

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR SERVICES TO INCREASE PHYSICAL ACTIVITY

This Agreement, made and entered into by and between County Assistance Districts No. 2, 6, 9, and 11 each a political subdivision of the State of Texas (hereinafter individually referred to as "DISTRICT," and collectively referred to as "DISTRICTS") and Fit Houston (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, the Districts desire that Consultant provide services that benefit the public health or welfare in their respective boundaries, as authorized by Texas Government Code Section 387.003 (a-1) (4); to be more fully described herein and

WHEREAS, Consultant represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

- A. Consultant shall render Services as described below within the identified Districts, which are County Assistance Districts created under Texas Local Government Code Chapter 387.
1. Provide programming to promote health by increasing physical activity in designated areas in Fort Bend County Precinct Four, as directed by the Pct 4 staff and consultation with County Parks Department.
 2. Deliver health messaging that is evidence-based and proven from a scientific perspective.
 3. Direct campaign to bring in new healthy behaviors that accompany walking, create wellness initiatives with stakeholders as directed by the Precinct Four Office, and develop community health programs through partnerships
 4. Encourage and promote health and well-being across agencies and entities in Fort Bend County.
 5. Provide recommendations for increasing safe, abundant, convenient infrastructure for physical activity in contract service areas.

6. Facilitate community stakeholder meetings, tracking progress including documentation, project management; create contact lists of like-minded groups and entities to be shared among stakeholders.
 7. Collect Community Walking group performance and impact data through surveys, interviews, testimonials, and other quantitative and qualitative methods.
 8. Produce de-identified reporting to view aggregate community health impact on physical activity with no private health information (no PHI).
- B. Consultant understands and agrees that compensation is based on the programming and services provided and shall not be used to fund an employee who could otherwise be employed by County.
- C. Services shall be provided proportionately in accordance with the allocation payment by each District, as described in the Compensation of this Agreement. Documentation of such allocation shall be kept by Consultant in a form acceptable to the County Auditor.

Section 2. Personnel

- A. Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of one or more Districts, to perform the Scope of Services when and as required and without delays.
- B. All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of one or more Districts, is incompetent or by his conduct becomes detrimental to the project shall, upon request of one or more Districts, immediately be removed from association with the project.

Section 3. Compensation and Payment

- A. The Maximum Compensation for the performance of Services is a total of sixty-four thousand two hundred dollars and 00/100 (\$64,200.00), allocated among the Districts as shown in the table below. In no case shall the amount paid by Districts under this Agreement exceed the Maximum Compensation without an approved change order.

CAD 2	\$16,050.00
CAD 6	\$16,050.00
CAD 9	\$16,050.00
CAD 11	\$16,050.00

- B. Consultant understands and agrees that the Maximum Compensation stated is an all inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated herein.
- C. All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by Districts.
- D. Districts will pay Consultant based on the following procedures: Consultant shall submit invoices as directed by the County Auditor containing the information required by the Auditor which may include the amount and type of services provided and documentation to support the work. The Auditor will direct the schedule for invoicing and payment. All information shall be on forms acceptable to the Auditor. The Precinct Four Office shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. Consultant shall be paid for each approved invoice within thirty (30) calendar days. Districts reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

- A. Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Districts shall have available the total maximum sum of sixty-four thousand two hundred dollars and 00/100 (\$64,200.00), specifically allocated to fully discharge any and all liabilities Districts may incur.
- B. Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that Districts may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed sixty-four thousand two hundred dollars and 00/100 (\$64,200.00),

Section 5. Time of Performance or Term

This Agreement is effective as of October 1, 2024 and shall terminate on September 30, 2025, unless sooner terminated in accordance with this Section. This Agreement does not automatically renew.

Section 6. Termination

- A. Termination for Convenience: Any Districts may terminate their participation in this Agreement at any time upon thirty (30) days written notice issued by the County Purchasing Agent, on behalf of the District seeking termination. Termination by a District affect.

B. Termination for Default

1. Districts may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the Districts in writing;
 - b. If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to Districts' reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from Districts specifying such breach or failure.
2. If, after termination, it is determined by Districts that for any reason whatsoever that Consultant was not in default, or that the default was excusable, services may continue in accordance with the terms and conditions of this Agreement or the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Districts in accordance with Section 7A above.

C. Upon termination of this Agreement, Districts shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to Districts. Consultant's final invoice for said services will be presented to and paid by Districts in the same manner set forth in Section 3 above.

D. If Districts 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 Consultant.

Section 7. 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 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of Districts upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to Districts on request.

Section 9. Inspection of Books and Records

Consultant will permit Districts, or any duly authorized agent of Districts, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. Districts' right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

- A. Prior to commencement of the Services, Consultant shall furnish Districts 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 Districts. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by Districts. Consultant 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. Consultant 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. Districts 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 Consultant shall contain a waiver of subrogation in favor of Districts and members of Commissioners Court. For Commercial General Liability, the Districts shall be named as an Additional Insured on a Primary & Non-Contributory basis.
 - C. If required coverage is written on a claims-made basis, Consultant 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. Consultant 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 Consultant.

Section 11. Indemnity

CONSULTANT SHALL INDEMNIFY AND DEFEND DISTRICTS AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S 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 12. Confidential and Proprietary Information

- A. Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to Districts. Any and all information of any form obtained by Consultant or its employees or agents from Districts in the performance of this Agreement shall be deemed to be confidential information of Districts ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- B. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Districts hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Districts in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise Districts immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with Districts in seeking injunctive or other equitable relief in the name of Districts or Consultant against any such person. Consultant agrees that, except as directed by Districts, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at Districts' request, Consultant will promptly turn over to Districts all documents, papers, and other matter in Consultant's possession which embody Confidential Information.
- C. Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to Districts that is inadequately compensable in damages. Accordingly, Districts may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges

and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Districts and are reasonable in scope and content.

- D. Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Consultant expressly acknowledges that Districts is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, Districts will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Districts by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Contractor

- A. The Parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the Parties. Therefore, the Parties specifically agree that County shall have the right of control only to the extent of determining the results to be accomplished by Consultant but not as to the details and means by which those results shall be accomplished.
- B. Neither Party shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party. Any reference to "Partner" or "Partnership has no legal intention and is rhetorical only. Neither party can take actions or make commitments on behalf of the other. Each party is responsible for itself and does not have authority to legally or financially bind the other. **Consultant understands and agrees that promotional materials may not indicate that there is a partnership between the Parties.**
- C. In the performance of work or services hereunder, Consultant 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 Consultant or, where permitted, of its subcontractors.
- D. Consultant 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 Districts and shall not be entitled to any of the privileges or benefits of Districts employment.

Section 14. Notices

- A. 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).
- B. 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:

Any District: Fort Bend County Judge
401 Jackson St.
Richmond, TX 77469

With a copy to: Fort Bend County Purchasing Agent
301 Jackson, Ste. 201
Richmond, Texas 77469

Consultant: Fit Houston

2527 Bandelier Drive
Houston, TX 77080

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 14(A) and 14(B) 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 15. Compliance with Laws

Consultant shall comply with 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, including, without limitation,

Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by Districts, Consultant shall furnish Districts with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Warranty

- A. Consultant warrants to Districts that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Consultant will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Consultant warrants to Districts that the Services will be free from material errors and will materially conform to all requirements and specifications needed to perform the Services.

Section 17. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights by Consultant are prohibited under this subsection, whether they are voluntarily or involuntarily, without first obtaining written consent from Districts.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend Districts, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Districts's sovereign immunity.

Section 19. Successors and Assigns

Districts and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend Districts, media outlets, or governmental agencies shall be the sole responsibility of Districts. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of Districts, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and any other document, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts For purposes of section 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Consultant hereby verifies that Consultant and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- A. 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.
- B. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant 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.

- C. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant 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.

- D. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant 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" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

Section 26. Human Trafficking

BY ACCEPTANCE OF CONTRACT, CONSULTANT ACKNOWLEDGES THAT FORT BEND DISTRICTS IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO DISTRICTS FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS

Section 27. Entire Agreement

This executed instrument is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 27 day of August, 2024.

CAD NO. 2

By: Kell George

Title: Fort Bend County Judge

Date: August 27, 2024

CAD NO. 6

By: Kell George

Title: Fort Bend County Judge

Date: August 27, 2024

CAD NO. 9

By: Kell George

Title: Fort Bend County Judge

Date: August 27, 2024

CAD NO. 11

By: Kell George

Title: Fort Bend County Judge

Date: August 27, 2024

FIT HOUSTON

DocuSigned by:
Lharissa Jacobs
BE5ADE30A0684BB

Authorized Agent- Signature

Lharissa Jacobs

Authorized Agent- Printed Name

Executive Director

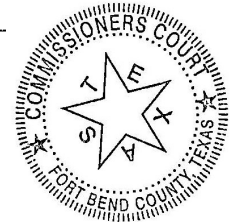
Title

8/19/2024

Date

ATTEST:

Laura Richard
Laura Richard, County Clerk



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$64,200.00 to accomplish and pay the obligation of Fort Bend Districts under this contract.



Robert Ed Sturdivant, Districts Auditor

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