

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**IRREVOCABLE LICENSE AGREEMENT
REGARDING THE JONES CREEK RANCH PARK**

THIS IRREVOCABLE LICENSE AGREEMENT REGARDING THE JONES CREEK RANCH 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 acquired that certain 112.761 acre tract of land known as the Jones Creek Ranch Park (the "Property") for use as a public facility; and

WHEREAS, the YMCA desires to assist the County in providing programs and activities for the citizens of Fort Bend County, to promote, develop and preserve outdoor educational programs for youth and families on the Property; and

WHEREAS, the YMCA has requested of County permission to use the Property for its programs; and

WHEREAS, County is willing to allow the YMCA to use the Property for the purposes set forth herein; and

WHEREAS, YMCA is a 501(c)(3) non-profit organization that offers programs, services and initiatives focused on the unique needs of the communities it engages;

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) that portion of Jones Creek Ranch Park, located in Fort Bend County, Texas, as shown on Exhibit A attached hereto and made a part hereof for all purposes, together with all improvements, including without limitation, all permanently installed and built-in items, all rights and interests appurtenant thereto (the "Land"), and all other tangible

equipment and personal property used in connection with the Land, herein the "Personalty", and with the Land, collectively, the "Property".

- 1.02 The term of this license is 30 years, beginning on June 1st, 2015, and terminating at midnight on May 31, 2045, unless terminated sooner pursuant to the terms hereof. 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 fails to comply with law in any material respect provided that County has first notified YMCA in writing 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 PROPERTY

- 2.01 The purpose of this Agreement is to provide for the use of the Property, including any and all recreational facilities located on the Property, for all purposes in keeping with the mission of the YMCA, including but not limited to the following:

2.011 Comprehensive Day Camps Programs – Exclusive use of Property designated in Exhibit A for twelve (12) weeks between June and August each year beginning June 2015. Such exclusive use shall be reserved for YMCA weekdays, Monday through Friday from 6:30 a.m. to 6:30 p.m.; however, County may schedule other groups for use of the pools and fields with prior notice to YMCA except beginning in June 2016 for YMCA swim lessons during its summer camp period when exclusive use of the pool shall be reserved for YMCA weekdays from 6:30 p.m. to 8:30 p.m. The YMCA will schedule use of Lake (when it becomes operational) and other areas of the park with assigned County staff as needed before each summer period or on an as needed basis prior to each weekly session of summer camp.

2.012 Weekend Overnight Camping Programs – Exclusive use of entire Property on two (2) weekend dates in each of the following periods: September through December and January through May, respectively, each to be determined and agreed upon by YMCA and County six (6) months in advance. Such exclusive use for designated weekends shall begin on Fridays at 4:00 p.m. through Sundays at 6:00 p.m.

2.013 Weekday Evening Sports Programs – Exclusive use of certain sports fields located on the Property on selected weekday evenings in each of the periods September through December and January through May, respectively (fields and times to be agreed upon by both YMCA and County six (6) months in advance (specific practice fields and specific days must be determined and agreed upon by both Parties.))

2.014 General Use of Property – If YMCA wishes to reserve a facility on the Property (which is not already reserved under this Agreement) and the desired facility located on the Property is not under an agreement for use reserved by another party, YMCA will be allowed to reserve and utilize the facility at no additional cost so long as the reservation by YMCA is made no sooner than ten (10) business days before the desired event date. Should YMCA wish to reserve the facility at a time earlier than ten (10) business days of the YMCA's desired event date YMCA may reserve that facility subject only to availability and the standard rate of fees charged by County for that facility may apply.

- 2.015 County will permit YMCA to install signage consistent with YMCA's signage at other County park facilities that will promote YMCA's presences. Such signage must be approved by County in advance.
- 2.016 County shall ensure that a 911 emergency telephone line is located at its pool.
- 2.02 During the license term, the Parties acknowledge and agree that YMCA shall adhere to the schedule for all authorized use of the Property as determined by this Agreement and schedule any additional use of the Property through Fort Bend County Parks and Recreation Department.
- 2.03 During periods of YMCA's exclusive use of the Property or any part thereof, YMCA shall have the right to conduct activities described in Sections 2.011 through 2.013 above and County shall refrain from scheduling use by members of the general public that will interfere with this right except for use of the pool and fields as described in Section Two (2). When the YMCA is not scheduled to enjoy exclusive use, County shall have the right to schedule use by other parties, as with any other county-owned park and recreational facility.
- 2.04 Any YMCA event or activity permitted under the terms of this Agreement to be conducted on the Property 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. Any proposed on-site swimming for during the YMCA's exclusive use for Summer Camps shall be staffed by YMCA lifeguards. All fees associated with employing YMCA personnel shall be the responsibility of YMCA.
- 2.05 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 Property or the improvements currently located thereon, or as to the suitability of the Property or the improvements currently located thereon for YMCA's intended use.
- 2.06 SUBJECT TO SECTION 2.07, 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.
- 2.07 YMCA may make suggestions, which County may consider, for improvements to facilities located on the Property. However, all decisions regarding the improvements to the Property shall remain with the Commissioners Court of Fort Bend County, Texas.
- 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 have access to the Property at any and all times. YMCA is prohibited from changing or altering any locks or security devices at the Property, without providing advance notice to the County.
- 2.10 YMCA shall not grant permits, licenses or sublease to others for use, alterations, improvement, addition of facilities or any other purpose which could confer upon them privileges not available to the general public, or which would infer or imply exclusive private use of public funds.

III. MAINTENANCE AND OPERATION

- 3.01 County shall maintain the Property in good condition and shall keep such Property in safe and clean condition at all times. All users of the Property, including but 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 trash. Maintenance within the buildings located on the Property will be undertaken by County outside of scheduled program hours and in accordance with the 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.
- 3.02 In its operations, YMCA shall observe and comply with all Federal, State and City Laws, Ordinances, and Regulations.
- 3.03 County shall be responsible for the cost of all electricity, gas, water, sewer, telephone, and other utility services provided to the Property.
- 3.04 County may, with notice to YMCA during periods of its exclusive use, 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 due to equipment failure, health or safety issues, or events or circumstances (other than lack of funding) beyond their control.

IV. NONDISCRIMINATION POLICY

- 4.01 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."
- 4.02 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.

V. ASSIGNMENT

- 5.01 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.
- 5.02 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.
- 5.03 Notwithstanding Sections 5.01 and 5.02 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).

VI. INDEMNIFICATION

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.

VII. INSURANCE

- 7.01 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.
- 7.02 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 the Property to waive subrogation with respect to any such waived claims.

VIII. WARRANTIES AND REPRESENTATIONS

- 8.01 YMCA hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- 8.02 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.
- 8.03 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 YMCA.
- 8.04 This Agreement shall supersede any and all prior agreements between the parties hereto relating to the use of the Property 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.
- 8.05 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 or by the Fort Bend County Parks Director, who County represents has been appointed by the Commissioner's Court as its authorized representative for purposes of making decisions on its behalf with respect to the subject matter of this Agreement unless as otherwise required by all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement.

IX. MISCELLANEOUS PROVISIONS

- 9.01 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
401 Jackson
Richmond, Texas 77469
Attn: County Judge
Phone (281) 341-8608
Fax: (281) 341-8609

To YMCA:

YMCA of Greater Houston
2600 North Loop West, Suite 300
Houston, Texas 77092
Attn: Brian Haines
Phone: (281) 630-5949

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

With a copy to:

Paul McEntire, President & Chief Executive Officer
2600 North Loop West, Suite 300
Houston, Texas 77092
Phone: (713) 758-9104

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

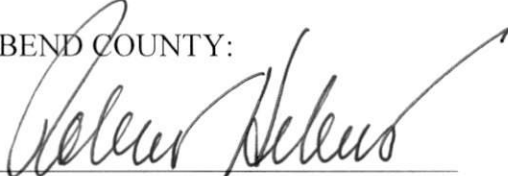
- 9.02 This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a duly authorized writing signed by YMCA and County.
- 9.03 The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 9.04 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.
- 9.05 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.
- 9.06 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.

X. 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: 6-2, 2015

ATTEST:



Laura Richard, County Clerk



YOUNG MEN'S CHRISTIAN ASSOCIATION
OF THE GREATER HOUSTON AREA

By



Paul McEntire,
YMCA, President/CEO

Date: May 27, 2015

Attachments

Exhibit A Designated Area for YMCA Use

EXHIBIT A

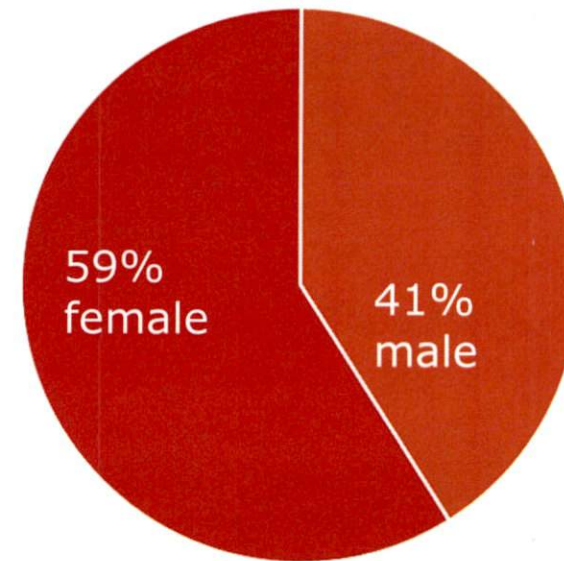
Summer Camp
area
in
red



DEMOGRAPHICS

Facility Members

- Age 25-54: 67%
 - Average age 48
- Female: 59%
- Married: 73%
- College Degree or Grad Degree: 48%
- Own Home: 84%
- Age 25-54: 67%
- Ethnicity:
 - 4% Asian
 - 9% Black or African-American
 - 17% Hispanic or Latino
 - 67% White
 - 3% Other
- Earn \$100K+: 47%
 - Average HHI \$94,900



Gender

Source: YMCA of Greater Houston Membership Profile, August 2014