

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

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**RENEWAL AGREEMENT FOR OPERATION AND PROGRAMMING
OF FIFTH STREET COMMUNITY CENTER**

THIS AGREEMENT ("Agreement"), is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, ("County"), and the Boys and Girls Clubs of Greater Houston, Inc., a non-profit, Texas corporation, ("Boys & Girls Club") to perform Services at Fifth Street Community Center (the "Community Center") located in Fort Bend County, Texas.

WITNESSETH:

WHEREAS, County has a responsibility to provide for the support of its citizens who are unable to support themselves;

WHEREAS, County has the authority to provide recreational facilities as well as support for its citizens;

WHEREAS, the Commissioners Court of Fort Bend County finds that it will be in the public interest and serve the general welfare of the community, for some entity other than the County to manage, operate and maintain the Community Center and provide organized and supervised youth activities;

WHEREAS, the Fort Bend County Purchasing Agent has advertised for proposals for the operation and programming of activities for the Community Center;

WHEREAS, Boys & Girls Club responded to County's request for proposals for the operation and programming of activities for the Community Center and to provide organized and supervised youth activities;

WHEREAS, on August 27, 2002 Commissioners Court accepted Boys & Girls Club's proposal for the operation and programming of activities for the Community Center;

WHEREAS, County and Boys & Girls Club agree that Boys & Girls Club will manage, operate and maintain the Community Center and provide organized and supervised youth activities and programs;

WHEREAS, the Commissioners Court of Fort Bend County finds that it is in the public interest and serves the general welfare of the community, for Boys & Girls Club to manage, operate and maintain the Community Center and for Boys & Girls Club to provide organized and supervised youth activities;

WHEREAS, the Commissioners Court of Fort Bend County finds that by entering into this Agreement with Boys & Girls Club, it will be promoting public safety and furthering its interest in law enforcement, by reducing crime, especially juvenile crime;

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

AGREEMENT

1. Incorporation of Preamble

1.1. 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.

2. Services

2.1. The Boys & Girls Club shall perform the Services described in this Agreement.

2.2. The Boys & Girls Club 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 Boys & Girls Club or not otherwise permitted or sanctioned under its articles of incorporation, charter, and/or by-laws.

2.3. Notwithstanding anything contained herein to the contrary, under no circumstances *whatsoever* will the Boys & Girls Club 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.

2.4. The Boys & Girls Club 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.

2.5. The Boys & Girls Club 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.

2.6. In the event that events and/or activities other than those directly related to the Services are conducted at the Community Center, the Boys & Girls Club 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 Boys & Girls Club 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 § 2.4, *supra*.

2.7. Any event or activity permitted under the terms of this Agreement to be conducted upon the Community Center shall be supervised by the Boys & Girls Club'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.

3. Consideration

3.1. As consideration for this Agreement, County will pay to the Boys & Girls Club an amount not to exceed \$147,000.00 payable in quarterly payments of \$36,750.00.

3.2. County will pay the first quarterly payment to Boys & Girls Club within thirty (30) days of the execution of this Agreement at the address provided in section 9.1.

4. Term

4.1. This Agreement shall be effective on **October 1, 2017** and shall terminate on **September 30, 2018**.

- 4.2. This Agreement may renew annually, with express written consent of the Commissioners Court.
- 4.3. This Agreement may be terminated without cause prior to the expiration of the term herein at the option of either County or Boys & Girls Club upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
- 4.4. 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.
- 5. Boys & Girls Club's Responsibilities and Obligations**
- 5.1. During the term of this Agreement, Boys & Girls Club'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 Boys & Girls Club 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.
- 5.2. Boys & Girls Club 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.
- 5.3. In addition to utilities as set forth above, Boys & Girls Club 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 Boys & Girls Club's necessary equipment, together with all the wages and salaries of all employees retained by Boys & Girls Club, for the portion of the Community Center occupied by Boys & Girls Club.
- 5.4. Boys & Girls Club shall also be solely responsible for all program supplies necessary to fulfill the requirements of Section 2 and 5 above.
- 5.5. Boys & Girls Club 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.
- 5.6. Breach of any provision of this Section shall be grounds for immediate termination of this Agreement.
- 6. Access to Community Center by County**
- 6.1. County may enter the Community Center at any and all times:
 - (a) To inspect same;
 - (b) To determine whether Boys & Girls Club 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.
- 6.2. County may inspect all phases of Boys & Girls Club's operation including, but not limited to, the condition of the property and equipment and/or the operation and management of Boys & Girls Club's programs and/or the Community Center.
- 6.3. 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.

7. Assignment

- 7.1. The Boys & Girls Club 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.
- 7.2. Any such transfer, assignment, abandonment, or other disposition, without the prior written consent of County, or any assignment of the Boys & Girls Club’s rights hereunder by operation of law, is void and of no force and effect as against County.
- 7.3. Subject to the above requirement that County’s written consent first be obtained upon the assignment or transfer of rights under this Agreement by the Boys & Girls Club, 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 the Boys & Girls Club, and the instrument of assignment or other written evidence of the transfer of rights under this Agreement shall include a provision to such effect.

8. Insurance and Liability Coverage

8.1. The Boys & Girls Club, 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:
 - (i) Employers Liability - Each Accident \$1,000,000
 - (ii) Employers Liability - Each Employee \$1,000,000
 - (iii) Employers Liability - Policy Limit \$1,000,000
- (b) Commercial General Liability Insurance with limits of not less than:
 - (i) Each Occurrence Limit \$1,000,000
 - (ii) Damage to Rented Premises \$300,000
 - (iii) Personal & Advertising Injury \$1,000,000
 - (iv) General Aggregate \$2,000,000
 - (v) Products - Completed Operations Aggregate \$2,000,000

The required commercial general liability policy will be issued on a form that insures the Boys & Girls Club’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 the Boys & Girls Club 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, the Boys & Girls Club 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.

- 8.2. The Boys & Girls Club 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 the Boys & Girls Club 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.
- 8.3. 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 the Boys & Girls Club'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 the Boys & Girls Club. 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.
- 8.4. The Boys & Girls Club 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.
- 8.5. The Boys & Girls Club 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 the Boys & Girls Club under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 8.6. 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
- 8.7. The Boys & Girls Club's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by the County. The Boys & Girls Club's or subcontractor's insurance will be kept in force until all services have been fully performed and accepted by County in writing.

9. Notice

- 9.1. 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:

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| <p>To Fort Bend County County: Attn: Fort Bend County Judge 401 Jackson Street Richmond, Texas 77469 Phone (281) 341-8608 Fax: (281) 341-8609</p> | <p>To Boys and Girls Clubs of Greater Houston, Inc. Boys & Girls Club: Administrative Office Attn: Chief Operating Officer 1520-A Airline Drive Houston, Texas 77009 Phone: (713) 868-3426 Fax: (713) 868-3703</p> |
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With Fort Bend County Attorney
Copies 401 Jackson St.
To: 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

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

10. Indemnification

- 10.1. THE BOYS & GIRLS CLUB 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 BOYS & GIRLS CLUB'S RESPONSIBILITIES UNDER THIS AGREEMENT, CAUSED BY THE BOYS & GIRLS CLUB'S SOLE NEGLIGENCE OR ITS SOLE INTENTIONAL ACT OR OMISSION; OR IS CAUSED BY THE JOINT NEGLIGENCE OF THE BOYS & GIRLS CLUB AND ANY OTHER PERSON, OR ENTITY OR THE JOINT INTENTIONAL ACT OR OMISSION OF THE BOYS & GIRLS CLUB AND OTHER PERSON OR ENTITY.

11. Public Access

- 11.1. The Boys & Girls Club 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 the Boys & Girls Club.
- 11.2. The Boys & Girls Club B 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 the Boys & Girls Club would normally occupy the Community Center and the Boys & Girls Club expressly agrees to accommodate such disruptions.
- 11.3. County agrees that it will endeavor to inform the Boys & Girls Club as far in advance as possible of an event that would cause it to displace Boys & Girls Club from the Community Center.
- 11.4. County agrees that it will endeavor to assist the Boys & Girls Club to make reasonable accommodations when it requires Boys & Girls Club to vacate the Community Center.
- 11.5. The Boys & Girls Club 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 the Boys & Girls Club's disciplinary policies and procedures.

12. Rights and Remedies

- 12.1. All rights and remedies provided hereunder shall be cumulative and none shall exclude any other provision of this Agreement.
- 12.2. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 12.3. 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.

13. Boys & Girls Club is an Independent Contractor

- 13.1. In the performance of work or services under this Agreement, the Boys & Girls Club 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 the Boys & Girls Club, or where permitted, its subcontractors.
- 13.2. The Boys & Girls Club 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.

14. Miscellaneous

- 14.1. 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.
- 14.2. Wherever the phrase "Commissioners Court" is used herein, it refers to the Commissioners Court of Fort Bend County.
- 14.3. 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.
- 14.4. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.
- 14.5. No member, official, or employee of County shall be personally liable to the Boys & Girls Club or any successor in interest, in the event of any default or breach by County or for any amount which may become due to the Boys & Girls Club, its successors, or on any obligations under the terms of this Agreement.
- 14.6. This Agreement shall be governed by the laws of the State of Texas. Venue for all purposes is the County of Fort Bend, Texas.

15. Boys & Girls Club's Representations and Acknowledgments

- 15.1. The Boys & Girls Club warrants and represents unto County that:
 - (a) The Boys & Girls Club is a duly organized and existing legal entity, in good standing in the state of Texas;
 - (b) The Boys & Girls Club has full right and authority to execute, deliver and perform this Agreement;
 - (c) The person executing this Agreement on behalf of the Boys & Girls Club was authorized to do so;
 - (d) That prior to County's execution of this Agreement, the Boys & Girls Club will deliver to County satisfactory evidence of the person executing this Agreements authority to execute this Agreement on behalf of the Boys & Girls Club; and
 - (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.

16. Entire Agreement

- 16.1. 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 the Boys & Girls Club.
- 16.2. The Boys & Girls Club hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- 16.3. 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.

- 16.4. 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.
- 16.5. It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject.

IN WITNESS WHEREOF, this Agreement is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Agreement. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

BOYS AND GIRLS CLUB OF GREATER HOUSTON, INC.

Robert Hebert, County Judge

President and Chief Operating Officer

Date

Date

ATTEST:

Laura Richard, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$147,000.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.

Robert Ed Sturdivant, County Auditor