

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**IRREVOCABLE LICENSE AGREEMENT
REGARDING BATES M. ALLEN PARK**

THIS IRREVOCABLE LICENSE AGREEMENT REGARDING BATES M. ALLEN PARK (“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 referred to as “County,” and YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE GREATER HOUSTON AREA, a Texas non-profit corporation, hereinafter referred to as “YMCA,” effective as of the date executed by County as set forth below.

RECITALS

WHEREAS, County has executed that certain Donation Agreement of even date herewith between County and YMCA regarding Bates M. Allen Park (the “Donation Agreement”);

WHEREAS, County will accept one or more donations from YMCA for the construction of improvements at Bates M. Allen Park as contemplated in the Donation Agreement and as permitted by Texas Local Government Code §81.032;

WHEREAS, Texas Local Government Code §320.001, §320.004 and §320.044 authorizes County to enter into a contract regarding the financing, construction, equipment, maintenance, or operation of a facility located or to be located in or pertaining to a park under its control;

WHEREAS, YMCA is a 501(c) non-profit organization that offers programs, services and initiatives focused on the unique needs of the communities it engages;

WHEREAS, YMCA will tender its donations to County subject to the requirement that County construct specified improvements and agree to provide YMCA a license to use the improvements, all pursuant to the Donation Agreement; and

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

NOW THEREFORE, for and in good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

I. TERM AND TERMINATION

1.01 Subject to the provisions of this Agreement, County hereby grants to YMCA an irrevocable license to use (and to permit its patrons, invitees, permittees and licensees to use) the following described portion of Bates M. Allen Park, located in Fort Bend County, Texas, together with certain improvements to be constructed thereon, to-wit:

The recreational and nature based activity area located on a tract of land being a part of Fort Bend County Bates M. Allen Park, said area being identified with hatch lines as "Camp Cloud" on the map or diagram marked Exhibit "A," attached hereto and incorporated herein by reference as if copied herein verbatim, as well as the area connecting to and occupied by the canoe launch/dock to be constructed as part of the Project (as defined in the Donation Agreement), hereinafter called "Property."

- 1.02 The term of this license is 30 years, beginning on the date the first phase of improvements constructed on the Property pursuant to the terms hereof are completed and ready for use as evidenced by a certificate of completion executed by both parties hereto and ending, unless terminated sooner pursuant to the terms hereof, on the 30th anniversary of such date. Thereafter, this License Agreement may be renewed annually by a written amendment signed by both Parties.
- 1.03 County may terminate this Agreement with prior notification in the event that YMCA breaches this Agreement or failed to comply with law in any material respect provided that County has first notified YMCA with particularity of the perceived breach or unlawful conduct and YMCA fails to cure such breach or illegality within ninety (90) days (or if such matter cannot reasonably be cured within such time, then within such additional period of time as shall be reasonably necessary provided that cure is commenced within such 90-day period and diligently prosecuted to completion).

II. USE OF PARK AREA

- 2.01 YMCA acknowledges that prior to entering into this Agreement it has investigated and inspected the Property and all existing conditions and improvements located thereon to the full extent that YMCA has deemed necessary and appropriate. YMCA acknowledges that County has made, and is making, no representations or warranties, express or implied, as to the condition of the Licensed Premises or the improvements currently located thereon, or as to the suitability of the Licensed Premises or the improvements currently located thereon for YMCA's intended use.
- 2.02 YMCA ACCEPTS THE PROPERTY "AS-IS" AND "WHERE-IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, AND SUBJECT TO ALL MATTERS, LIMITATIONS, CONDITIONS, AND RESTRICTIONS WHETHER OR NOT OF PUBLIC RECORD.
- 2.03 During the license term, the Parties acknowledge and agree that YMCA shall:
 - A. Schedule all authorized use of the improvements to be constructed upon the Property (sometimes referred to as "Camp Cloud") pursuant to this Agreement and the Donation Agreement, whether use is for YMCA purposes or by others. Schedule of events and duration shall be reported to the County Parks Director in a manner and form reasonably required by the County from time to time (and at least once every six months) upon advance notice in writing to YMCA. YMCA shall have scheduling priority over third parties for use of the Property. YMCA shall conduct, or will have the right to approve as to content and delivery, all authorized programming at the Property. YMCA may condition consent to scheduling and use on receipt of evidence of insurance coverages customarily required of third parties using YMCA facilities or programming.
 - B. Have the right to name the Property, a portion of the Property area containing specific donated improvements, and/or any or all individual improvements thereon, subject to

prior written approval by the Fort Bend County Commissioners Court, such approval not to be unreasonably withheld or delayed; however the park shall remain named "Bates M. Allen Park."

C. INDEMNIFY COUNTY IN ACCORDANCE WITH SECTION FIVE OF THIS AGREEMENT.

- 2.04 County may, with notice to YMCA, prohibit entry into and use of the Property whenever it is reasonably necessary, as determined by County and YMCA. The parties will work together to accommodate unforeseen schedule changes due to inclement weather or other conditions beyond the Parties' control. Neither County nor YMCA shall be liable to each other or to any third party for the facilities' unavailability at any time.
- 2.05 When YMCA is conducting scheduled YMCA activities on the Property, YMCA's license to use of the Property shall be exclusive. When the YMCA is not scheduled to use the Property, the Property may be used by other parties subject to the provisions of Section 2.03 above. YMCA shall have the right to conduct activities in other areas of Bates M. Allen Park from time to time upon approval or pre-approval of the County Parks Director. However, YMCA will make no use of any common or shared area outside of the Property in any manner or form that shall unreasonably interfere with the use being made of such area by any other party authorized to use the same, whether such use be authorized by law, rule, regulation or agreement.
- 2.06 Any YMCA event or activity permitted under the terms of this Agreement to be conducted on the Property or any other portion of Bates M. Allen Park shall be supervised by YMCA's personnel or designated representatives, who shall maintain similar operating standards as the YMCA and who shall remain in the area during the course of the event or activity.
- 2.07 Access to and the use of any parking areas adjacent to the Park by YMCA shall be shared with all other parties entitled to use the same. YMCA has no entitlement to reserved parking; access to and use of the parking areas shall be on a first come, first served basis.
- 2.08 YMCA will, to the extent practicable, advise its patrons, invitees, permittees, and licensees in use of the Property of their responsibilities regarding the use of the Property.
- 2.09 County shall maintain the completed Camp Cloud improvements upon the Property in good condition and shall keep such improvements and the Property in safe and clean condition at all times (provided that YMCA rather than County shall be responsible for cleaning the interior of the buildings located on the Property). All users of the Property, including by not limited to YMCA, shall leave the Property in the same or better condition as upon their arrival, including but not limited to the removal of all trash. Maintenance within the buildings located on the Property will be undertaken by County outside of scheduled program hours and in accordance with County's normal maintenance scheme for other similar County-owned facilities. County shall mow and maintain the land within the Property on a regular basis as determined solely by County.
- 2.10 In no event shall either party be responsible for security service in connection with operation or usage of the Property.
- 2.11 No use shall be made of the Camp Cloud buildings other than by YMCA or a pre-approved, pre-scheduled group as contemplated above, and YMCA shall be entitled to lock and secure such buildings to prevent such use. However, County shall have access to the Property, including Camp Cloud buildings, at any and all times. YMCA is prohibited from changing or altering any locks or security devices at the Property,

including the Camp Cloud buildings without providing a copy of the new key, combination, or access code, as the case may be, to the County. Further, while use of the Property itself (as compared to the Camp Cloud buildings thereon) may not be prohibited during periods when there is no scheduled even or activity of YMCA or pre-approved group taking place, YMCA shall not be responsible to monitor or control use of the Property by anyone other than those participating in a YMCA program or activity or those participating in a program or activity pre-scheduled by a pre-approved group as described above.

- 2.12 Part of the improvements to be constructed as part of the Project will consist of mutually agreed upon signage to be placed at locations mutually agreed upon by the parties at the perimeter of the Property to indicate the Property's perimeter and other information appropriate for communication to the public consistent with the rights and obligations created under this Agreement and the Donation Agreement.

III. NONDISCRIMINATION POLICY

- 3.01 YMCA shall comply with, and cause all who take advantage of its programs and offerings at the Property to comply with, Title VI of the Civil Rights Act of 1964, in that "no person shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination."
- 3.02 In addition, no person who desires to participate in YMCA's programs or offerings at the Property shall be excluded from participation or denied the benefits of YMCA's services on the basis of creed.

IV. ASSIGNMENT

- 4.01 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.
- 4.02 Any such transfer, assignment, abandonment or other disposition, without the prior written consent of County, or any assignment of YMCA's rights hereunder by operation of law, is void and of no force and effect as against County.
- 4.03 Notwithstanding Sections 4.01 and 4.02 above or any other provision of this Agreement, YMCA shall have the right to terminate the license granted by this Agreement at any time upon at least one hundred eighty (180) days' notice to County, in which event this Agreement shall terminate at the time of expiration of such license and neither party shall have any further obligations or liabilities to each other under this Agreement beyond those that have already accrued (except that the indemnity contained in Article V shall continue with respect to events occurring prior to the expiration of the license).

V. INDEMNIFICATION AND INSURANCE

- 5.01 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, FOR PERSONAL INJURY DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS ARISING OUT**

OF THE PERFORMANCE OF YMCA'S RESPONSIBILITIES UNDER THIS AGREEMENT, WHERE SUCH PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS IS CAUSED BY YMCA'S SOLE NEGLIGENCE OR ITS SOLE INTENTIONAL MISCONDUCT OR TO THE EXTENT SUCH PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, DESTRUCTION, OR LOSS IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF YMCA, IN WHICH CASE YMCA SHALL ONLY BE OBLIGATED TO INDEMNIFY, SAVE, AND HOLD HARMLESS AND DEFEND FOR THE PERCENTAGE OF COMPARATIVE FAULT ASSIGNED TO YMCA. Notwithstanding the foregoing or anything else in this Agreement, however, it is recognized that YMCA is an entity that is entitled to limited liability pursuant to The Charitable Immunity and Liability Act of 1987, as amended (as codified in Chapter 84 of the Texas Civil Practice and Remedies Code)(as such statute may be modified, re-enacted, re-codified, or replaced in the future, the "Charitable Immunity Act"). Notwithstanding anything in this Section 5.01 or elsewhere in this Agreement to the contrary, in no event shall YMCA be required to assume or indemnify County for, or defend County against, liability to any extent to which YMCA would be protected from such liability pursuant to the provisions of the Charitable Immunity Act if such claim were brought directly against YMCA.

- 5.02** Prior to any YMCA programming being scheduled and prior to each September 1st thereafter, YMCA shall furnish County with insurance certificate(s) for each policy that is in effect as of the effective date of this Agreement for verification by the County Risk Management Department as to compliance with the insurance requirements of this Agreement. YMCA shall provide County subsequent insurance certificates throughout the term of the Agreement upon request. YMCA 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. Policy shall name the County, its elected and appointed officials, agents and employees as additional insureds.
- 5.03** Each party waives all claims against the other for damage or destruction to physical property, REGARDLESS OF WHETHER SUCH DAMAGE OR DESTRUCTION WAS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE PARTY AGAINST WHOM RIGHTS ARE HEREBY RELEASED, and each shall cause its property insurance policies, if any, with respect to property located at Bates Allen Park to waive subrogation with respect to any such waived claims.

VI. WARRANTIES AND REPRESENTATIONS

- 6.01** YMCA hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- 6.02** YMCA warrants and represents unto County that:
- A. YMCA is a duly organized and existing legal entity, in good standing in the state of Texas;

- B. YMCA has full right and authority to execute, deliver and perform this Agreement;
- C. The person executing this Agreement on behalf of YMCA was authorized to do so; and
- D. Upon request of County, such person will deliver to County satisfactory evidence of his or her authority to execute this Agreement on behalf of YMCA.

- 6.03 This Agreement and the Donation Agreement constitute 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 YMCA.
- 6.04 This Agreement shall supersede any and all prior agreements between the parties hereto (other than the Donation Agreement) relating to the use by YMCA or Bates M. Allen Park 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.
- 6.05 Except as otherwise provided for herein, all consents, rules, and regulations as provided for herein by County shall only be those approved or adopted by the Commissioners Court of Fort Bend County, Texas. [DOES THIS MEAN THAT EVERY APPROVAL AND CONSENT ON BEHALF OF THE COUNTY HAS TO BE RUN THROUGH COMMISSIONERS COURT? CAN WE PROVIDE FOR A DESIGNATED PERSON WITH AUTHORITY TO GRANT APPROVALS ON BEHALF OF THE COUNTY?]

VII. MISCELLANEOUS PROVISIONS

- 7.01 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To County:

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

With a copy to:

Fort Bend County
 Parks Department
 9555A Highway 6
 Missouri City, TX 77459
 Attn: Parks Director
 Phone: (281) 835-9419
 Fax: (281) 416-0682

To YMCA:

YMCA of Greater Houston
 2600 North Loop West, Suite 300
 Houston, Texas 77092
 Attn: Charlie Myer
 Phone: (281) 627-5992

With a copy to:

Clark Baker
 2600 North Loop West, Suite 3000
 Houston, Texas 77092

And with a copy to:

Baker Botts L.L.P.
 910 Louisiana Street
 Houston, Texas 77002
 Attn: Robert P. Wright

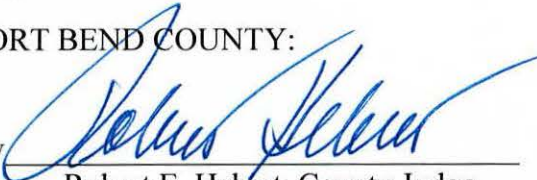
Phone: (713) 229-1237
Facsimile: (713) 229-7737

- 7.02 This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a duly authorized writing signed by YMCA and County.
- 7.03 The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 7.04 This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. This Agreement is performable within Fort Bend County. Venue for any dispute arising out the Agreement shall be Fort Bend County, Texas.
- 7.05 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- 7.06 In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included.

XV. EXECUTION

IN TESTIMONY AND WITNESS OF WHICH this Agreement has been executed in duplicate originals as follows:

FORT BEND COUNTY:

By 
Robert E. Hebert, County Judge


Date: December 18, 2012

ATTEST:


Dianne Wilson, County Clerk



YOUNG MEN'S CHRISTIAN ASSOCIATION
OF THE GREATER HOUSTON AREA

By 
Clark Baker, President/CEO

Date: 12/5/2012, 2012

Attachments

Exhibit A Map/drawing of the Property

EXHIBIT A

F



EXHIBIT A

