

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

KNOW ALL BY THESE PRESENTS:

PROJECT FUNDING AGREEMENT
REGARDING TW DAVIS YMCA

This Agreement regarding Project Funding for TW DAVIS YMCA ("Agreement") is made and entered into by and between FORT BEND COUNTY TEXAS (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, and the YMCA OF GREATER HOUSTON (hereinafter "TW Davis YMCA"), a non-profit corporation duly organized and existing under the laws of the State of Texas, acting by and through its Association Board. County and TW Davis YMCA are may sometimes be referred to in this Agreement collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, the Fort Bend County Parks Bond ("Bond") passed on November 7, 2023; and

WHEREAS, the Bond authorized funding for a variety of parks and recreation projects within Fort Bend County, including the TW Davis YMCA Project located in Richmond, Texas ("Project"); and

WHEREAS, the Project includes design and construction of a rebuilt 60,000 square foot YMCA facility located on 19.8 acres at FM 762 and Austin Street in Richmond, TX at an estimated cost of Sixteen Million Eight Hundred Thousand Dollars (\$16,800,000.00); and

WHEREAS, the Bond authorizes the County to contribute Two Million Five Hundred Thousand Dollars (\$2,500,000.00) towards the construction cost of the Project; and

WHEREAS, the funds will be used by the TW Davis YMCA towards the construction cost of the Project; and

WHEREAS, the TW Davis YMCA and County believe it is in their best interests to enter into this Agreement, to advance the Project; and

WHEREAS, the TW Davis YMCA and County agree to abide by all pertinent federal, state, and local laws and regulations; and

NOW THEREFORE, for and in consideration of the mutual benefits to be derived by the parties hereto, the County and City agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to outline the obligations related to the construction improvements of the Project.
2. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated in this Agreement.
3. Term of the Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect unless terminated as provided below, or the Projects are complete and the obligations under Sections 4 and 5 of this Agreement are fulfilled.
4. TW Davis YMCA Responsibilities.
 - a. Design.
 - i. TW Davis YMCA will fund and manage the design of the Project.
 - ii. TW Davis YMCA will provide the County with a final set of plans upon completion of the design of the project and prior to bidding.
 - iii. TW Davis YMCA will conduct all utility coordination and/or relocations with private franchise utility companies.
 - iv. TW Davis YMCA has the right to extend the limits of the project as necessary to improve connectivity at TW Davis YMCA's expense.
 - b. Construction.
 - i. TW Davis YMCA will oversee the construction of the Project.
 - ii. TW Davis YMCA will forward the County a request for payment within 30 days after bidding the project. This will include a copy of the low bid and award letter.
 - iii. TW Davis YMCA will submit to the County a full accounting of the funds expended on the Project and a set of record drawings within 90 days after the completion of the Project.
 - c. TW Davis YMCA agrees the funds will be used for the following project description:
 - i. The Facility will be utilized as an Emergency Site Shelter for Fort Bend County residents use during extreme weather events such as hurricanes, freezes, floods.
 - ii. Design and construction of a Community Multipurpose Room within the facility and open to residents and/or organizations of Fort Bend County for multiuse purposes, community meetings, town halls, etc.
 - iii. Construction of a walking trail connecting to trails of existing City of Richmond Trails Master Plan and open and accessible to all residents of Fort Bend County.
5. County Responsibilities.

- a. Construction. The County agrees to pay TW Davis YMCA, Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) out of the 2023 Parks Bonds upon Project Funding Agreement – YMCA of Greater Houston / Fort Bend County

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County will pay 100% of the allocated funds for the Project upon TW Davis YMCA's award of the construction contract, within 30 days of the written request from TW Davis YMCA.

- b. The County agrees the funds will be used for the following project description:
 - i. The Facility will be utilized as an Emergency Site Shelter for Fort Bend County residents use during extreme weather events such as hurricanes, freezes, floods.
 - ii. Design and construction of a Community Multipurpose Room within the facility and open to residents and/or organizations of Fort Bend County for multiuse purposes, community meetings, town halls, etc.
 - iii. Construction of a walking trail connecting to trails of existing City of Richmond Trails Master Plan and open and accessible to all residents of Fort Bend County.

6. Schedule.

- a. The anticipated completion date for design of the Project is Winter 2024.
- b. The anticipated start date for construction of the Project is Spring 2025.
- c. The anticipated completion date for construction of the Project will be provided to County upon contract award.

7. Limit of Appropriation.

- a. Prior to execution of this Agreement, the TW Davis YMCA has been advised by the County, and the TW Davis YMCA clearly understands and agrees such understanding and agreement being of the absolute essence to this Agreement, that the County shall have available the total maximum amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00), specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the Project.
- b. TW Davis YMCA does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that TW Davis YMCA may become entitled to hereunder and the total maximum amount that the County will pay TW Davis YMCA hereunder will not under any condition, circumstance or interpretation hereof exceed Two Million Five Hundred and No/100 Dollars (\$2,500,000.00).

8. Termination. This Agreement shall remain in effect unless:

- a. The Agreement is terminated in writing with the mutual consent of the parties.
- b. The Agreement is terminated by one party because of a breach; or
- c. TW Davis YMCA does not appropriate funds for the Project.

9. Insurance and Liability.

- a. TW Davis YMCA warrants and represents that it is insured under a commercial insurance policy or self-insured for all claims.
- b. County will require all third-party contractors, subcontractors, and vendors (collectively, the "Contractor") who perform work or provide services under this agreement to maintain such levels of insurance as are customary for the size and kind of work or services to be provided. All insurance policies, except workers' compensation, must name County as an additional insured. TW Davis will obtain copies of insurance policies from the Contractor and deliver to County copies of such policies. All such policies must contain an agreement that the insurer will notify County in writing not less than thirty (30) days before any reduction in coverage or cancellation of any policy.

10. Indemnification

TW DAVIS YMCA AGREES THAT IT WILL REQUIRE EACH CONTRACTOR PERFORMING DEMOLITION, CONSTRUCTION, OR MAINTENANCE WORK THAT CONTRACTS DIRECTLY WITH TW DAVIS YMCA (COLLECTIVELY, "CONTRACTOR") UTILIZED IN CONNECTION WITH THIS AGREEMENT TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS COUNTY, ITS EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY IN THIS SECTION 10 AS "COUNTY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS AND LIABILITY, INCLUDING DEFENSE COSTS RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CONTRACTOR'S NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE CONTRACTOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF ITS DUTIES RELATING TO THE PARK. TW DAVIS YMCA WILL REQUIRE EACH CONTRACTOR TO MAINTAIN THIS INDEMNITY DURING THE PERFORMANCE OF SUCH CONTRACTOR'S WORK AND UP TO THE DATE OF TW DAVIS YMCA'S ACCEPTANCE OF SUCH WORK.

TW DAVIS YMCA FURTHER AGREES TO REQUIRE CONTRACTOR TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS AND DAMAGES RELATING IN ANY WAY TO THE SOLE, JOINT, AND/OR CONCURRENT NEGLIGENCE OF TW DAVIS YMCA AND CONTRACTOR, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

11. Miscellaneous.

- a. **Information Sharing.** TW Davis YMCA shall promptly provide County with a copy of all reports submitted by third party contractors through TW Davis YMCA to the Texas Commission on Environmental Quality ("TCEQ") pertaining to the Project.

b. **No Partnership.** Nothing in this Agreement shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between TW Davis YMCA and County; it being understood and agreed that neither any provisions contained in this Agreement, nor any acts of TW Davis YMCA or County, shall be deemed to create any relationship between TW Davis YMCA and County other than the contractual relationship established under this Agreement.

c. **Captions.** The captions used here are for convenience only and do not limit or amplify the provisions in this Agreement.

d. **Recitals.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

e. **Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Fort Bend County, Texas and that venue for any litigation arising out of or related to this Agreement shall lie solely in the court of appropriate jurisdiction located in Fort Bend County, Texas.

f. **Assignment.** This Agreement shall not be assignable, in whole or in part, without first obtaining the written consent of the other Party.

g. **Severability.** The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected.

h. **Merger.** This Agreement embodies the entire understanding between the Parties with respect to the operation, maintenance and improvement of the Project, and there are no prior effective representations, warranties or agreements between the Parties with respect to the operation, maintenance and improvement of the Project. This Agreement shall supersede and replace all previous agreements, if any, pertaining to the operation, maintenance and improvement of the Project between the Parties.

i. **Entire Agreement; Amendment and Attachments.** This Agreement contains the entire agreement between the Parties, and no agreement shall be effective to change, modify, or terminate this Agreement, in whole or in part, unless such agreement is in writing and duly signed by the Party against whom enforcement of such change, modification, or termination is sought. This Agreement supersedes any and all other agreements, either oral or in writing between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

12. **Notices.**

- A. Each party giving any notice or making any request, demand, or other communication (each, a “Notice”) pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Parks and Recreation
Attn: Director
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County, Texas
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

YMCA: YMCA of Greater Houston
Attn: Stephen Ives
1331 Augusta Dr.
Houston, Texas 77057

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 12(A) and 12(B) and if the addressee has received the Notice. A Notice is deemed received as follows:
1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

13. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, TW Davis YMCA hereby verifies that TW Davis YMCA and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

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- b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, TW Davis YMCA does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. “Boycott Israel” has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, TW Davis YMCA does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. “Boycott energy company” has the meaning provided in § 809.001 of the Texas Government Code.
 - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, TW Davis YMCA does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. “Discriminate against a firearm entity or firearm trade association” has the meaning provided in § 2274.001(3) of the Texas Government Code. “Firearm entity” and “firearm trade association” have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
14. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, TW Davis YMCA ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
15. This instrument, in duplicate originals, has been executed by the parties hereto as follows. This Agreement shall not be effective until executed by all parties.

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{EXECUTION PAGE TO FOLLOW}

FORT BEND COUNTY, TEXAS

YMCA OF GREATER HOUSTON

By: _____
KP George, County Judge

By:  _____
Stephen Ives, CEO

Date: _____

Date: 9/11/24

ATTEST SEAL:

Laura Richard, County Clerk

APPROVED AS TO FORM:

 _____
Darren McCarthy
Parks Director

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