

ARF-1606

REGULAR SESSION AGENDA

Date: 09/28/2010

Agreement

Submitted By: Laura Johnson, County Attorney

Department: ☒ County Attorney

Type of Item: Discussion Item

Renewal Agreement/ Appointment: No

Appointment:

Reviewed by County Attorney's Office: Yes

Attorney's Office:

Multiple Originals Y/N?: N

Item #: ~~37.0~~ ³⁵
Parks

AGENDA ITEM

Information

SUMMARY OF ITEM

Deliberate and take appropriate action on Agreement between Fort Bend County and the YMCA of Greater Houston to provide programs at the Barbara Jordan Community Center.

SPECIAL HANDLING

10-6-10 orig. ret. to Laura at Co. Attorney

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

KNOW ALL MEN BY THESE PRESENTS:

AGREEMENT FOR PROGRAMS AT BARBARA JORDAN COMMUNITY CENTER

THIS 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, hereinafter called "**County**," and the Fort Bend YMCA, a division of the YMCA of Greater Houston, a non-profit, Texas corporation, hereinafter referred to as "Contractor" to perform Services at the Barbara Jordan Community Center located in Fort Bend County, Texas, hereinafter referred to as "**Community Center**."

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 Contractor agree that Contractor 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 Contractor to provide an outreach program;

WHEREAS, the Commissioners' Court of Fort Bend County finds that by entering into this Agreement with Contractor, 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:

**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 the Services described in this Agreement.
- 2.02** Contractor shall use the Community Center for the purpose of its Services and for no other event and/or activity.
- 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 directly related to the Services 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

As consideration for this Agreement, County will pay to Contractor an amount not to exceed \$35,000 payable in quarterly payments of \$8750.00

ARTICLE IV. TERM

- 4.01 This Agreement is effective upon signature of County and shall terminate on September 30, 2011. 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.
- 4.02 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 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/"at risk" ("Services").
- 5.02 Contractor shall pay all the wages and salaries of all employees retained by Contractor, for the provision of the Services.
- 5.03 Contractor shall be solely responsible for all program supplies necessary to provide the Services.
- 5.04 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.
- 5.05** 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 relating to the provision of Services.
- 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.
- 6.04** Contractor 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 Contractor.
- 6.05** Contractor 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 Contractor would normally occupy the multi-use room and Contractor 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.
- 1. 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.
 - 2. County agrees that it will endeavor to assist Contractor to make reasonable accommodations when it requires Contractor to vacate the Community Center. However, there may be occasions when Contractor will be required to cancel all activities at the Community Center in order to accommodate the County's needs during an emergency.
- 6.06** Contractor 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.

**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 COMMISSIONERS' COURT.
- 7.02** ANY SUCH TRANSFER, ASSIGNMENT, ABANDONMENT OR OTHER DISPOSITION, WITHOUT THE PRIOR WRITTEN CONSENT OF COMMISSIONERS' COURT, 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 COMMISSIONERS' COURT 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 shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Contractor, name of insurance company, policy number, term of coverage and limits of coverage.
- 8.02** Contractor shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement.
- 8.03** Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
- A. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state or hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.
 - B. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:
 - \$2,000,000 general aggregate limit
 - \$1,000,000 each occurrence
 - \$1,000,000 aggregate Products, combined single limit
 - \$1,000,000 aggregate Personal Injury/Advertising Liability
 - \$ 100,000 Fire Legal Liability
 - C. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

- 8.04 County and the County Commissioners shall be named as additional insured to all required coverage. All policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and County Commissioners.

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
301 Jackson, 7th Floor
Richmond, Texas 77469
Attn: County Judge
Phone (281) 341-8608
Fax: (281) 341-8609

To Contractor:

Jess Stuart
Center Director
911 Thompson HWY
Richmond, Texas 77469
Phone 281-341-0791
Fax 281-342-9368

With Copies To:

Fort Bend County Attorney:
301 Jackson Street, Suite 621
Richmond, Texas 77469
Phone: (281) 341-4555
Fax: (281) 341-4557

- 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. INDEMINIFICATION

- 10.01 **CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD COUNTY, ITS AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO HEREIN AS "COUNTY"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS AND RELATED EXPENSES IN ANY MANNER WHATSOEVER, ARISING OUT OF THE SERVICES AND ALL EVENTS AND/OR ACTIVITIES OF CONTRACTOR, ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.**
- 10.02 **CONTRACTOR WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF CONTRACTOR.**

- 10.03 **CONTRACTOR WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH CONTRACTOR MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO CONTRACTOR'S PERSONAL PROPERTY LOCATED AT OR NEAR THE COMMUNITY CENTER.**

**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

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.

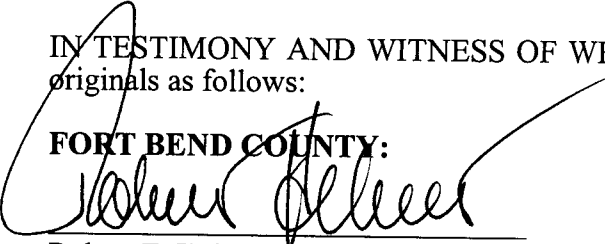
ARTICLE XVI ENTIRE AGREEMENT

- 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:

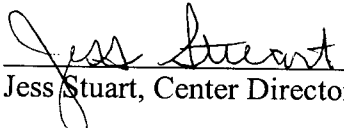

Robert E. Hebert, County Judge

Date: 9-28-2010

ATTEST:


Dianne Wilson, County Clerk

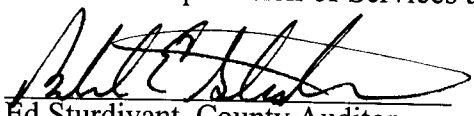
BARBARA JORDAN COMMUNITY CENTER


Jess Stuart, Center Director

Date: 9-14-10

Auditor Certificate

I hereby certify that funds in the amount of \$35,000.00 are available to pay the County's obligation within the foregoing Agreement for the provision of Services at Mustang Community Center.


Ed Sturdivant, County Auditor

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