

**AGREEMENT FOR THE CONSTRUCTION,
CONVEYANCE, AND LEASEBACK OF STRUCTURE
TO BE LOCATED AT DOWNING ELEMENTARY SCHOOL**

This Agreement is made and entered into on the date set forth below by and between the ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT (the "District") and the BOYS AND GIRLS CLUB OF THE PERMIAN BASIN ("BGC").

Recitals

WHEREAS, the District currently owns and operates an elementary school known as Edward K. Downing, located at Knox Avenue and 16th Street in Ector County, Texas (the "Premises"; and

WHEREAS, BGC has offered to construct a Boys and Girls Club facility (the "Facilities) on the Premises solely at BGC's expense; and

WHEREAS, BGC has agreed to convey complete ownership of the new Facilities to the District in return for a leaseback to the BGC for use for particular purposes for a particular period of time;

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

Agreement

1. *Access to Premises.* The District will make available to BGC for construction of the Facilities on the site located on the Premises described generally on Exhibit A (the "Site"), attached hereto.
2. *Construction.* BGC will construct the Facilities as described on Exhibit B, attached hereto, at their sole and absolute expense on the Site.
3. *Ownership of Facilities.* Upon completion of the construction by BGC of the Facilities, BGC shall take all steps necessary to convey full and complete title to the Facilities to the District.
4. *Lease.* Upon conveyance of the Facilities to the District, the District agrees to lease to BGC the Facilities and additional properties as described hereafter for the term of thirty (30) years (unless sooner terminated as hereinafter provided), commencing upon the date of conveyance of the Facilities to the District for the sum of One Dollar (\$1.00) per year.
5. *Permitted Use.* BGC will use the Facilities solely to operate a Boys and Girls Club.

6. *Access to Gym and Playground.* In addition to its use of the Facilities, BGC shall be allowed to use the existing gym and playground facilities at Edward K. Downing Elementary School during after-school hours, subject to the approval of the Principal of Edward K. Downing. BGC shall be responsible for securing same after each use.

7. *Maintenance.* The District shall be responsible for the maintenance of the structural walls, roof, and HVAC systems of the Facility. BGC shall be responsible for all other maintenance of the Facilities.

8. *Janitorial.* BGC shall be responsible for all janitorial services for the Facilities.

9. *Utilities.* The District shall be responsible for the payment of all utilities to the Facilities. The Facilities will be operated in accordance with the District's Energy Management Guidelines.

10. *Insurance.* BGC shall obtain and keep in force through the term hereof general liability insurance at its expense, covering all activities and operations of the Facilities, with minimum limits of \$1,000,000 for personal injury or death and \$1,000,000 for property damage. The District shall be named as an additional insured on said policy or policies.

11. *Independent Contractor Relationships.* The parties intend that their relationship under this Agreement shall be an independent contracting relationship, and neither party shall conduct itself in any manner inconsistent with such independent status. Nothing in this Agreement, nor in the performance thereunder, is intended or shall be construed to be create a partnership, joint venture or other form of business enterprise, or relationship of agency or employment between the District and BGC.

12. *Indemnification.* BGC shall indemnify, hold harmless, protect, and defend the District, and its trustees, officers, employees, representatives, agents, and affiliates for, from, and against any and all claims and damages (including reasonable attorneys fees and costs) of any nature whatsoever (including, but not limited to, property damage and loss, bodily injuries, sickness, disease, or death), directly or indirectly arising out of or in connection with the construction or with BGC's use of the Premises or the conduct of BGC's business or from any activity, work, or thing done, permitted, or suffered by BGC in or about the Premises, unless caused solely by the District.

13. *Supervision.* BGC shall be solely responsible for recruiting, staffing, and supervising all of its staff and employees for use in the Premises.

14. *Day to Day Operations.* The District will designate the school Principal as the person that BGC shall contact with respect to any issues that arise in connection with the day to day operations under this Agreement. In the event there is a dispute that is not resolved at the campus level, the matter shall be referred to the District's Superintendent or designee for resolution. The decision of the Superintendent or designee shall be final and not subject to further appeal.

15. *Screening.* Any and all staff members, employees, or volunteers of BGC shall comply in all respects with all State and District policies and rules pertaining to adults on a school premises.

16. *Public Purpose and Benefit.* The District determines that it is receiving adequate benefit by the construction and conveyance of title of the Facilities in return for the \$1.00 per year lease. The District further determines that the Facilities shall serve a public purpose consistent with the District's mission. The District further determines that the property being leased herein is not immediately needed for school purposes.

17. *Termination.* While it is anticipated that this Agreement will continue collaboratively for at least thirty (30) years, notwithstanding any provision of this Agreement to the contrary, the parties agree that this lease may be terminated by the Board of Trustees of the District at any time for any reason and or no reason at all on the giving of thirty (30) days notice to BGC. Upon said termination, all obligations between the parties will terminate and the Facilities will remain the sole and absolute property of the District.

18. *No Assignment.* This Agreement may not be assigned by BGC without the prior written consent of the District.

19. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Texas, and any dispute shall be settled in the courts of Ector County, Texas.

20. *Notices.* All notices, certificates, requests, demands, and other communications shall be in writing and personally served or sent by facsimile, email, or certified mail to the following addresses:

THE DISTRICT: Ector County Independent School District
802 North Sam Houston
P.O. Box 3912
Odessa, Texas 79760-3912
ATTN: Superintendent of Schools

BGC: Boys and Girls Club of the Permian Basin
800 East 13th Street
Odessa, Texas 79761
ATTN: _____

WITNESS our signatures on the dates set forth below:

Date: _____

Ector County Independent School District

By: _____

Name: _____

Title: _____

Date: _____

Boys and Girls Club of the Permian Basin

By: _____

Name: _____

Title: _____