

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

**AGREEMENT FOR OPERATION AND PROGRAMMING OF
FIFTH STREET THE CENTER EXPANSION**

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 WILLIAM SMITH SR., TRI COUNTY CHILD DEVELOPMENT COUNCIL INC., a non-profit, Texas corporation, hereinafter referred to as "**Tri-County**" for operation and programming of the Fifth Street The Center Expansion located in Fort Bend County, Texas, hereinafter referred to as "**the 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 and educational 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 Center and provide organized and supervised Head Start services such as health, dental, nutrition and other community services to the children and families in the community;

WHEREAS, the County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, Local Government Code:

WHEREAS, County and Tri-County agree that Tri-County will manage, operate and maintain the Center and provide organized and supervised 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 Tri-County to manage, operate and maintain the Center and for Tri-County to provide organized and supervised educational activities;

WHEREAS, the Commissioners' Court of Fort Bend County finds that by entering into this Agreement with Tri-County, it will be promoting public health and education and furthering its interest in public health, by providing preventive education and services;

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.

10/24/12 2 originals returned to Felicia at Comm Pct 2

ARTICLE II. SERVICES

- 2.01** Tri-County shall use the Center for the purpose of operating its programs and for no other event and/or activity that is not sponsored by Tri-County or not otherwise permitted or sanctioned under its articles of incorporation, charter, and/or by-laws.
- 2.02** Notwithstanding anything contained herein to the contrary, under no circumstances *whatsoever* will Tri-County allow any activity and/or event that is not an organized, supervised Head Start activity and/or event to take place in the Center or on its grounds.
- 2.03** Tri-County will only use the Center for organized, supervised Head Start programs and activities, such health, dental and nutritional education.
- 2.04** Tri-County 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 Center by all parties involved.
- 2.05** In the event that events and/or activities other than those normally organized and supervised by Tri-County are conducted at the Center, Tri-County will, at least thirty (30) days prior to each event and/or activity, submit to the Fort Bend County Administrative Services Department 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 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. Tri-County 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 Center shall be supervised by Tri-County's personnel, all of whom shall be properly trained, adequate in number and who shall remain in the Center during the entire course of the event or activity.

ARTICLE III. CONSIDERATION

As consideration for this Agreement, Tri-County will pay to County an amount not to exceed one-dollar (\$1.00). Payment shall be made to the Fort Bend County Treasurer, without demand.

ARTICLE IV. TERM

- 4.01** This Agreement shall be effective on the date executed by County (anniversary date) and shall be effective for one (1) year.
- 4.02** This Agreement shall renew automatically on the anniversary date, unless either party provides written notice no later than sixty (60) days prior to the anniversary date.
- 4.03** This Agreement may be terminated without cause prior to the expiration of the term herein at the option of either County or Tri-County upon the giving of ninety (90) days written notice to the other party in the manner and form provided for herein.
- 4.04** 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.
- 4.05** Upon expiration or termination of this agreement, for whatever cause, Tri-County shall

immediately, quietly and peaceably, surrender to County possession of the Center.

- 4.06** Tri-County shall have the right at any time during or within thirty (30) days after the termination of this agreement dismantle and remove all property and improvements placed by Tri-County at the Center or on the lands of County adjacent and contiguous to the Center, regardless of the manner in which such property and improvements may be affixed thereto; provided, however, that said premises shall be restored to substantially their original condition insofar as it is reasonably practicable to do so, reasonable wear and tear excepted, or, if mutually agreed upon, it may transfer such property to County and leave the same in place as abandoned property.
- 4.07** Tri-County is required to repair any damage to the Center upon termination of this Agreement, reasonable wear and tear excepted.
- 4.08** Tri-County shall be responsible and held liable for any and all Environmental Hazards caused by Tri-County's activities and shall remove any and all such Environmental Hazards to County's satisfaction.

ARTICLE V. RESPONSIBILITIES AND OBLIGATIONS

- 5.01** During the term of this Agreement, Tri-County's obligations and/or responsibilities hereunder, in addition to others specified herein, shall include the employment of:
 - A. One (1) full-time Center Manager, with support staff, who will coordinate all Tri-County Staff on-site and shall be responsible for the overall success of the program.
- 5.02** Tri-County will be responsible for any and all costs and expenses in connection with the operation of the Center, including, but not limited to: personnel salary and expenses, telephone, food, beverages, materials, supplies, etc., incidental to the operation of the Center.
- 5.03** Tri-County will be responsible, at its sole expense, for securing and contracting for telephone and or telecommunications services, including but not limited to local and/or long distance telephone services, as well as internet services.
- 5.04** County shall be responsible for all utilities, save and except telephone and telecommunications services.
- 5.05** County is solely responsible for any and all charges of any kind incurred as a result of the installation, commencement or use of any utility service, (save and except telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service), including all deposits, installation or connection fees, charges for monthly service, charges for pre-approved upgrades services or other miscellaneous fees.
- 5.06** Notwithstanding anything contained herein to the contrary, the provisions of this Article apply equally to any alarm system or service installed by Tri-County on the premise, including the provisions obligating Tri-County to pay all charges of any kind as to the installation or use of any utility.
- 5.07** For purposes of this Agreement, an alarm system, including related sensors, or control panels, shall be considered and treated as a separate metering system and will be governed by the same and the responsibility of County.
- 5.08** In addition to utilities as set forth above, Tri-County shall pay all items of cost incident to the operation of the Center, including, but not limited to, janitorial services, security of the Center, installation and maintenance of all Tri-County's necessary equipment, together with all the wages and salaries of all employees retained by Tri-County, for the portion of the Center occupied by Tri-County.
- 5.09** Tri-County shall also be solely responsible for all program supplies necessary to fulfill the

- requirements of Article II and V above.
- 5.10 Tri-County will not allow any illegal or unlawful activity to take place at the Center and will immediately report any and all illegal activity to law enforcement.
 - 5.11 Breach of any provision of this Article shall be grounds for immediate termination of this Agreement.
 - 5.12 The County shall perform all maintenance and repair required to keep the heating, air-conditioning, plumbing and electrical equipment in good operating condition during the term of this agreement and any renewal term.
 - 5.13 In the event the installation of any non-building standard improvement or trade fixture is contemplated, Tri-County shall consult with Commissioner's Court and receive written consent prior to commencing any work and shall comply with any special instructions which Commissioner's Court, or its designee, may have concerning the installation.
 - 5.14 Consent shall include the right of Tri-County to make alterations for the above described purposes in those areas of the Center outside the Leased Premises so long as they are done without unnecessary disruption to the operation of the Center and with reasonable dispatch.
 - 5.15 Tri-County shall alone bear the cost of any alteration or upgrade of existing systems and shall promptly restore the affected areas to an architecturally whole condition, or in the alternative, County may restore the same and Tri-County shall reimburse the County for the reasonable expense thereof.
 - 5.16 Tri-County will secure the services of reputable contractors in the conduct of any work performed and will be liable for any damages occurring to the Center caused by the acts of its contractors or agents.
 - 5.17 Notwithstanding anything contained herein to the contrary, any and all repairs, modifications and/or replacements, of any kind, to the Center **must** follow and comply with all County guidelines and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
 - 5.18 County shall be responsible for all modifications or alterations necessary to comply with the Americans with Disabilities Act and/or the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations and other requirements, now or hereafter in force, of all federal, state and local governmental bodies and agencies which are applicable to the Center.
 - 5.19 Tri-County will not permit any mechanic's lien, or liens, or any other type of lien to be placed upon the Center or upon improvements on the Center.
 - 5.20 If a mechanic's lien or any other type of lien is filed on the Center or on improvements to the Center, Tri-County will promptly take any and all actions necessary to remove said lien.
 - 5.21 A lien will be filed under Chapter 9 of the Business of Commerce Code to pledge equipment listed as security for payment of this Agreement.

**ARTICLE VI
ACCESS TO THE CENTER BY COUNTY**

- 6.01 County may enter the Center at any and all times:
 - A. To inspect same;
 - B. To determine whether Tri-County 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 Tri-County's operation including, but not limited to, the condition of the property and equipment and/or the operation of Tri-County's programs and/or the Center as they relate to and affect the organized and supervised educational activities permitted under this agreement.

- 6.03** County shall have the right to impose regulations, policies and/or restrictions upon the Center from time to time as County, in its sole discretion, deems appropriate, as they relate to and affect the organized and supervised educational activities permitted under this agreement.

**ARTICLE VII.
ASSIGNMENT**

- 7.01** TRI-COUNTY 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 TRI-COUNTY'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 TRI-COUNTY, 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 TRI-COUNTY, 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** Tri-County shall secure, and at all times during the term of this Agreement (including any extension thereof), carry and maintain, at its own expense, a general liability policy.
- A. The limits of the above-mentioned general liability coverage shall be not less than One Hundred Thousand Dollars (\$100,000.00) for bodily injury per person; Three Hundred Thousand Dollars (\$300,000.00) bodily injury per occurrence; One Hundred Thousand Dollars (\$100,000.00) property damage per occurrence; or
- B. Five Hundred Thousand Dollars (\$500,000.00) bodily injury and property damage combined, single limit.
- C. The minimum available annual aggregate for the purposes of this Agreement shall be One Million Dollars (\$1,000,000.00).
- 8.02** Tri-County shall secure and at all times during the term of this Agreement (including any extension thereof) carry and maintain, at its own expense, Workers' Compensation and Employers' Liability coverage as prescribed by applicable law, including coverage for liability under the Longshoremen's and Harbor Workers' Act and the Jones Act, if applicable.
- A. Without limiting the foregoing, Tri-County further covenants and agrees to have all of its employees covered by Worker's Compensation coverage and Unemployment Compensation coverage at Tri-County's sole cost and expense and to pay or cause to be paid, without cost to or expense to County, all Social Security and Federal Income Withholding taxes and related fringe benefit expenses of all such employees.
- 8.03** County shall be named as an additional insured, as its interest may appear, and the policies shall contain cross liability endorsements.
- 8.04** Tri-County may carry said insurance under a blanket policy.

- 8.05 Insurance required hereunder shall be maintained by insurance rated A or better by "Best's Insurance Guide".
- 8.06 No insurance policies required hereunder shall be cancelable or subject to reduction of coverage except after sixty (60) days prior written notice to County.
- 8.07 Tri-County shall furnish County with certificates of all insurance required under this Agreement.
 - A. If Tri-County does not provide such certificates within thirty (30) days of obtaining possession of the Center, or if Tri-County allows any insurance required hereunder to lapse, County may, at its option, take out and pay the premiums on the necessary insurance to comply with Tri-County's obligations.
 - B. County is entitled to immediate reimbursement from Tri-County for all amounts spent by it to procure and maintain such insurance.

**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 Tri-County:
 WSS Tri-County CDC Inc.
 P.O. Box 1929
 Stafford, Texas 77497
 Attn: Helen R. Wright
 Phone: (281) 242-7100
 Fax: (281) 242-8202

With Copies To:
 Fort Bend County Attorney:
 301 Jackson Street, Suite 728
 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 Tri-County in any manner.
- 9.04 Any change to Tri-County's addresses will be in writing, signed by the Tri-County, and will be delivered to the Commissioners' Court of the County.

**ARTICLE X.
INDEMINIFICATION**

- 10.01 **TRI-COUNTY 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 USE OF THE THE CENTER AND ALL EVENTS AND/OR ACTIVITIES OF TRI-**

COUNTY, ITS OFFICERS, EMPLOYEES, TRI-COUNTYS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.

- 10.02 TRI-COUNTY WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF TRI-COUNTY.**
- 10.03 TRI-COUNTY WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH TRI-COUNTY MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO TRI-COUNTY'S PERSONAL PROPERTY LOCATED AT OR NEAR THE THE CENTER.**

**ARTICLE XI.
PUBLIC ACCESS**

- 11.01** Tri-County expressly states that it understands that the Center is a public facility, open to the public, and that at times this fact may impose a hardship on Tri-County.
- 11.02** Tri-County expressly states that it understands that there will be times when County or its designee shall need to use the Center during the time period that Tri-County would normally occupy the Center and Tri-County expressly agrees to accommodate such disruptions.
- A. County agrees that it will endeavor to inform Tri-County as far in advance as possible of an event that would cause it to displace Tri-County from the Center.
- B. County agrees that it will endeavor to assist Tri-County to make reasonable accommodations when it requires Tri-County to vacate the Center.
- C. County will provide Tri-County ninety (90) days notice in the event the provisions of Article XI is invoked.
- 11.03** Tri-County expressly states that it understands that, notwithstanding that the primary purpose of the Center is to provide organized and supervised public activities, no member of the public may be precluded from using the Center, subject to Tri-County'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.
TRI-COUNTY IS AN INDEPENDENT CONTRACTOR**

- 13.01** In the performance of work or services under this Agreement, Tri-County 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 Tri-County, or where permitted, its subcontractors.

- 13.02** Tri-County 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 Tri-County or any successor in interest, in the event of any default or breach by County or for any amount which may become due to Tri-County, 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.
TRI-COUNTY'S REPRESENTATIONS AND ACKNOWLEDGEMENTS**

- 15.01** Tri-County warrants and represents unto County that:
- A. Tri-County is a duly organized and existing legal entity, in good standing in the state of Texas;
 - B. Tri-County has full right and authority to execute, deliver and perform this Agreement;
 - C. The person executing this Agreement on behalf of Tri-County was authorized to do so;
 - D. That prior to County's execution of this Agreement, Tri-County will deliver to County satisfactory evidence of the person executing this Agreements authority to execute this Agreement on behalf of Tri-County;
 - E. Has received and is receiving from County hereunder absolutely no warranty or representation as to the condition of, or suitability of the Center.
 - F. Tri-County has made an independent inspection of the Center and accepts such premises in the same condition as it exists on the date of this agreement.
 - G. Tri-County has made its own independent determination as to the suitability of the activities of the Center.
 - H. Tri-County will operate and maintain the Head Start Center in accordance with all local, state and federal grant program requirements.

**ARTICLE XVI
ENTIRE AGREEMENT**

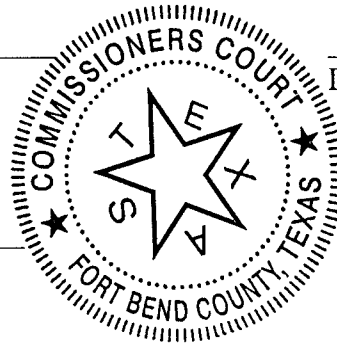
- 16.01** This Agreement constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the County, acting through its Commissioners Court, and Tri-County.
- 16.02** Tri-County hereby 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 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
Robert E. Hebert, County Judge



10-23-2012
Date

ATTEST:

Dianne Wilson
Dianne Wilson, Fort Bend County Clerk

WILLIAM SMITH Sr., TRI-COUNTY CHILD DEVELOPMENT COUNCIL INC.

Helen R. Wright
Helen R. Wright, Executive Director

10/23/12
Date

ATTEST:

Lera A. Edison

MER:Head Start Agr.3548-2012