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ARTURO GUJARDO, JR. COUNTY CLERK HIDALGO COUNTY, TEXAS			
BY	Dac		DEPUTY

THE STATE OF TEXAS §
 COUNTY OF HIDALGO §

**Boys & Girls Clubs of Edinburg RGV & County of Hidalgo, Pct.
 4 San Carlos Endowment Center (Sunflower Road)
 Use Agreement**

THIS Agreement is made on and entered into effective as of the 06th day of November, 2018, by and between **COUNTY OF HIDALGO, TEXAS** (the "County") and the **Boys & Girls Clubs of Edinburg RGV** (the "BGC"), a Texas non-profit corporation.

WHEREAS, in 1998 the County and BGC entered into a collaborative relationship regarding the lease of the San Carlos Community Resource Center for the purposes as described herein; and

WHEREAS, the County and BGC desire to continue their collaboration for the public purpose of using the San Carlos Endowment Center to provide supervised recreational, educational and support opportunities to the youth and residents of the County including, but not limited to and contingent upon funding, after school and summer youth services and educational and family support services; and

WHEREAS, County is a "local government" and a political subdivision of the State of Texas; and

WHEREAS, County is the owner/operator of a multi-purpose Facility, San Carlos Endowment Center, located at the corner of State Highway 107 and Sunflower Road, (hereinafter referred to as the "Center" or "Premises"), to provide a variety of services to help improve the health and well-being of the youth and residents of the County; and

WHEREAS, the services provided by BGC benefit the residents of the County and public by providing recreational, educational and support opportunities to the youth and residents of the County.

NOW, THEREFORE, for and in consideration of the promises, covenants, terms, and conditions herein contained, the parties agree as follows:

1.1 The BGC may use designated area(s) of the Center for the purposes as described above and for any other lawful purpose on the terms and conditions herein. BGC will provide personnel and volunteers to effectuate its purpose. Parties agree that said personnel and volunteers are not employees of the County. The designated area(s) for use by BGC include the Leadership Room, Community Room, Culture Room, Courage Room, Computer Lab, Storage Room, Kitchen, Playground and Garden Space. Designated areas of the Center for use by BGC may be modified by written agreement of the parties. The

BGC may have ingress and egress to the Center for the purposes as described herein.

1.2 BGC must provide documentation of its status as a section 501(c) (3) non-profit organization, attached as Exhibit A.

1.3 BGC understands and acknowledges that entering into this Agreement does not constitute an endorsement by the County of BGC's organization, its financial stability, or the quality of its programs. BGC shall not represent that it or any of its agents or employees are agents or employees of the County.

1.4 Should BGC serve food at the CENTER, it must comply with all current County policies, state and local rules and regulations regarding the safe storage, preparation, handling, and serving of food whether permanent or temporary.

1.5 BGC, and its employees, agents and volunteers, shall maintain any and all applicable licenses and permits necessary to effectuate its services.

1.6 BGC must conduct annual background checks on all volunteers or paid employees who will interact with youth. BGC shall maintain documentation of completed background checks for review upon request by the County. If the background checks reveal that an employee or volunteer is unsuitable for working with children, BGC shall not allow the volunteer or employee to interact with youth.

1.7 BGC shall maintain and make available to County statistical data and/or any other relevant information of the number of individuals served by the BGC at the CENTER.

1.8 The County may suspend or limit use of the CENTER by BGC if necessary to protect public health and safety. The County will notify BGC at least two business days in advance of any necessary suspension/limitation, unless the suspension/limitation is due to an emergency situation, in which case the County will notify BGC as soon as possible, but not later than four business days after the emergency suspension/limitation is imposed. Notification may be verbal.

II. CONSIDERATIONS

2.1 The County and BGC have agreed that to effectuate the purpose of this Agreement and for the benefit of the Citizens of Hidalgo County that use of the CENTER shall be at no cost to BGC.

Term, Termination and Renewal

2.2 The term of this Agreement shall be for four (4) years commencing on the date referenced above. This Agreement may be renewed for two (2) additional one (1) year terms upon the same terms and conditions described herein by written amendment signed by both parties.

2.3 The Parties may terminate this Agreement with or without cause upon thirty (30) calendar days written notice to the other party.

2.4 This Agreement shall terminate and become null and void without further notice on the expiration of all the additional terms specified in Paragraph 2.2, unless sooner terminated or renewed and extended.

2.5 Any holding by BGC after the expiration of said terms shall not constitute a renewal of the Agreement or give BGC any rights under the Agreement in or to the Premises. If the BGC holds over and continues to occupy the Premises after the expiration of the additional terms specified in Paragraph 2.2, BGC will be deemed to be occupying the Premises on the basis of a month to month, subject to all the terms and conditions of this Agreement. County is deemed to consent to said hold over; however, it may terminate said hold over possession by the BGC with thirty (30) calendar days written notice to the BGC.

Nature of Relationship

2.6 Nothing contained in this Agreement shall be deemed or constructed to create the relationship of principal and agent or that of partnership or joint venture or any association between the County and BGC, and any intention to create a joint venture or partnership relationship between the Parties hereto is hereby expressly disclaimed. No provision contained in this agreement, nor any acts of the Parties hereto shall be deemed to create any relationship between the County and BGC other than the relationship of landlord and tenant. BGC shall maintain exclusive control, direction and management of its own employees, and the County shall have no rights with respect thereto, except for the County's right to enforce covenants of BGC as set forth in this agreement.

Immunities

2.7 It is expressly understood and agreed that, in the execution of this agreement, the County does not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercising of governmental powers and functions.

Insurance

2.8 Liability Insurance:

- A. The County will carry sufficient liability insurance at the statutorily required limits, pursuant to the Texas Tort Claims Act. The County's liability insurance shall include, but not be limited to, coverage for any claims resulting from building construction or design defects outside of the BGC's approved building modifications.
- B. BGC must provide a certificate of insurance naming the County as an additional insured, and must provide proof of comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence, attached

as Exhibit B. BGC understands and acknowledges that the County does not insure any items that are the property of BGC on or at the Premises.

2.9 Property Insurance: BGC shall maintain content coverage insurance on BGC's personal property located within the Premises. BGC covenants and agrees that County shall have no responsibility for damage or destruction of BGC's personal property located within the Premises.

Assignment

2.10 BGC may not assign or sublet any portion of the premises without the County's written consent.

Modifications, Maintenance and Repairs

2.11 BGC, at its sole cost and expense, shall make the necessary modifications required for its use of the Premises. Said modifications shall be submitted in writing to the County through the County's Executive Office and must be approved by the County in writing and shall be done in accordance with all applicable building codes. If any modifications are made to the Premises, the BGC shall not be required to restore the Premises to its original condition upon termination of this Agreement and said modifications will become property of the County. Further, Subject to the County's written approval and further subject to applicable laws, ordinances and regulations, BGC may install a sign on the Premises. BGC must remove all signs at the termination of this agreement.

2.12 County shall maintain in good working order and make all such necessary maintenance and repairs to the Premises' landscaping, foundation, roof, structural integrity, plumbing systems, electrical and lighting systems, heating, ventilation and air conditioning systems ("HVAC"), fire protection and fire alert systems and other mechanical systems, except that BGC shall make those repairs occasioned by BGC's negligent use of the Premises.

2.13 County shall construct, repair and maintain the Premises so that the Premises will have:

- (1) Effective waterproofing and weather protection of the contents of the Premises by watertight roof, exterior walls, windows, and doors.
- (2) Plumbing facilities that conform to applicable law, maintained in good working order.
- (3) A water supply approved under applicable law that is under the control of the BGC, capable of producing hot and cold running water, or a system that is under the control of County that produces hot and cold running water furnished to BGC and connected to a sewage disposal system conforming to applicable law.
- (4) Heating, ventilation and air conditioning facilities conforming to applicable law

which are more than adequate to heat, ventilate and air condition the improvements on the Premises, and are maintained in good-working order.

- (5) Electrical lighting, with wiring and electrical equipment that conform to applicable law, maintained in good working order.
- (6) Fire protection and fire alert systems that conform to applicable law, maintained in good working order.
- (7) Building, grounds, and appurtenances in every part clean, sanitary, and free from all accumulations of debris, and all areas under control of County kept in every part clean, sanitary, and free from all accumulations of debris.
- (8) Floor, stairways, and railings maintained in good repair, and elevators/escalators (if any) that conform to applicable law, maintained in good working order.
- (9) Landscaping (including, but not limited to all greenery, watering, and maintenance).
- (10) Parking Lot (including painting, striping, paving, etc.) that conforms to applicable law.

2.14 If after BGC's notice to County of repairs or maintenance which County has a duty to undertake, County neglects to commence such repairs within thirty (30) business days following written notice from BGC, then the BGC may terminate this agreement.

2.15 BGC shall be responsible for repairs or damage to the Premises caused solely by BGC's negligent use of Premises, and damage to fixtures and improvements resulting from negligent or willful acts of BGC, or BGC's employees, agents, licensees, invitees, or those serviced by BGC at the CENTER. In addition, BGC shall repair all injury or damage caused by the installation or removal of furniture, fixtures or property permitted under this Agreement.

2.16 All such construction, modifications, maintenance and/or repairs made by either County or BGC shall be made by duly qualified individuals in a good and workmanlike manner using high quality materials.

ADA Compliance

2.18 County shall be responsible for ensuring Premises comply with the Americans with Disabilities Act (ADA) as amended.

Damage or Destruction of Premises

2.19 If the Premises, or any structures or improvements on the Premises, should be damaged or destroyed by fire, tornado, vandalism or other casualty, BGC shall give preliminary verbal notice within reasonable time (generally 24-36 hours) to an appropriate

County Official/Administrator. BGC shall provide a factually comprehensive written notice within 48 hours to an appropriate County Official/Administrator of the damage or destruction, including a description of the damage and, as far as known to BGC, the cause of the damage. Should the Premises be so damaged by fire, tornado, vandalism, or other casualty that rebuilding or repairs cannot reasonably be completed within thirty (30) business days from the date of the occurrence of the damage, this Agreement, at the option of the County or BGC, shall terminate effective as of the date of said occurrence.

Utilities

2.21 BGC, at its sole cost and expense, shall have the responsibility of providing the following service(s) at the Premises: telecommunication services for the area(s) designated for use by BGC for the purpose of including but not limited to membership tracking software and community communication.

2.22 County, at its sole cost and expense, shall have the responsibility of providing all other services at the Premises, including, but not limited to: janitorial services, security alarm services, pest control services and garbage dumpster/collection services.

Taxes

2.23 To the extent the Premises is assessed for ad valorem taxation purposes, County is responsible for rendering and paying all real estate taxes on the Premises.

III. INDEMNIFICATION

3.1 BGC shall indemnify and hold harmless County, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against County arising out of or resulting from BGC's acts or failure to act in connection with the provision of the use of the CENTER by BGC under this Agreement.

IV. MISCELLANEOUS

4.1 **Governing Law:** This Agreement will be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by the Agreement as performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

4.2 **Conflicts with Applicable Law:** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of their Agreement and any present or future law, ordinance, or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

4.3 **No Waiver:** No waiver by any party hereto of any breach of any provision of the Agreement will be deemed to be a waiver of any proceeding or succeeding breach of the same or any other provision hereof.

4.4 **Notice:** Except as may be otherwise specifically provided in this Agreement, all notices, demands, request or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to BGC: Boys & Girls Clubs of Edinburg RGV
Attention: Adriana Rendon, Title: Interim Chief Executive Officer
Address: 702 Cullen St.
City, State, Zip: Edinburg, TX 78541

If to County: County of Hidalgo, Texas
Attn: Ramon Garcia, County Judge
100 E. Cano, 2nd Floor
Edinburg, TX 78539

And: County of Hidalgo
County Executive Officer
Attn: Valde Guerra, County Executive Officer
2818 So. 281
Edinburg, Texas 78539

With copy to: County of Hidalgo, Commissioner Precinct 4
Attn: Commissioner Joseph Palacios
1501 N. Doolittle Rd.
Edinburg, TX 78542

4.5 **Entire Agreement:** This contract contains the entire Agreement of the parties with respect to the matters covered by its terms. No other agreements, statement or promise made by any party or to any employee, officer or agent of any party, that is not contained in this Agreement, will be of no force or effect, unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

4.6 **Legal Construction/Severability:** In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.7 **Prior Agreements:** This Agreement supersedes and terminates all previous Agreements between the parties hereto concerning the subject matter hereof, except for any Agreement dated prior to this Agreement to the extent work is being performed under said Agreement at the time of executing this Agreement. Once ongoing work under any such previous Agreement(s) is completed and payment is remitted such previous agreement shall terminate at such time.

4.8 **Additional Documents:** The Parties agree that they will use reasonable, good faith efforts to execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

4.9 **Successors:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

4.10 **Headings:** The headings and captions contained in this Agreement are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.

4.11 **Gender and Number:** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.

4.12 **Non-Discrimination:** The Agreement, all related activities and programs offered under this Agreement by BGC shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and BGC policy, including without limitation to race, color, national origin, religion, sex, age, veteran status, or disability.

4.13 **Authority to Execute:** The execution and performance of this Agreement by the Parties has been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the participating County and BGC in accordance with its terms.

4.14 **Governmental Purpose:** Each party hereto is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

4.15 **Force Majeure:** Neither Party shall be required to perform any term, condition, or covenant of this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Parties and which by the exercise of due diligence Parties are unable, wholly or in part, to prevent or overcome.

4.16 **Commitment of Current Revenues:** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations

of such party under this Agreement, then any party may terminate this Agreement by providing written notice to the other party in accordance with the timelines referenced in section 2.3 . Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party.

IN WITNESS WHEREOF, the undersigned execute this Agreement as of the day and year first above written.

BOYS & GIRLS CLUBS OF EDINBURG RGV

BY: [Signature]
Print Name IDE Quiroga, Title: Board Chair

COUNTY OF HIDALGO, TEXAS

BY: Ramon Garcia
Ramon Garcia Hidalgo, County Judge

ATTEST:

By: [Signature]
Arturo Guajardo, Jr.
Hidalgo County Clerk



APPROVED BY
COMMISSIONERS' COURT
ON: 11/6/18 [Signature]

APPROVED AS TO FORM:
Hidalgo County Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

[Signature]
By: Robert Viña, III, Assistant District Attorney
Civil Litigation Division