

STATE OF TEXAS

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COUNTY OF FORT BEND

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LICENSE AGREEMENT FOR USE OF BALL FIELDS AT FREEDOM PARK

THIS License AGREEMENT (“License” and/or “Agreement”) is made and entered into by and between Fort Bend County, (“County”), a body corporate and politic under the laws of the State of Texas, and Katy United LLC, DBA: Katy United (“Katy United”), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, Fort Bend County hereby adopts Chapter 320 of the Local Government Code for the purpose of acquiring, improving, equipping, maintaining, financing, and operating one or more public parks.

WHEREAS, Fort Bend County Commissioners Court elects to exercise and perform the powers authorized by Chapter 320 which includes executing a contract pertaining to a park under its control, namely Fort Bend County Freedom Park (“Freedom Park”);

WHEREAS, Katy United desires to assist County in providing recreational facilities for the citizens of the County, to promote the sport and hobby of baseball and develop within the citizens of the County the spirit of good sportsmanship and cooperation, as well as provide a means to actively and recreationally occupy the time and leisure of said citizens; and

WHEREAS, Katy United has requested permission to use and to make improvements to a certain portion of Freedom Park, for the purposes described above, to be used by persons residing in the County; and

WHEREAS, the County is willing to allow Katy United to use and to make improvements to a certain portion of Freedom Park for the purposes set forth above; and

WHEREAS, Katy United is willing to supervise and manage the said baseball fields and appurtenances thereto; and

WHEREAS, County finds that this License serves a public purpose.

NOW THEREFORE, in consideration of the mutual covenants, licenses and benefits to both parties, it is agreed as follows:

AGREEMENT

1. Property.

1.1. Subject to the provisions of this License, the County hereby licenses to Katy United a revocable right to use, make improvements to and maintain the following described portion of Freedom Park, located in Fort Bend County, Texas, to-wit:

Those certain baseball fields located on a tract of land being a part of Fort Bend County Freedom Park, said area being identified with hatch lines as “Katy National Little Katy

United" on the map or diagram marked "Exhibit A," attached hereto and incorporated herein by reference as if copied herein verbatim, hereinafter called "Property."

- 1.2. The license granted herein permits Katy United to use, schedule use of, maintain and improve the above described Property for the purposes of providing sporting activities and play fields for the residents of Fort Bend County and surrounding areas.
- 1.3. This license does not convey any interest in Property to Katy United. The license is merely a license to use the Property according to the terms hereof.

2. Term.

- 2.1. The Term of this Agreement shall commence upon the date of execution by County ("Effective Date") and terminate on the one (1) year anniversary of the Effective Date ("Termination Date"). This Agreement shall not automatically renew, and may only be renewed by signed agreement of both parties.

3. Name.

- 3.1. The fields are to be known as "Freedom Park Baseball Fields."

4. Improvements.

- 4.1. It is the intent of the parties and a material inducement for the County to grant this license that the Katy United will make all of the improvements to the Property that are identified as, and in accordance with, Exhibit "B."
- 4.2. No work shall commence before County has approved construction plans which must be submitted to County no later than 60 days prior to beginning construction. Construction shall be in accordance with the plans presented.
- 4.3. As consideration for the use of the fields, all fixtures, improvements, alterations and additions thereto, made and/or installed in or upon the fields by Katy United, including, but not limited to the playing areas, the appurtenances thereto, team quarters (including lockers and showers), public restrooms, electronic scoreboards, sidewalks, shrubberies, stands, floodlighting facilities, and any or all other fixtures and improvements (similar or dissimilar) immediately become the property of the County when installed and/or constructed upon the fields. Except as otherwise provided herein, all property that may be moved without damage to the Property, as determined solely by County, does not become the property of the County, but remains the property of the Katy United. Upon termination of this license, any movable property not removed by Katy United before the date of termination becomes the property of the County.
- 4.4. Katy United shall keep and maintain in good repair, to the satisfaction of County, the Property and all improvements upon the Property, including but not limited to all seating, bleachers, concession stands, fences, sidewalks, landscaping, baseball fields, utility tie-ins, gas, water, sewer service lines, restrooms, floodlighting, electrical outlets, press boxes, scoreboards, backstops, storage buildings and all other fixtures and improvements for the fields, in a safe, attractive and good state of repair and cleanliness. Katy United will keep the fields and that portion of the Property lying and being within twenty-five yards of the fields in a neat, clean and respectable condition. If County determines that the Katy United is not complying with the provisions of this subparagraph, the County may terminate this license upon ten (10) days advance written notice to Katy United.
- 4.5. Katy United shall timely satisfy and discharge all debt for all material and labor for improvements made upon the Property. In the event that a lien for unpaid labor and/or materials is threatened or filed against the Property, Katy United shall promptly cause the lien to be released and/or the threat be removed. The filing of a lien against the Property for unpaid material and/or labor brought to or performed upon the Property by or for the benefit of Katy United constitutes an injury to the County and is cause for immediate termination of

this license.

- 4.6. KATY UNITED SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY FOR ALL DAMAGES AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, FOR OR ON ACCOUNT OF ANY NECESSARY LEGAL ACTION TO REMOVE THE THREAT OF THE FILING OF A LIEN OR THE REMOVAL OF ANY LIEN.

5. Maintenance.

- 5.1. Katy United shall provide for all maintenance at the Property at the sole expense of Katy United. Such maintenance shall include, but not be limited to maintenance of grounds, building, fences, playing areas, spectator areas and on-site sewage systems, if applicable.
- 5.2. Katy United shall provide all supplies and materials necessary to perform the maintenance requirements described herein at the sole expense of the Katy United. County may perform periodic unannounced and/or noticed inspections of the fields and appurtenances thereto to determine the condition thereof.

6. Utilities.

- 6.1. Katy United shall remit payment to County for no less than 50% of the electricity bill for the Property. County shall invoice Katy United on a quarterly basis, with payment due no later than 30 days of receipt of invoice by Katy United.

7. Liability and Insurance

- 7.1. Katy United shall furnish County with insurance certificates(s) and a copy of each policy that is in effect as of the effective date of this Agreement for verification and approval by the County Risk Management Department. Katy United shall provide County subsequent insurance certificates throughout the term of the Agreement upon request. Katy United shall carry Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include independent contractors, and contractual liability each at \$1,000,000 per occurrence. Coverages shall be written on per occurrence forms. Policies shall name the County, its elected and appointed officials, agents, and employees as additional insureds.
- 7.2. KATY UNITED EXPRESSLY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, CLAIMS, DEMANDS, LAWSUITS, LIABILITY, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, INVESTIGATIVE COSTS, AND OTHER COSTS OF LITIGATION, IN ANY MANNER ARISING OUT OF THE ACTS OR OMISSIONS OF KATY UNITED AND KATY UNITED'S EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS, IN THEIR USE OF THE PROPERTY, IRRESPECTIVE OF WHETHER THE COUNTY WAS CONCURRENTLY NEGLIGENT.
- 7.3. Katy United shall ensure that a "FORT BEND COUNTY ATHLETIC FACILITY RELEASE OF LIABILITY FOR PARTICIPANT" is executed on behalf of each Katy United participant prior to participation. Copies of the Release of Liability will be made available to County upon request.
- 7.4. County makes no representation, warranty, or guarantee with respect to the condition of the Property, the presence or absence of pits or depressions in the surface of the fields, the type or condition of the soil or other material within the soil, and the presence of pipes or other objects in the soil. KATY UNITED ACCEPTS THE PROPERTY AND ALL APPURTENANCES AND IMPROVEMENTS THERETO "AS IS, WHERE IS AND WITH ALL FAULTS."

8. Conduct/Security

- 8.1. Katy United shall exercise proper supervision and control of all activities of Katy United on the Property. In exercising the rights and performing the obligations required of it under the

terms of this license, Katy United shall comply, and shall require all persons using the Property to comply, with all applicable federal, state, county and city laws, ordinances, rules and regulations, including the Park Rules that may be adopted from time to time by the Commissioners Court. Said Park Rules are incorporated herein by reference as if copied herein verbatim. Additionally, Katy United shall at all times maintain and enforce good order and fair sportsmanship upon the Property, and shall not permit any conduct, behavior or practice in violation of any federal, state, or municipal laws, rules, regulations or ordinances or of a sort likely to bring discredit or humiliation upon anyone, including Fort Bend County and its governing body.

- 8.2. Katy United shall permit all persons residing in Fort Bend County, Texas to participate in the activities of the League upon the Property. Katy United shall not discriminate against any person or persons because of race, color, religion, sex or national origin.
- 8.3. Katy United may and is encouraged to create and distribute to users of the Property a written guideline or code of conduct. The guideline or code of conduct may not conflict with any federal, state, county and/or city ordinance, rule and regulation. However, Katy United may require conduct of a higher standard or degree of character than is required under all rules and laws so long as the prescribed conduct does not discriminate against any person on the basis of their race, color, religion, sex or national origin. Katy United shall provide to the County any such guideline or code of conduct.
- 8.4. Katy United shall provide all necessary security personnel for the events it sponsors or conducts on the Property.
- 8.5. Katy United acknowledges and agrees that it is neither the responsibility nor the right of persons other than those representing Fort Bend County Parks and Recreation Department to enforce park rules and regulations. Katy United shall contact Fort Bend County Parks & Recreation if any Katy United participant witnesses a violation of Park Rules or actions inconsistent with expectations of a public setting. For emergency situations, Katy United shall call the Fort Bend County Sheriff's Office for assistance.

9. Times/Calendar

- 9.1. County may establish the day-to-day times when the Katy United may use the Property for its activities. The County may post signs at or near the entrance to the Property stating the times when the Property is open to the public and the Katy United.
- 9.2. Katy United may use the Property at all times during the calendar year, except when the Property is scheduled for other events by the County.
- 9.3. Notwithstanding the foregoing, the County may alter or change the dates and times that Katy United may use the Property. The County may, with or without notice to Katy United, prohibit entry into and use of the Property whenever it is necessary, as determined by County. Unless an act of God, war or other public calamity requires closure of the Property, the County may give notice to Katy United, in the manner described herein of any change in the Park's calendar.
- 9.4. Katy United shall be required to provide a written schedule of games and practices for each athletic season. Katy United shall be responsible for scheduling use of the Property by other youth organizations. Katy United shall not deny the use of the Property to any youth organization that does not interfere with the normal Katy United playing season.

10. Notice and Termination

- 10.1. This license may be terminated by either party, with or without cause, by giving written notice to the other party at least thirty (30) days prior to the date of termination.
- 10.2. Notice to County shall be given by registered or certified U. S. Mail, Return Receipt Requested, postage prepaid, addressed to Fort Bend County, County Judge, 301 Jackson St., Suite 719,

Richmond, Texas 77469, with copy to Fort Bend County, Parks Director 9555A Highway 6 Missouri City, TX 77459.

- 10.3. Notice to Katy United shall be given by registered or certified U. S. Mail, Return Receipt Requested, postage prepaid, addressed to Katy United, President, 23102 Seven Meadows Pkwy, Katy, Texas 77494.
- 10.4. Notice is considered given and completed upon deposit of the notice in the U.S. Mail.
- 10.5. Each party may change its respective address and specify as its address any other address in the State of Texas by giving at least fifteen (15) days written notice of such change to the other party.

11. Income

- 11.1. Katy United may sell "concession items" such as food, beverages and activity "programs" without need for prior approval from County.
- 11.2. Katy United must have prior written approval from County regarding any other uses of the property for production of income not named herein.

12. Miscellaneous

- 12.1. Paragraph captions herein are merely descriptive and do not add to or detract from the content of this license.
- 12.2. Any oral representations or modifications concerning this license are of no force or effect; and this license may be modified or changed only by the Commissioners Court.
- 12.3. Katy United shall provide the County at all times with the current names, addresses and phone numbers of the President, chief acting officer, vice-president and each board member of Katy United.
- 12.4. This license shall be governed under Texas law, and it shall be performed entirely in Fort Bend County, Texas.
- 12.5. The person signing this license on Katy United's behalf hereby represents that he or she is authorized by the Katy United's Board of Directors to execute this license on Katy United's behalf.
- 12.6. No statement contained in this license shall be construed so as to find Katy United or any of its participants, to be an employee, or agent of the County, and Katy United and its participants shall be entitled to none of the rights, privileges, or benefits of County employees except as otherwise may be stated herein nor shall Katy United or its participants hold itself out as an employee or agent of the County.
- 12.7. In the event of one or more of the provisions contained in this license shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this license shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 12.8. The waiver by either party of a breach of any provision of this license shall not operate as or be construed as a waiver of any subsequent breach.
- 12.9. Any amendments to this license shall be of no effect unless in writing and signed by both parties hereto.
- 12.10. Katy United shall not assign this license, or any interest arising herein, without the prior written consent of County.
- 12.11. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

13. Termination.

- 13.1. Termination for Convenience. County may terminate this Agreement at any time upon thirty (30) days written notice.
- 13.2. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
- (a) If Katy United fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - (b) If Katy United materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
- 13.3. If, after termination, it is determined for any reason whatsoever that Katy United was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 6.1 above.
- 13.4. Upon termination of this Agreement, County shall compensate Katy United in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Katy United's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.
- 13.5. If County terminates this Agreement as provided in this Section 6, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Katy United.
- 13.6. If County terminates this Agreement prior to the termination date, County shall not be subject to any early termination fee or other penalty.

14. Texas Government Code Section 2251.152 Acknowledgment.

- 14.1. By signature below, Katy United represents pursuant to Section 2252.152 of the Texas Government Code, that Katy United 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. No Boycott of Israel.

- 15.1. As required by Chapter 2270, Government Code, Katy United 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.

16. Understanding, Fair Construction.

- 16.1. By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

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 and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

KATY UNITED LLC

Robert Hebert, County Judge

Authorized Agent – Signature

Date

Authorized Agent- Printed Name

ATTEST:

Title

Laura Richard, County Clerk

Date

Exhibit A: Map

Exhibit B: Participant Release Form

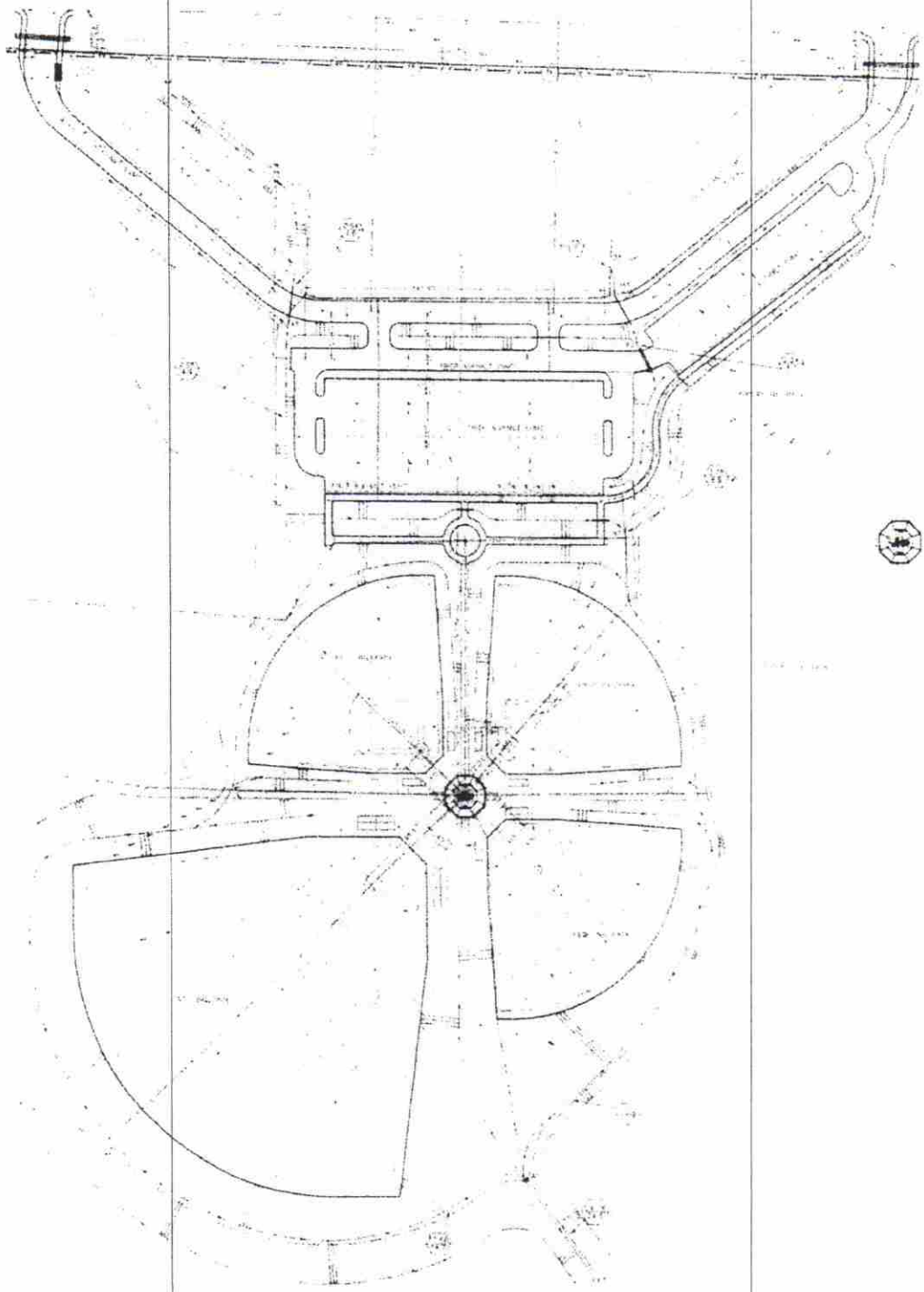


Exhibit B

