

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**MAINTENANCE, USE, AND OPERATION
 AGREEMENT BETWEEN FORT BEND COUNTY AND
 THE BLACK COWBOY MUSEUM**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and The Black Cowboy Museum, a non-profit organization in the State of Texas.

WITNESSETH

WHEREAS County is the current owner of a .84 acre parcel of land in Kendleton, TX contiguous to Bates Allen Park, a County owned park (hereinafter the "location");

WHEREAS, the parties intend that the location be used as the site for The Black Cowboy Museum during the term of this Agreement but owned by the County at all times;

WHEREAS, the support of museums is a public purpose that helps to educate the public about such subjects as history, economics, and anthropology; and,

WHEREAS, The Black Cowboy Museum has established and maintains a museum currently but seeks to relocate the museum; and,

WHEREAS, the Commissioners Court is authorized to establish, maintain, or contribute to a museum by §§ 319.001 and 319.002 of the Texas Local Government Code and the determinations of Texas Attorney General Opinion Nos. JC-0582(2002) and MW-423(1982); and

WHEREAS, the requirements for sale or lease real property by counties found in Chapter 262 of the Texas Local Govt. Code do not apply to a contract entered into under section 319.004 of the Texas Local Govt.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto mutually agree as follows:

AGREEMENT

Section 1. Roles and Duties of the Parties

- A. County intends to construct a building on the location and upon completion of the building and notice from County, The Black Cowboy Museum will take access of the building to curate and operate The Black Cowboy Museum, pursuant to this Agreement. County will then allow The Black Cowboy Museum its agents, employees, guests and invitees to enter, use, occupy, manage, operate and maintain the location in accordance with this Agreement.

- B. The Black Cowboy Museum will obtain, preserve and maintain collections of artifacts and archives concerning the history of the Black Cowboy and allow the public reasonable access to said collections through exhibits, displays, and educational programs. Collections purchased by The Black Cowboy Museum pursuant to this Agreement are the property of The Black Cowboy Museum.
- C. The Black Cowboy Museum may use the funding provided under this Agreement for one or more of the following activities: erecting historical markers and monuments; purchasing objects and collections of objects that are historically significant; preparing, publishing, and disseminating, by sale or otherwise, a history of The Black Cowboy, hiring professional staff, and funding other programs or activities as may be suggested by Commissioners Court and agreed to by The Black Cowboy Museum. The Black Cowboy Museum may also use Funds for the operational expenses that are needed to perform these services.
- D. The Black Cowboy Museum has primary responsibility for upkeep, management and operations of Museum and all expenses in connection with operations of The Black Cowboy Museum. The Black Cowboy Museum shall operate and maintain the location and the building in a clean, safe, and sanitary condition.

Section 2. Compensation and Payment

- A. The County will make one annual payment of seventy five thousand dollars and 0/100 (\$75,000.00) to The Black Cowboy Museum for costs and services rendered for each term of this Agreement. The first payment shall issue upon execution of this Agreement and is intended to compensate The Black Cowboy Museum for pre-opening operations and acquisition of Museum collections. Thereafter, County shall remit the annual payment each October 1 for each year this Agreement is in effect.
- B. The Parties acknowledge and agree that Services have been and will be supported by good and valuable consideration during the Term of this Agreement, the sufficiency of which is acknowledged by the Parties.
- C. In addition to payment by County, The Black Cowboy Museum may also collect and retain funds from revenue generating activities, like retail sales, concessions, special events, and educational opportunities.
- D. The Black Cowboy Museum understands and agrees that the annual payment is an all inclusive amount and no additional fee, cost or reimbursed expense shall be added to the amount paid by County.

Section 3. Independent Contractor

- A. In the performance of work or services hereunder, The Black Cowboy Museum shall be deemed an independent subcontractor and any of its agents, employees, officers, or

volunteers performing work required hereunder shall be deemed solely as employees of The Black Cowboy Museum or, where permitted, of its subcontractors.

- B. The Black Cowboy Museum 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.

Section 4. Limit of Appropriation

- A. The Black Cowboy Museum clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of seventy five thousand dollars and 0/100 (\$75,000.00) annually, specifically allocated to fully discharge any and all liabilities County may incur.
- B. The Black Cowboy Museum does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that The Black Cowboy Museum may become entitled to and the total maximum sum that County may become liable to pay to The Black Cowboy Museum shall not under any conditions, circumstances, or interpretations thereof exceed seventy five thousand dollars and 0/100 (\$75,000.00) annually.

Section 5. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 6. Insurance

- A. Prior to commencement of the Services, The Black Cowboy Museum shall furnish County with properly executed certificates of insurance, which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. The Black Cowboy Museum shall provide certified copies of insurance endorsements and/or policies if requested by County. The Black Cowboy Museum shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. The Black

Cowboy Museum 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:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. 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.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of The Black Cowboy Museum shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, The Black Cowboy Museum warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. The Black Cowboy Museum shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of The Black Cowboy Museum.

Section 7. Indemnity

THE BLACK COWBOY MUSUEM SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF THE BLACK COWBOY MUSUEM, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF THE BLACK COWBOY MUSUEM OR ANY OF THE BLACK COWBOY MUSUEMS AGENTS, SERVANTS OR EMPLOYEES. THE PARTIES AGREE THAT THIS INDEMNIFICATION PROVISION SHALL APPLY DURING THE PERFORMANCE OF SERVICES AS WELL AS DURING THE PERORMANCE OF ANY CONTINUING OBLIGATIONS THAT MAY EXIST (IF ANY) AFTER THE EXPIRATION OF THIS AGREEMENT.

Section 8. Assignment

Neither party to this contract shall assign the contract, nor any interest arising herein, without the written consent of the other.

Section 9. Term and Termination

- A. The term of this Agreement begins as of the date executed by both Parties through September 30, 2022. Thereafter, this Agreement shall renew under the same terms and conditions each October 1 for a one year period through September 30, 2026, unless otherwise terminated in accordance with this Agreement
- B. County may terminate this Agreement in whole or, from time to time, at any time upon thirty (30) days written notice issued by County for County's convenience or because of the failure of The Black Cowboy Museum to fulfill the contract obligations. County shall terminate by delivering to The Black Cowboy Museum a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, The Black Cowboy Museum shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to County all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement whether completed or in process.
- C. If the Agreement is terminated, County shall only be liable for payment for services performed and accepted before the effective date of termination.
- D. If the termination is for failure of The Black Cowboy Museum to fulfill the obligations under this Agreement, County may complete the work by contract or otherwise and THE BLACK COWBOY MUSUEM shall be liable for any additional cost incurred by County.
- E. If, after termination for failure to fulfill contract obligations, it is determined that The Black Cowboy Museum had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

- F. The rights and remedies of the County provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- G. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to The Black Cowboy Museum.
- H. 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).
- I. 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
 Attn: County Judge
 401 Jackson Street
 Richmond, TX 77469

Copy to: Fort Bend County
 Attn: Purchasing Agent
 301 Jackson, Ste. 201
 Richmond, Texas 77469

The Black
Cowboy Museum: The Black Cowboy Musuem
 Attn: Larry Callies
 PO Box 536
 Hungerford, TX 77448

- J. A Notice is effective only if the party giving or making the Notice has complied with the requirements of this Section 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.

Section 10. Miscellaneous

- A. For purposes of section 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, The Black Cowboy Museum hereby verifies that The Black Cowboy Museum and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
1. 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.
 2. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, The Black Cowboy Museum 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 section 808.001 of the Texas Government Code.
 3. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, The Black Cowboy Museum 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 section 809.001 of the Texas Government Code.
 4. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, The Black Cowboy Museum 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 section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association."
- B. In the event of one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- C. The waiver by either party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.

- D. Any amendments to this agreement shall be of no effect unless in writing and signed by both parties hereto.
- E. HUMAN TRAFFICKING. BY ACCEPTANCE OF CONTRACT, THE BLACK COWBOY MUSUEM 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.

Section 11. Entire Agreement.

It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject.

IN WITNESS WHEREOF, this Agreement is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Agreement. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

KP George
County Judge KP George

July 26, 2022
Date

ATTEST:

Laura Richard
Laura Richard, County Clerk



THE BLACK COWBOY MUSUEM

Larry Callie
Signature of Authorized Agent

Larry Callie
Name of Authorized Agent

Founder & CEO
Title of Authorized Agent

7-13-22
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 375,000.00 to pay the obligation of Fort Bend County under and within the foregoing Agreement.

Robert Ed Sturdivant
Robert Ed Sturdivant, Auditor

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

The Black Cowboy Museum
Rosenberg, TX United States

Certificate Number:
2022-905793

Date Filed:
06/30/2022

Date Acknowledged:
07/26/2022

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

FORT BEND COUNTY

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

26596
MAINTENANCE, USE, AND OPERATION AGREEMENT

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.**6 UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)