its agents, employees, officers or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

ARTICLE XIV. MISCELLANEOUS

- 14.01 Except as otherwise provided for herein, all consents, rules, and regulations as provided for herein by the County shall only be those approved or adopted by the Commissioners Court of Fort Bend County, Texas.
- 14.02 Wherever the phrase "Commissioners Court" is used herein, it refers to the Commissioners Court of Fort Bend County.
- 14.03 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

- 14.04 Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.
- 14.05 No member, official, or employee of County shall be personally liable to Contractor or any successor in interest, in the event of any default or breach by County or for any amount which may become due to Contractor, its successors, or on any obligations under the terms of this Agreement.
- 14.06 This Agreement shall be governed by the laws of the State of Texas. Venue for all purposes is the County of Fort Bend, Texas.

ARTICLE XV. CONTRACTOR'S REPRESENTATIONS AND ACKNOWLEDGEMENTS

- 15.01 Contractor warrants and represents unto County that:
- A. Contractor is a duly organized and existing legal entity, in good standing in the state of Texas;
 - B. Contractor has full right and authority to execute, deliver and perform this Agreement;
 - C. The person executing this Agreement on behalf of Contractor was authorized to do so;
 - D. That prior to County's execution of this Agreement, Contractor will deliver to County satisfactory evidence of the person executing this Agreement's authority to execute this Agreement on behalf of Contractor;
 - E. Has received and is receiving from County hereunder absolutely no warranty or representation as to the condition of, or suitability of the Community Center.

ARTICLE XVI. ENTIRE AGREEMENT

- 16.01 This Agreement constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the County, acting through its Commissioners Court, and Contractor.
- 16.02 Contractor hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- 16.03 This Agreement shall supersede any and all prior agreements between the parties hereto relating to the Community Center and to the extent of any inconsistencies in the provisions of this Agreement with the provisions of any said prior agreement, the provisions of this Agreement shall control.
- 16.04 Any oral representations or modifications concerning this instrument will be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

ARTICLE XVII. EXECUTION

IN TESTIMONY AND WITNESS OF WHICH this Agreement has been executed in duplicate originals as follows:

FORT BEND COUNTY

BOYS AND GIRLS CLUB OF GREATER HOUSTON, INC.

Robert E. Hebert, County Judge

[Signature]
President and Chief Operating Officer

Date

9-27-16
Date

ATTEST:

Laura Richard, County Clerk

AUDITOR CERTIFICATE

I hereby certify that funds in the amount of \$140,000.00 are available to pay the County's obligation within the foregoing Agreement for the Operation and Programming by the Boys & Girls Club at the 5th St. Community Center.

Robert E. Sturdivant, County Auditor