

STATE OF TEXAS

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§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

§

AGREEMENT FOR PROGRAMS AT BEASLEY ELEMENTARY SCHOOL

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 Fort Bend YMCA, a division of the YMCA of Greater Houston, a non-profit, Texas corporation, ("YMCA") to perform Services at Beasley Elementary School (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, County and YMCA agree that the YMCA provide an organized and supervised outreach program;

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 the YMCA to provide an outreach program;

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

WHEREAS, County has determined that this Agreement serves a public purpose;

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 YMCA shall perform the Services described in this Agreement.

2.2. The YMCA shall use the Community Center for the purpose of its Services and for no other event and/or activity.

2.3. Notwithstanding anything contained herein to the contrary, under no circumstances whatsoever will the YMCA 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 YMCA 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 YMCA 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 YMCA 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 YMCA 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 YMCA'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 YMCA an amount not to exceed \$35,000 payable in quarterly payments of \$8,750.00.
- 4. Term**
- 4.1. This Agreement is effective upon signature of County and shall terminate on September 30, 2019. 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.
 - 4.2. 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. YMCA's Responsibilities and Obligations**
- 5.1. During the term of this Agreement, the YMCA's obligations and/or responsibilities hereunder, in addition to others specified herein, shall include the provision of the following services: the provision of outreach services in the form of school year after school and summertime tutorial, recreational and developmental programming for youth 6 to 17 years old in the low income and/or "at risk" ("Services").
 - 5.2. The YMCA shall pay all the wages and salaries of all employees retained by the YMCA, for the provision of the Services.
 - 5.3. The YMCA shall be solely responsible for all program supplies necessary to provide the Services.
 - 5.4. The YMCA 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.
 - 5.5. Breach of any provision of this Article 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 the YMCA 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 the YMCA's operation relating to the provision of Services.
 - 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.
 - 6.4. The YMCA expressly states that it understands that the Community Center is a County building, open to the public, and that at times this fact may impose a hardship on the YMCA.
 - 6.5. The YMCA expressly states that it understands that there will be emergency related times when County or its designee shall commandeer the Community Center during the time period that the YMCA would normally occupy the multi-use room and the YMCA expressly agrees to accommodate such disruptions immediately and without notice. Such emergencies shall include, but not be limited to, weather-related emergencies, medical related emergencies, etc.
 - (a) County agrees that it will endeavor to inform the YMCA as far in advance as possible of an event that would cause it to displace the YMCA from the Community Center.
 - (b) County agrees that it will endeavor to assist the YMCA to make reasonable accommodations when it requires the YMCA to vacate the Community Center. However, there may be occasions when the YMCA will be required to cancel all activities at the Community Center in order to accommodate the County's needs during an emergency.
 - 6.6. The YMCA expressly states that it understands that, notwithstanding that the primary purpose of the Community Center is to assist the community, no member of the public may be precluded from using the Community Center.
- 7. Assignment**
- 7.1. The YMCA 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 YMCA'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 YMCA, 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 YMCA, 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 YMCA, 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 YMCA'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 YMCA 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 YMCA 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 YMCA 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 YMCA 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 YMCA'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 YMCA. 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 YMCA 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 YMCA 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 YMCA 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 YMCA's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by the County. The YMCA'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:

| | | | |
|---------|------------------------------|-------|-----------------------|
| To | Fort Bend County | To | T.W. Davis YMCA |
| County: | Attn: Fort Bend County Judge | YMCA: | Attn: Center Director |
| | 401 Jackson Street | | 911 Thompson HWY |
| | Richmond, Texas 77469 | | Richmond, Texas 77469 |
| | Phone (281) 341-8608 | | Phone 281-341-0791 |
| | Fax: (281) 341-8609 | | Fax 281-342-9368 |

| | | |
|--------|---------------------------|--------------------------------|
| With | Fort Bend County Attorney | Beasley Elementary School 7511 |
| Copies | 401 Jackson St. | Avenue J |
| To: | Richmond, Texas 77469 | Beasley, Texas 77417 |
| | Phone: (281) 341-4555 | |
| | Fax: (281) 341-4557 | |

Lamar CISD
3911 Avenue I
Rosenberg, Texas 77471

- 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 YMCA in any manner.
- 9.4. Any change to the YMCA's addresses will be in writing, signed by the YMCA, and will be delivered to the Commissioners Court of the County.

10. Indemnification

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

11. Public Access

- 11.1. The YMCA 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 YMCA.

- 11.2. The YMCA 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 YMCA would normally occupy the Community Center and the YMCA expressly agrees to accommodate such disruptions.
- 11.3. County agrees that it will endeavor to inform the YMCA as far in advance as possible of an event that would cause it to displace YMCA from the Community Center.
- 11.4. County agrees that it will endeavor to assist the YMCA to make reasonable accommodations when it requires YMCA to vacate the Community Center.
- 11.5. The YMCA 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 YMCA'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. YMCA is an Independent Contractor

- 13.1. In the performance of work or services under this Agreement, the YMCA 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 YMCA, or where permitted, its subcontractors.
- 13.2. The YMCA 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 YMCA 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 YMCA, 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.
- 14.7. As required by Chapter 2270, Government Code, YMCA hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic

harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

- 14.8. By signature below, YMCA represents pursuant to Section 2252.152 of the Texas Government Code, that YMCA is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

15. YMCA's Representations and Acknowledgments

- 15.1. The YMCA warrants and represents unto County that:

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

Remainder of Page Intentionally Left Blank

Signatures Follow On Next Page

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

**BEASLEY ELEMENTARY SCHOOL
FORT BEND YMCA, T.W. DAVIS BRANCH**

Robert Hebert, County Judge

Center Director

Date

Date

ATTEST:

Laura Richard, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$35,000.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.

Robert Ed Sturdivant, County Auditor