

AGENDA ITEM

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 09/15/09	Submitted By: Nicole Mehrens, County Attorney's Office
Court Agenda Date: 09/22/09	Department: PARKS
	Phone Number: 281-341-4555

SUMMARY OF ITEM:

Approve Renewal Occupancy Agreements between Fort Bend County and Fort Bend Seniors Meals on Wheels and Much, Much More for utilization of Fort Bend County 5th Street Community Center, Fort Bend County Bud O'Shieles Community Center, and the Mustang Center, effective October 1, 2009 through September 30, 2010.

RENEWAL AGREEMENT/APPOINTMENT YES NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached:

FINANCIAL SUMMARY:

BUDGETED ITEM: YES NO

FUNDING SOURCE: Accounting Unit: Account Number:
Activity (If Applicable):

DESCRIPTION OF LAWSON ACCOUNT: _____

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office (✓ when completed)
If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input checked="" type="checkbox"/> Auditor (281-341-3774)	<input checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input checked="" type="checkbox"/> Budget Officer (281-344-3954)	<input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input checked="" type="checkbox"/> Facilities/Planning (281-633-7022)	<input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input checked="" type="checkbox"/> Purchasing Agent (281-341-8642)	<input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input checked="" type="checkbox"/> Information Technology (281-341-4526)	<input checked="" type="checkbox"/> County Clerk (281-341-8697)
<input checked="" type="checkbox"/> Other: <u>Mike Davis, Parks Dept.</u>	<input checked="" type="checkbox"/> County Atty. (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

10-10A 1 orig. each ret. to Nicole at Co. Attorney

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**OCCUPANCY AGREEMENT
FORT BEND COUNTY COMMUNITY CENTER – 5th STREET
RENEWAL**

THIS AGREEMENT 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 FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE, a Texas non-profit corporation, hereinafter referred to as “F.B.S.”

W I T N E S S E T H:

WHEREAS, F.B.S. is a community based organization addressing the needs of the County’s indigent elderly by administering and providing specialized programs that allow these distinguished citizens to maintain and improve their quality of life as well as their mental and physical health, with dignity. These specialized programs include recreational activities, nutritional programs, transportation, homebound services, social services, and information and referral services, all of which serve a valuable public purpose;

WHEREAS, Fort Bend County owns a facility located at 3110 Fifth Street, Stafford, Texas 77471, known as the Fort Bend County *5th Street Community Center*;

WHEREAS, it is in the public interest, and serves the general welfare of the community, for a portion of the Center, and its related facilities, to be utilized by F.B.S. for the purpose of providing and administering specialized programs for the County’s indigent elderly;

WHEREAS, such portion of the Center, and its related facilities, are well suited for the purposes for which F.B.S. was established and would further facilitate the implementation of its specialized program of services and the delivery of such services to those persons served by the Center who would benefit thereby;

WHEREAS, the County is willing to furnish to F.B.S. and F.B.S. is willing to occupy, a portion of the Center for the exclusive purpose of implementing its specialized programs to the County’s indigent elderly who reside in the area served by the Center, such use of the Center being in the public interest and a proper exercise of the authority of the County under law to provide for its indigent residents;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to both parties herein named, it is agreed as follows:

**I.
F.B.S. USAGE OF THE LEASED PREMISES**

- A. Subject to and upon the provisions hereinafter set forth, the County does, by these presents, grant unto F.B.S. from 8:00 a.m. to 2:00 p.m., Monday through Friday the right to use the 5th Street Community Center.
- B. Said designated areas, to be hereinafter referred to as “the Leased Premises,” are located in the Fort Bend County Community Center, 3110 Fifth Street, Stafford, Texas 77471.
- C. As consideration for this Occupancy Agreement, F.B.S. will pay to the County, without demand, at the office of the County Treasurer, Fort Bend County, Texas, an annual payment in the amount of one dollar (\$1.00).

1. The above indicated payment will be paid by F.B.S. to the County within thirty (30) days of occupancy.
- D. F.B.S. will make no use of any common or shared area in any manner or form that shall unreasonably interfere with the use being made of such area by any other party authorized to use the same, whether such use be authorized by law, rule, regulation or agreement.
- E. Prior to its use of any multi-purpose, conference or meeting room in the Center, F.B.S. will consult with Fort Bend County Park Director, or his designee for the purpose of scheduling such use and F.B.S. will abide by and respect all reasonable requests that may be made by Fort Bend County's Parks Department Director regarding the use by F.B.S. of such rooms or any other areas held in common or otherwise shared by those parties authorized to use the Center.
 1. Fort Bend County's Parks Department Director shall consider *all* requests for use of all or portions of the Center, excluding the Leased Premises, with priority being given:
 - a. First, to Fort Bend County;
 - b. Second, to resident's of Fort Bend County; and
 - c. Third, to F.B.S.
- F. Access to and the use of any parking areas adjacent to the premise by F.B.S. shall be shared with all other parties entitled to use the same.
 1. F.B.S. has no entitlement to reserved parking on the part of F.B.S. and that its access to and use of the parking areas shall be on a first come, first served basis.
 2. As used in throughout this Agreement, whenever the context otherwise requires, the term "F.B.S." includes F.B.S.'s guests, clients, patrons, invitees, permittees, licensees or any other persons, whether natural or corporate, holding under F.B.S., and F.B.S. will, to the extent practicable, advise such parties of their responsibilities regarding the use of any common shared areas.
- G. F.B.S. expressly authorizes County and County's designee access and use of the Leased Premises at all other times than those set forth in Section IA above.

II. TERM & TERMINATION

- A. Both parties agree that this Agreement becomes effective on **October 1, 2009** and end midnight, on **September 30, 2010**.
- B. This Agreement may be renewed or extended for a one (1) year extension under the same terms and conditions, at the option of F.B.S. upon giving written notice to County in the manner and form provided for herein.
 1. Said notice of renewal must be received by County no later than sixty (60) days prior to the date such term expires.
 2. In like manner, the term of the Agreement may be extended without limit for successive and additional periods of one (1) year each.
- C. This Agreement may be terminated without cause prior to the expiration of the term herein at the option of either County or F.B.S. upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
 1. The termination of the Agreement will be effective upon the last day of the month in which the expiration of the thirty (30) day period occurs.
- D. Upon the expiration or termination of the Term, for whatever cause, F.B.S. shall immediately, quietly and peaceably, surrender to County possession of the Leased Premises in "broom clean" and good order, condition and repair, except only for ordinary wear and tear.
 1. If F.B.S. fails to surrender possession as herein required, County may initiate any and all legal action as County may elect to dispossess F.B.S. and all of its property, and all persons or firms claiming by, through or under F.B.S. and all of

their property, from the Leased Premises, and may remove from the Leased Premises and store (without any liability for loss, theft, damage or destruction thereto) any such property at F.B.S.'s sole cost and expense.

If F.B.S. fails to surrender possession of the Leased Premises in the condition herein required, County may, at F.B.S.'s sole expense, restore the Leased Premises to such condition.

III. INSPECTION

- A. F.B.S. agrees that it:
1. Has made its own inspection of the Leased Premises;
 2. Accepts the Leased Premises in the condition in which it exists on the date of this Agreement;
 3. Has made its own determination as to the suitability of the Leased Premises for the uses for which F.B.S. may put the same;
 4. Has received and is receiving from the County hereunder absolutely no warranty or representation as to the condition of, or suitability of the Leased Premises.

IV. EQUIPMENT, FURNISHING AND REPAIRS

- A. F.B.S. shall be responsible for the equipping and the furnishing of the Leased Premises in a manner suitable for the uses which it will be put, including the installation of any personal property, trade fixtures or other special equipment or the making of any non-building standard improvement, as well as the cost thereof.
- B. Without limitation, and as part of the consideration for the grant by the County of its right to use the premise, F.B.S. will, at its own expense, separately secure and contract for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service, which may be necessary to F.B.S. in its enjoyment and use of the Leased Premises.
- C. In the event the installation of any non-building standard improvement or trade fixture is contemplated, F.B.S. shall consult with Commissioners' Court and receive written permission prior to commencing any work and shall comply with any special instructions which Commissioners' Court, or its designee, may have concerning the installation.
1. All work shall be performed in a manner that minimizes the disruption to any other user of the Center's facilities and which will result in the least amount of damage or alteration to the structure.
 2. Subject to the terms and provisions of this subsection, to the extent the existing wiring, plumbing or other systems are adequate for its needs, F.B.S. may use the same.
 - a. Should any such systems be inadequate for F.B.S.'s needs, and it becomes necessary for such systems to be upgraded or modified, F.B.S. may do so upon the prior written consent of Commissioners' Court.
 - b. Consent shall include the right of F.B.S. to make alterations for the above described purposes in those areas of the Center outside the Leased Premises so long as they are done without unnecessary disruption to the operation of the Center and with reasonable dispatch.
 - c. F.B.S. shall alone bear the cost of any alteration or up-grading of existing systems and shall promptly restore the affected areas to an architecturally whole condition, or in the alternative, County may restore the same and F.B.S. shall reimburse the County for the reasonable expense thereof.
 3. F.B.S. will secure the services of reputable contractors in the conduct of any work performed and will be liable for any damages occurring to the Center, including the Leased Premises, caused by the acts of its contractors or agents.

- D. Notwithstanding anything contained herein to the contrary, any and all repairs, modifications and/or replacements, of any kind, to the Leased Premises *must* follow and comply with all County guidelines and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- E. Any and all modifications to the appearance of the Leased Premises must meet County standards and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- F. County shall be responsible for all modifications or alterations necessary to comply with the Americans with Disabilities Act and/or the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations and other requirements, now or hereafter in force, of all federal, state and local governmental bodies and agencies which are applicable to the Leased Premises and common areas of the Center;
- G. F.B.S. will not permit any mechanic's lien, or liens, or any other type of lien to be placed upon the Center and/or Leased Premises or upon improvements on the Center and/or Leased Premises.
 - 1. If a mechanic's lien or any other type of lien is filed on the Center and/or Leased Premises or on improvements to the Center and/or Leased Premises, F.B.S. will promptly pay the lien.
 - 2. If default in payment of the lien continues for thirty (30) days after written notice from County to F.B.S., County may, at its option, pay the lien or any portion of it without inquiry as to its validity.
 - 3. Any amounts paid by County to remove a mechanic's lien or any other type of lien caused to be filed against the Center and/or Leased Premises or against improvements on the Center and/or Leased Premises by F.B.S., including expenses and interest, shall be due from F.B.S. to County and shall be repaid to County immediately on rendition of written notice.
- H. A lien will be filed under Chapter 9 of the Business and Commerce Code to pledge equipment listed as security for payment of this Agreement.

V.
USAGE BY F.B.S.

- A. F.B.S. shall use the Leased Premises for the purpose of operating its programs and for no other activity or event which is not sponsored by F.B.S. or not otherwise permitted or sanctioned under its articles of incorporation, charter, by-laws, policies or which is not otherwise provided for under the laws, rules or regulations governing recipients of grants or financial assistance.
- B. F.B.S. will at all times comply with any and all orders, regulations and policies, and amendments thereto, issued by the County for the purpose of maintaining an orderly and compatible use of the Center by all parties involved.
- C. Any F.B.S. event or activity permitted under the terms of this Agreement to be conducted upon the Leased Premises shall be supervised by F.B.S.'s personnel or designated representatives who shall be properly trained, adequate in number and who shall remain on the Leased Premises during the course of the event or activity.

VI.
COMPLIANCE WITH FEDERAL LAW AND GRANT REQUIREMENTS

- A. F.B.S. shall comply with, and cause all who take advantage of its programs and offerings at the Center 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.”

1. In addition, no person shall be excluded from participation or denied the benefits of F.B.S.'s services on the basis of creed.
2. F.B.S. will publicize this policy.

VII. REMOVAL OF F.B.S. PROPERTY

- A. Upon the expiration of the initial term of this Agreement, or upon the expiration of any extended term, should such term have been extended, whether once or successively, all personal property, trade fixtures or non-building standard improvements placed on the Leased Premises by F.B.S. shall be removed by F.B.S. upon the request of County.
- B. Should the installation of any such personal property, trade fixture or non-building standard improvement alter the Leased Premises such that its removal will damage the premise, F.B.S. shall repair and restore the same to an architecturally whole condition such that it may again be used for the purposes for which it was originally constructed.

VIII. OPERATION OF LEASED PREMISES

- A. F.B.S. will promptly and fully comply with all valid laws, ordinances, regulations or other requirements, now or hereafter in force, of all federal, state and/or local governmental bodies and agencies which have jurisdiction of any nature over the Leased Premises or F.B.S.'s use or occupancy thereof.
- B. To the extent applicable and allowed by law, F.B.S. will participate in the record keeping system and/or requirements of the Center required by Fort Bend County.
- C. F.B.S. will not use or allow the Leased Premises to be used for any unlawful purposes; nor will F.B.S. cause, maintain or permit any nuisance in or about the Leased Premises, or commit or suffer to be committed any waste of or upon the Leased Premises.
- D. At all times F.B.S. will operate the Center and its programs at the Center in a manner that portrays the County in a positive light and in a manner that upholds the lofty ideals and standards of the County, as reasonably determined solely by County.
 1. At no time will F.B.S. operate the Center or its programs at the Center in a manner that would bring harm or disrepute to County, as reasonably determined solely by County, nor will F.B.S. allow and/or tolerate any such activity.
 2. Breach of this subsection C. shall be grounds for immediate termination of this Agreement.
- E. F.B.S. will not, in its use of and operations on and within the Leased Premises:
 1. Bring or allow to be brought or kept upon the Leased Premises illegal weapons, illegal substances and/or alcoholic beverages of any kind; or
 2. Permit upon the Leased Premises the existence of any unsafe or unsanitary condition.
- F. The County may enter the Leased Premises at any time:
 1. To inspect same;
 2. To determine whether F.B.S. is complying with the provisions of this Agreement;
 3. To post notices;
 4. To make repairs or provide maintenance; and/or
 5. For any reason that County may, in its sole discretion, deem worthy.

IX.
NON-ASSIGNMENT

- A. F.B.S. 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.
- B. Any such transfer, assignment, abandonment or other disposition, without the prior written consent of County, or any assignment of F.B.S.'s rights hereunder by operation of law, is void and of no force and effect as against County.
- C. Subject to the above requirement that County's written consent first be obtained upon the assignment or transfer of rights under this Agreement by F.B.S., the party to which such rights are assigned or transferred shall be bound by the terms and provisions of this Agreement to the same extent as F.B.S., and the instrument of assignment or other written evidence of the transfer of rights under this Agreement shall include a provision to such effect.
- D. Notwithstanding anything contained herein to the contrary, an assignment, or transfer of rights under the terms of this Agreement by F.B.S. shall be subject to the terms of 45 CFR 74.134 regarding the use and disposition of any interest in the Leased Premises vested in F.B.S. under the terms of the Agreement.

X.
SERVICES PROVIDED BY COUNTY

- A. All utilities, other than telephone, shall be the responsibility of County.
- B. County will alone bear and will be solely responsible for any and all charges of any kind incurred as a result of the installation, commencement or use of any utility service, (except for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service), including, by way of description only and not by way of limitation, all deposits, installation or connection fees, charges for monthly service, charges for upgraded services or other miscellaneous fees, whether such expenses or charges are for electricity, water, sewage, gas, cable or other utility available to the public in the area where the Leased Premises are located.
- C. Notwithstanding anything contained herein to the contrary, the provisions of this Article X. apply equally to any alarm system or service installed by F.B.S. on the premise, including the provisions obligating F.B.S. to pay all charges of any kind as to the installation or use of any utility.
 - 1. For purposes of this agreement, an alarm system, including related sensors, or control panels, shall be considered and treated as a separate metering system and will be governed by the same provisions.

XI.
MAINTENANCE OF LEASED PREMISES

- A. F.B.S. shall not be responsible for the maintenance and repair of the building structure of the Leased Premises including the maintenance and repair of the foundation, load bearing walls, exterior walls, sub-flooring and roof.
 - 1. Said responsibility shall lie solely with County.
- B. F.B.S. shall not be responsible for the repair and maintenance of the Center's mechanical, utility and plumbing system (subject to the provision of Articles V and XIII).
 - 1. Said responsibility shall lie solely with County.
- C. The responsibility of F.B.S. does not extend to or include the repair and maintenance of any heating, ventilation and air-conditioning system or the outdoor lighting serving the Leased Premises.
 - 1. Said responsibility shall lie solely with County.

- D. The care, maintenance and up-keep, including the landscaping of any common or shared areas, such as breezeways, parking lots, sidewalks, multi-purpose rooms and storage areas shall not be the responsibility of F.B.S.
 - 1. Said responsibility shall lie solely with County.
- E. Should the Center or any part thereof, including the Leased Premises, become unfit because of its condition or state of repair, then in such event, this Agreement may be terminated at the option of F.B.S., by giving written notice to that effect to County in the manner and form provided for herein.
- F. County shall perform all maintenance, repair and painting of the interior of the Leased Premises.
 - 1. F.B.S., at the end of each day, shall leave the Leased Premises clean and free of clutter, in order that other renters may have free and unhindered use of the Leased Premises.
- G. F.B.S. shall repair and replace the indoor lighting and electrical fixtures, carpets, water fountains, flooring materials, cabinets, doors and locks, plumbing fixtures in the kitchen and restroom areas and all other items customarily included in and considered as part of F.B.S.'s responsibility, that are damaged as the result of F.B.S.'s misuse or negligence, as determined solely by County.
- H. F.B.S. will keep the Leased Premises in a neat and clean condition at all times.
- I. County shall furnish pest control, janitorial and custodial services for the Leased Premises and for their payment and supervision.
- J. F.B.S. shall be responsible for the security of the Leased Premises.
- K. Should the Leased Premises be destroyed or damaged to such an extent that the same shall be thereby rendered unfit, then, in such event, this Agreement may be terminated at the option of F.B.S., by giving written notice to that effect to County, and this Agreement shall be deemed terminated as of the end of the calendar month during which such notice is received by County.

XII. INSURANCE REQUIREMENTS

- A. F.B.S. shall secure, and at all times during the term of this Agreement (including any extension thereof), carry and maintain, at its own expense, liability insurance providing for fire and general liability coverage as to all of its personal property located at or near the Leased Premises, including any trade fixtures or non-building standard improvements made or installed by F.B.S.
 - 1. Such policy or policies of insurance shall specifically be endorsed to cover damage due to vandalism, mischief and sprinkler leakage.
- B. F.B.S. shall also secure, and at all times during the term of this agreement (including any extension thereof), carry and maintain, at its own expense, comprehensive general liability and property liability insurance with liability limits of not less than One Million Dollars (\$1,000,000.00) for injury to or death of one or more persons in any one occurrence, and Five Hundred Thousand Dollars (\$500,00.00) for damage to or destruction of, property in any one occurrence.
- C. F.B.S. shall secure and at all times during the term of this Agreement (including any extension thereof) carry and maintain, at its own expense, Workers' Compensation and Employers' Liability Insurance as prescribed by applicable law, including insurance covering liability under the Longshoremen's and Harbor Workers' Act and the Jones Act, if applicable.
- D. County shall be named as an additional insured, as its interest may appear, and the policies shall contain cross liability endorsements.
- E. F.B.S. may carry said insurance under a blanket policy.
- F. Insurance required hereunder shall be maintained by insurance rated A or better by "Best's Insurance Guide."

- G. No insurance policies required hereunder shall be cancelable or subject to reduction of coverage except after ten (10) days prior written notice to County.
- H. F.B.S. shall furnish County with certificates of all insurance required under this Agreement. If F.B.S. does not provide such certificates within thirty (30) days of obtaining possession of the Leased Premises, or if F.B.S. allows any insurance required hereunder to lapse, County may, at its option, take out and pay the premiums on the necessary insurance to comply with F.B.S.'s obligations. County is entitled to immediate reimbursement from F.B.S. for all amounts spent by it to procure and maintain such insurance.

XIII.

- A. Any notice required or permitted hereunder to be given, shall be given by registered or certified United States Mail, return receipt requested, postage prepaid, addressed to:

<u>To County:</u> Fort Bend County 301 Jackson, 7 th Floor Richmond, Texas 77469 Attn: County Judge	<u>To F.B.S.:</u> Fort Bend Seniors 1330 Band Road Rosenberg, Texas 77471 Attn: Manuela Arroyos Executive Director
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To Fort Bend County's Parks Department
 2725 FM 521 North
 Fresno, Texas 77545
 Attention: Mike Davis, Director
 Phone: (281-431-0131
 Fax: (281) 431-3079

XIV.

INDEMNIFICATION

- A. **F.B.S. EXPRESSLY AGREES TO INDEMNIFY AND HOLD COUNTY, ITS AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO HEREIN AS "COUNTY"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS AND RELATED EXPENSES IN ANY MANNER WHATSOEVER, ARISING OUT OF THE USE OF THE LEASED PREMISES AND ALL EVENTS AND/OR ACTIVITIES OF F.B.S., ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.**
- B. **F.B.S. WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF F.B.S.**
- C. **F.B.S. WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH F.B.S. MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO F.B.S.'S PERSONAL PROPERTY LOCATED AT OR NEAR THE LEASED PREMISES.**

XV.
COUNTY'S USAGE OF LEASED PREMISES

- A. F.B.S. expressly states that it understands that the Center is a county building, open to the public, and that at times this fact may impose a hardship on F.B.S.
- B. F.B.S. expressly states that it understands that there will be emergency related times when County or its designee shall commandeer the Leased Premises during the time period that F.B.S. would normally occupy the multi-use room and F.B.S. expressly agrees to accommodate such disruptions immediately and without notice. Such emergencies shall include, but not be limited to, weather-related emergencies, medical related emergencies, etc.
 - 1. County agrees that it will endeavor to inform F.B.S. as far in advance as possible of an event that would cause it to displace F.B.S. from the multi-use room.
 - 2. County agrees that it will endeavor to assist F.B.S. to make reasonable accommodations when it requires F.B.S. to vacate the Leased Premises. However, there may be occasions when F.B.S. will be required to cancel all activities at the Leased Premises in order to accommodate the County's needs during an emergency.
- C. F.B.S. expressly states that it understands that, notwithstanding that the primary purpose of the Leased Premises is to assist the elderly, no member of the public may be precluded from using the Leased Premises.

XVI.
MISCELLANEOUS

- A. All rights and remedies provided hereunder shall be cumulative and none shall exclude any other provision of this Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- B. A waiver by either party of a breach of this Agreement by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- C. F.B.S. hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- D. This Agreement shall supersede any and all prior agreements between the parties hereto relating to the Leased Premises 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.
- E. Except as otherwise provided for herein, all consents, rules, and regulations as provided for herein by the County shall only be those approved or adopted by the Commissioners Court of Fort Bend County, Texas.


XVII.
F.B.S. STATEMENTS

- A. F.B.S. warrants and represents unto County that:
 - 1. F.B.S. is a duly organized and existing legal entity, in good standing in the state of Texas;
 - 2. F.B.S. has full right and authority to execute, deliver and perform this Agreement;
 - 3. The person executing this Agreement on behalf of F.B.S. was authorized to do so; and
 - 4. Upon request of County, such person will deliver to County satisfactory evidence of his or her authority to execute this Agreement on behalf of F.B.S.

XVIII.
EXECUTION


This Occupancy 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 F.B.S.

FORT BEND COUNTY:

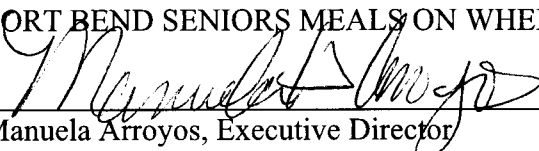

Robert E. Hebert, County Judge

September 22, 2009
Date

ATTEST:


Dianne Wilson, County Clerk

FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE


Manuela Arroyos, Executive Director

8/31/09
Date

I:/MER/Agreements/FB Seniors.Bud O'Sheiles.Renewal.08-09/2482

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

**OCCUPANCY AGREEMENT
FOR THE FORT BEND COUNTY BUD O'SHIELES COMMUNITY CENTER
RENEWAL**

THIS AGREEMENT 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 FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE, a Texas non-profit corporation, hereinafter referred to as "F.B.S."

W I T N E S S E T H:

WHEREAS, the County has constructed a Community Center in Precinct 1, located at 1330 Band Road, Rosenberg, Texas, known as the Fort Bend County Bud O'Shieles Community Center, hereinafter referred to as "Center", with a Community Development Block Grant from the United States Department of Housing and Urban Development;

WHEREAS, the purpose of the Center is to provide a wide range of services such as health, welfare, recreational, cultural, social and other similar community services to serve the needs of the general population of the neighborhood area;

WHEREAS, the County is authorized by law to provide for the needs of its indigent residents;

WHEREAS, F.B.S. is partially funded by the County;

WHEREAS, F.B.S. is a community based organization addressing the needs of the County's indigent elderly by administering and providing specialized programs that allow these distinguished citizens to maintain and improve their quality of life as well as their mental and physical health, with dignity. These specialized programs include recreational activities, nutritional programs, transportation, homebound services, social services, and information and referral services, all of which serve a valuable public purpose;

WHEREAS, it is in the public interest, and serves the general welfare of the community, for a portion of the Center, and its related facilities, to be utilized by F.B.S. for the purpose of providing and administering specialized programs for the County's indigent elderly;

WHEREAS, such portion of the Center, and its related facilities, are well suited for the purposes for which F.B.S. was established and would further facilitate the implementation of its specialized program of services and the delivery of such services to those persons served by the Center who would benefit thereby;

WHEREAS, the County is willing to furnish to F.B.S. and F.B.S. is willing to occupy, a portion of the Center for the exclusive purpose of implementing its specialized programs to the County's indigent elderly who reside in the area served by the Center, such use of the Center being in the public interest and a proper exercise of the authority of the County under law to provide for its indigent residents;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to both parties herein named, it is agreed as follows:

I.
F.B.S. USAGE OF THE LEASED PREMISES

- A. Subject to and upon the provisions hereinafter set forth, the County does, by these presents, grant unto F.B.S. from 8:00 a.m. to 4:30 p.m., Monday through Friday the right to use the three (3) offices, the receptionist counter and the crafts room. In addition, F.B.S. shall have access to the kitchen and the multi-use room to administer their lunch program.
1. Said designated areas, to be hereinafter called "the Leased Premises", are located in the Fort Bend Community Center, 1330 Band Road, Rosenberg, Texas.
- B. As consideration for this Occupancy Agreement, F.B.S. will pay to the County, without demand, at the office of the County Treasurer, Fort Bend County, Texas, an annual payment in the amount of one dollar (\$1.00).
1. The above indicated payment will be paid by F.B.S. to the County within thirty (30) days of occupancy.
- C. As additional compensation, F.B.S. agrees to:
1. Provide a competent individual whose primary responsibility shall be:
- a. To process requests for rent of the Community Center, or portions thereof;
- b. Show prospective renters the Community Center and its features;
- c. Maintain detailed records of inquiries and rentals of the Community Center.
2. Provide a competent individual who will:
- a. Collect and process deposit and rental fees on behalf of the County.
- 1) Said individual shall hold any such funds in trust on County's behalf and shall follow all procedures established by the Fort Bend County Auditor's department regarding said funds.
- 2) Said individual shall also, at F.B.S.'s sole expense, be bonded in an amount not less than five thousand dollars (\$5,000.00).
- D. F.B.S. may use, without additional cost, and subject to the provisions of this Agreement:
1. Common areas of the Center, including, but not limited to, Multi-Purpose Rooms and Conference Rooms and parking areas adjacent thereto; and
2. Any entrances, breezeways, driveways, docks, and openings contained in the Center for ingress and egress from said Center.
- E. F.B.S. recognizes that the Center is multi-functional in concept and design and that the successful realization of the purposes and objectives for which it was built and intended require that each and every party, in their use of any common, or shared area, shall endeavor to accommodate, the use being made thereof by the other, so long as it is reasonable.
- F. F.B.S. will make no use of any common or shared area in any manner or form that shall unreasonably interfere with the use being made of such area by any other party authorized to use the same, whether such use be authorized by law, rule, regulation or Agreement.
- G. Prior to its use of any multi-purpose, conference or meeting room in the Center, F.B.S. will consult with Fort Bend County's Parks Department Director, or designee for the purpose of scheduling such use and F.B.S. will abide by and respect all reasonable requests that may be made by Fort Bend County's Parks Department Director regarding the use by F.B.S. of such rooms or any other areas held in common or otherwise shared by those parties authorized to use the Center.
1. Fort Bend County's Parks Department Director shall consider *all* requests for use of all or portions of the Center, excluding the Leased Premises, with priority being given:
- a. First, to Fort Bend County;
- b. Second, to resident's of Fort Bend County; and
- c. Third, to F.B.S.

- H. Access to and the use of any parking areas adjacent to the premise by F.B.S. shall be shared with all other parties entitled to use the same.
 - 1. F.B.S. has no entitlement to reserved parking on the part of F.B.S. and that its access to and use of the parking areas shall be on a first come, first served basis.
 - 2. As used in throughout this Agreement, whenever the context otherwise requires, the term "F.B.S." includes F.B.S.'s guests, clients, patrons, invitees, permittees, licensees or any other persons, whether natural or corporate, holding under F.B.S., and F.B.S. will, to the extent practicable, advise such parties of their responsibilities regarding the use of any common shared areas.
- I. F.B.S. expressly authorizes County and County's designee access and use of the Leased Premises at all other times than those set forth in Section IA above.

II.
TERM & TERMINATION

- A. Both parties agree that the effective term of this Agreement shall be from **October 1, 2009**, ending at midnight on **September 30, 2010**.
- B. This Agreement may be renewed or extended for a one (1) year extension under the same terms and conditions, at the option of F.B.S., upon giving written notice to County in the manner and form provided for herein.
 - 1. Said notice of renewal must be received by County no later than sixty (60) days prior to the date such term expires.
 - 2. In like manner, the term of the Agreement may be extended without limit for successive and additional periods of one (1) year each.
- C. This Agreement may be terminated without cause prior to the expiration of the term herein at the option of either County or F.B.S. upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
 - 1. The termination of the Agreement will be effective upon the last day of the month in which the expiration of the thirty (30) day period occurs.
- D. Upon the expiration or termination of the Term, for whatever cause, F.B.S. shall immediately, quietly and peaceably, surrender to County possession of the Leased Premises in "broom clean" and good order, condition and repair, except only for ordinary wear and tear.
 - 1. If F.B.S. fails to surrender possession as herein required, County may initiate any and all legal action as County may elect to dispossess F.B.S. and all of its property, and all persons or firms claiming by, through or under F.B.S. and all of their property, from the Leased Premises, and may remove from the Leased Premises and store (without any liability for loss, theft, damage or destruction thereto) any such property at F.B.S.'s sole cost and expense.
 - 2. If F.B.S. fails to surrender possession of the Leased Premises in the condition herein required, County may, at F.B.S.'s sole expense, restore the Leased Premises to such condition.

III.
INSPECTION

- A. F.B.S. agrees that it:
 - 1. Has made its own inspection of the Leased Premises;
 - 2. Accepts the Leased Premises in the condition in which it exists on the date of this Agreement;
 - 3. Has made its own determination as to the suitability of the Leased Premises for the uses for which F.B.S. may put the same;
 - 4. Has received and is receiving from the County hereunder absolutely no warranty or representation as to the condition of, or suitability of the Leased Premises.

IV.
EQUIPMENT, FURNISHING AND REPAIRS

- A. F.B.S. shall be responsible for the equipping and the furnishing of the Leased Premises in a manner suitable for the uses which it will be put, including the installation of any personal property, trade fixtures or other special equipment or the making of any non-building standard improvement, as well as the cost thereof.
- B. Without limitation, and as part of the consideration for the grant by the County of its right to use the premise, F.B.S. will, at its own expense, separately secure and contract for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service, which may be necessary to F.B.S. in its enjoyment and use of the Leased Premises.
- C. In the event the installation of any non-building standard improvement or trade fixture is contemplated, F.B.S. shall consult with Commissioners' Court and receive written permission prior to commencing any work and shall comply with any special instructions which Commissioners' Court, or its designee, may have concerning the installation.
 - 1. All work shall be performed in a manner that minimizes the disruption to any other user of the Center's facilities and which will result in the least amount of damage or alteration to the structure.
 - 2. Subject to the terms and provisions of this subsection, to the extent the existing wiring, plumbing or other systems are adequate for its needs, F.B.S. may use the same.
 - a. Should any such systems be inadequate for F.B.S.'s needs, and it becomes necessary for such systems to be upgraded or modified, F.B.S. may do so upon the prior written consent of Commissioners' Court.
 - b. Consent shall include the right of F.B.S. to make alterations for the above described purposes in those areas of the Center outside the Leased Premises so long as they are done without unnecessary disruption to the operation of the Center and with reasonable dispatch.
 - c. F.B.S. shall alone bear the cost of any alteration or up-grading of existing systems and shall promptly restore the affected areas to an architecturally whole condition, or in the alternative, County may restore the same and F.B.S. shall reimburse the County for the reasonable expense thereof.
 - 3. F.B.S. will secure the services of reputable contractors in the conduct of any work performed and will be liable for any damages occurring to the Center, including the Leased Premises, caused by the acts of its contractors or agents.
- D. Notwithstanding anything contained herein to the contrary, any and all repairs, modifications and/or replacements, of any kind, to the Leased Premises *must* follow and comply with all County guidelines and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- E. Any and all modifications to the appearance of the Leased Premises must meet County standards and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- F. County shall be responsible for all modifications or alterations necessary to comply with the Americans with Disabilities Act and/or the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations and other requirements, now or hereafter in force, of all federal, state and local governmental bodies and agencies which are applicable to the Leased Premises and common areas of the Center;
- G. F.B.S. will not permit any mechanic's lien, or liens, or any other type of lien to be placed upon the Center and/or Leased Premises or upon improvements on the Center and/or Leased Premises.
 - 1. If a mechanic's lien or any other type of lien is filed on the Center and/or Leased Premises or on improvements to the Center and/or Leased Premises, F.B.S. will

- promptly pay the lien.
2. If default in payment of the lien continues for thirty (30) days after written notice from County to F.B.S., County may, at its option, pay the lien or any portion of it without inquiry as to its validity.
 3. Any amounts paid by County to remove a mechanic's lien or any other type of lien caused to be filed against the Center and/or Leased Premises or against improvements on the Center and/or Leased Premises by F.B.S., including expenses and interest, shall be due from F.B.S. to County and shall be repaid to County immediately on rendition of written notice.
- H. A lien will be filed under Chapter 9 of the Business and Commerce Code to pledge equipment listed as security for payment of this Agreement.

V.
USAGE BY F.B.S.

- A. F.B.S. shall use the Leased Premises for the purpose of operating its programs and for no other activity or event which is not sponsored by F.B.S. or not otherwise permitted or sanctioned under its articles of incorporation, charter, by-laws, policies or which is not otherwise provided for under the laws, rules or regulations governing recipients of grants or financial assistance.
- B. F.B.S. will at all times comply with any and all orders, regulations and policies, and amendments thereto, issued by the County for the purpose of maintaining an orderly and compatible use of the Center by all parties involved.
- C. Any F.B.S. event or activity permitted under the terms of this Agreement to be conducted upon the Leased Premises shall be supervised by F.B.S.'s personnel or designated representatives who shall be properly trained, adequate in number and who shall remain on the Leased Premises during the course of the event or activity.

VI.
COMPLIANCE WITH FEDERAL LAW AND GRANT REQUIREMENTS

- A. F.B.S. shall comply with, and cause all who take advantage of its programs and offerings at the Center 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."
 1. In addition, no person shall be excluded from participation or denied the benefits of F.B.S.'s services on the basis of creed.
 2. F.B.S. will publicize this policy.
- B. F.B.S. shall comply with, and cause all who take advantage of its programs and offerings at the Center to comply with, all of the Community Development Block Grant Program Requirements.

VII.
REMOVAL OF F.B.S. PROPERTY

- A. Upon the expiration of the initial term of this Agreement, or upon the expiration of any extended term, should such term have been extended, whether once or successively, all personal property, trade fixtures or non-building standard improvements placed on the Leased Premises by F.B.S. shall be removed by F.B.S. upon the request of County.
- B. Should the installation of any such personal property, trade fixture or non-building standard improvement alter the Leased Premises such that its removal will damage the premise, F.B.S. shall repair and restore the same to an architecturally whole condition such that it may again be used for the purposes for which it was originally constructed.

VIII.
OPERATION OF THE LEASED PREMISES

- A. F.B.S. will promptly and fully comply with all valid laws, ordinances, regulations or other requirements, now or hereafter in force, of all federal, state and/or local governmental bodies and agencies which have jurisdiction of any nature over the Leased Premises or F.B.S.'s use or occupancy thereof.
- B. To the extent applicable and allowed by law, F.B.S. will participate in the record keeping system and/or requirements of the Center required by the Community Development Block Grant Program.
- C. F.B.S. will not use or allow the Leased Premises to be used for any unlawful purposes; nor will F.B.S. cause, maintain or permit any nuisance in or about the Leased Premises, or commit or suffer to be committed any waste of or upon the Leased Premises.
- D. At all times F.B.S. will operate the Center and its programs at the Center in a manner that portrays the County in a positive light and in a manner that upholds the lofty ideals and standards of the County, as reasonably determined solely by County.
 - 1. At no time will F.B.S. operate the Center or its programs at the Center in a manner that would bring harm or disrepute to County, as reasonably determined solely by County, nor will F.B.S. allow and/or tolerate any such activity.
 - 2. Breach of this subsection C. shall be grounds for immediate termination of this Agreement.
- E. F.B.S. will not, in its use of and operations on and within the Leased Premises:
 - 1. Bring or allow to be brought or kept upon the Leased Premises illegal weapons, illegal substances and/or alcoholic beverages of any kind; or
 - 2. Permit upon the Leased Premises the existence of any unsafe or unsanitary condition.
- F. The County may enter the Leased Premises at any time:
 - 1. To inspect same;
 - 2. To determine whether F.B.S. is complying with the provisions of this Agreement;
 - 3. To post notices;
 - 4. To make repairs or provide maintenance; and/or
 - 5. For any reason that County may, in its sole discretion, deem worthy.

IX.
NON-ASSIGNMENT

- A. F.B.S. 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.
- B. Any such transfer, assignment, abandonment or other disposition, without the prior written consent of County, or any assignment of F.B.S.'s rights hereunder by operation of law, is void and of no force and effect as against County.
- C. Subject to the above requirement that County's written consent first be obtained upon the assignment or transfer of rights under this Agreement by F.B.S., the party to which such rights are assigned or transferred shall be bound by the terms and provisions of this Agreement to the same extent as F.B.S., and the instrument of assignment or other written evidence of the transfer of rights under this Agreement shall include a provision to such effect.
- D. Notwithstanding anything contained herein to the contrary, an assignment, or transfer of rights under the terms of this Agreement by F.B.S. shall be subject to the terms of 45 CFR 74.134 regarding the use and disposition of any interest in the Leased Premises vested in F.B.S. under the terms of the Agreement.

X.
SERVICE PROVIDED BY COUNTY

- A. County will operate and maintain the Fort Bend Community Center in accordance with all Community Development Block Grant Program Requirements.
- B. All utilities, other than telephone, shall be the responsibility of County.
- C. County will alone bear and will be solely responsible for any and all charges of any kind incurred as a result of the installation, commencement or use of any utility service, (except for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service), including, by way of description only and not by way of limitation, all deposits, installation or connection fees, charges for monthly service, charges for upgraded services or other miscellaneous fees, whether such expenses or charges are for electricity, water, sewage, gas, cable or other utility available to the public in the area where the Leased Premises are located.
- D. Notwithstanding anything contained herein to the contrary, the provisions of this Article X. apply equally to any alarm system or service installed by F.B.S. on the premise, including the provisions obligating F.B.S. to pay all charges of any kind as to the installation or use of any utility.
 - 1. For purposes of this agreement, an alarm system, including related sensors, or control panels, shall be considered and treated as a separate metering system and will be governed by the same provisions.

XI.
MAINTENANCE OF LEASED PREMISES

- A. F.B.S. shall not be responsible for the maintenance and repair of the building structure of the Leased Premises including the maintenance and repair of the foundation, load bearing walls, exterior walls, sub-flooring and roof.
 - 1. Said responsibility shall lie solely with County.
- B. F.B.S. shall not be responsible for the repair and maintenance of the Center's mechanical, utility and plumbing system (subject to the provision of Articles V and XI).
 - 1. Said responsibility shall lie solely with County.
- C. The responsibility of F.B.S. does not extend to or include the repair and maintenance of any heating, ventilation and air-conditioning system or the outdoor lighting serving the Leased Premises.
 - 1. Said responsibility shall lie solely with County.
- D. The care, maintenance and up-keep, including the landscaping of any common or shared areas, such as breezeways, parking lots, sidewalks, multi-purpose rooms and storage areas shall not be the responsibility of F.B.S.
 - 1. Said responsibility shall lie solely with County.
- E. Should the Center or any part thereof, including the Leased Premises, become unfit because of its condition or state of repair, then in such event, this Agreement may be terminated at the option of F.B.S., by giving written notice to that effect to County in the manner and form provided for herein.
- F. County shall perform all maintenance, repair and painting of the interior of the Leased Premises.
 - 1. F.B.S., at the end of each day, shall leave the Leased Premises clean and free of clutter, in order that other renters may have free and unhindered use of the Leased Premises.
- G. F.B.S. shall repair and replace the indoor lighting and electrical fixtures, carpets, water fountains, flooring materials, cabinets, doors and locks, plumbing fixtures in the kitchen and restroom areas and all other items customarily included in and considered as part of F.B.S.'s responsibility, that are damaged as the result of F.B.S.'s misuse or negligence, as determined solely by County.

- H. F.B.S. will keep the Leased Premises in a neat and clean condition at all times.
- I. County shall furnish pest control, janitorial and custodial services for the Leased Premises and for their payment and supervision.
- J. F.B.S. shall be responsible for the security of the Leased Premises.
- K. Should the Leased Premises be destroyed or damaged to such an extent that the same shall be thereby rendered unfit, then, in such event, this Agreement may be terminated at the option of F.B.S., by giving written notice to that effect to County, and this Agreement shall be deemed terminated as of the end of the calendar month during which such notice is received by County.

XII. INSURANCE REQUIREMENTS

- A. F.B.S. shall secure, and at all times during the term of this Agreement (including any extension thereof), carry and maintain, at its own expense, liability insurance providing for fire and general liability coverage as to all of its personal property located at or near the Leased Premises, including any trade fixtures or non-building standard improvements made or installed by F.B.S.
 - 1. Such policy or policies of insurance shall specifically be endorsed to cover damage due to vandalism, mischief and sprinkler leakage.
- B. F.B.S. shall also secure, and at all times during the term of this agreement (including any extension thereof), carry and maintain, at its own expense, comprehensive general liability and property liability insurance with liability limits of not less than One Million Dollars (\$1,000,000.00) for injury to or death of one or more persons in any one occurrence, and Five Hundred Thousand Dollars (\$500,00.00) for damage to or destruction of, property in any one occurrence.
- C. F.B.S. shall secure and at all times during the term of this Agreement (including any extension thereof) carry and maintain, at its own expense, Workers' Compensation and Employers' Liability Insurance as prescribed by applicable law, including insurance covering liability under the Longshoremen's and Harbor Workers' Act and the Jones Act, if applicable.
- D. County shall be named as an additional insured, as its interest may appear, and the policies shall contain cross liability endorsements.
- E. F.B.S. may carry said insurance under a blanket policy.
- F. Insurance required hereunder shall be maintained by insurance rated A or better by "Best's Insurance Guide."
- G. No insurance policies required hereunder shall be cancelable or subject to reduction of coverage except after ten (10) days prior written notice to County.
- H. F.B.S. shall furnish County with certificates of all insurance required under this Agreement. If F.B.S. does not provide such certificates within thirty (30) days of obtaining possession of the Leased Premises, or if F.B.S. allows any insurance required hereunder to lapse, County may, at its option, take out and pay the premiums on the necessary insurance to comply with F.B.S.'s obligations. County is entitled to immediate reimbursement from F.B.S. for all amounts spent by it to procure and maintain such insurance.

XIII. NOTICE

- A. Any notice required or permitted hereunder to be given, shall be given by registered or certified United States Mail, return receipt requested, postage prepaid, addressed to:

To County:
Fort Bend County
301 Jackson, 7th Floor
Richmond, Texas 77469
Attn: Robert E. Hebert,
County Judge
Phone: (281) 341-8608
Fax: (281) 341-8609

To F.B.S.:
Fort Bend Senior Citizen's, Inc.
1330 Band Road
Rosenberg, Texas 77471
Attn: Manuela Tobias,
Executive Director

To Fort Bend County's Parks Department
P.O. Box 509
Fresno, Texas 77545
Attention: Mike Davis, Director
Phone: (281) 838-9419
Fax: (281) 416-0682

XIV.
INDEMNIFICATION

- A. **F.B.S. EXPRESSLY AGREES TO INDEMNIFY AND HOLD COUNTY, ITS AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO HEREIN AS "COUNTY"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS AND RELATED EXPENSES IN ANY MANNER WHATSOEVER, ARISING OUT OF THE USE OF THE LEASED PREMISES AND ALL EVENTS AND/OR ACTIVITIES OF F.B.S., ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.**
- B. **F.B.S. WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF F.B.S.**
- C. **F.B.S. WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH F.B.S. MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO F.B.S.'S PERSONAL PROPERTY LOCATED AT OR NEAR THE LEASED PREMISES.**

XV.
COUNTY'S USAGE OF LEASED PREMISES

- A. F.B.S. expressly states that it understands that the Center is a County building, open to the public, and that at times this fact may impose a hardship on F.B.S.
- B. F.B.S. expressly states that it understands that there will be emergency related times when County or its designee shall commandeer the Leased Premises during the time period that F.B.S. would normally occupy the multi-use room and F.B.S. expressly agrees to accommodate such disruptions immediately and without notice. Such emergencies shall include, but not be limited to, weather-related emergencies, medical related emergencies, etc.
1. County agrees that it will endeavor to inform F.B.S. as far in advance as possible of an event that would cause it to displace F.B.S. from the multi-use room.
 2. County agrees that it will endeavor to assist F.B.S. to make reasonable accommodations when it requires F.B.S. to vacate the Leased Premises. However, there may be occasions when F.B.S. will be required to cancel all

- activities at the Leased Premises in order to accommodate the County's needs during an emergency.
- C. F.B.S. expressly states that it understands that, notwithstanding that the primary purpose of the Leased Premises is to assist the elderly, no member of the public may be precluded from using the Leased Premises.

XVI.
MISCELLANEOUS

- A. All rights and remedies provided hereunder shall be cumulative and none shall exclude any other provision of this Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- B. A waiver by either party of a breach of this Agreement by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- C. F.B.S. hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- D. This Agreement shall supersede any and all prior agreements between the parties hereto relating to the Leased Premises 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.

XVII.
F.B.S. STATEMENTS


- A. F.B.S. warrants and represents unto County that:
1. F.B.S. is a duly organized and existing legal entity, in good standing in the state of Texas;
 2. F.B.S. has full right and authority to execute, deliver and perform this Agreement;
 3. The person executing this Agreement on behalf of F.B.S. was authorized to do so; and
 4. Upon request of County, such person will deliver to County satisfactory evidence of his or her authority to execute this Agreement on behalf of F.B.S.
 5. Except as otherwise provided for herein, all consents, rules, and regulations as provided for herein by the County shall only be those approved or adopted by the Commissioners Court of Fort Bend County, Texas.

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XVIII.
EXECUTION

This Occupancy 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 F.B.S.

FORT BEND COUNTY:

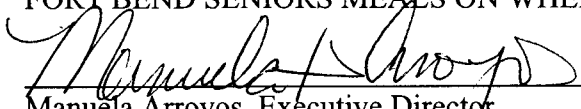

Robert E. Hebert, County Judge

September 22, 2009
Date

ATTEST:


Dianne Wilson, County Clerk

FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE


Manuela Arroyos, Executive Director

8/31/09
Date

I:/MTR/Agreements/FB Seniors.Mustang Renewal.08-10/2482

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

**OCCUPANCY AGREEMENT
FORT BEND COUNTY FACILITY – MUSTANG CENTER
RENEWAL**

THIS AGREEMENT 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 FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE, a Texas non-profit corporation, hereinafter referred to as “F.B.S.”

WITNESSETH:

WHEREAS, F.B.S. is a community based organization addressing the needs of the County’s indigent elderly by administering and providing specialized programs that allow these distinguished citizens to maintain and improve their quality of life as well as their mental and physical health, with dignity. These specialized programs include recreational activities, nutritional programs, transportation, homebound services, social services, and information and referral services, all of which serve a valuable public purpose;

WHEREAS, Fort Bend County owns a facility located at 4521 FM 521, Fresno, Texas, known referred to as “the Mustang Center;”

WHEREAS, it is in the public interest, and serves the general welfare of the community, for a portion of the Center, and its related facilities, to be utilized by F.B.S. for the purpose of providing and administering specialized programs for the County’s indigent elderly;

WHEREAS, such portion of the Center, and its related facilities, are well suited for the purposes for which F.B.S. was established and would further facilitate the implementation of its specialized program of services and the delivery of such services to those persons served by the Center who would benefit thereby;

WHEREAS, the County is willing to furnish to F.B.S. and F.B.S. is willing to occupy, a portion of the Center for the exclusive purpose of implementing its specialized programs to the County’s indigent elderly who reside in the area served by the Center, such use of the Center being in the public interest and a proper exercise of the authority of the County under law to provide for its indigent residents;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to both parties herein named, it is agreed as follows:

**I.
F.B.S. USAGE OF THE LEASED PREMISES**

- A. Subject to and upon the provisions hereinafter set forth, the County does, by these presents, grant unto F.B.S. from 8:00 a.m. to 2:00 p.m., Monday through Friday the right to use the Mustang Center.
- B. Said designated areas, to be hereinafter referred to as “the Leased Premises,” are located in the Fort Bend Mustang Center, 4521 FM 521, Fresno, Texas.
- C. As consideration for this Occupancy Agreement, F.B.S. will pay to the County, without demand, at the office of the County Treasurer, Fort Bend County, Texas, an annual payment in the amount of one dollar (\$1.00).
 - 1. The above indicated payment will be paid by F.B.S. to the County within thirty

(30) days of occupancy.

- D. F.B.S. will make no use of any common or shared area in any manner or form that shall unreasonably interfere with the use being made of such area by any other party authorized to use the same, whether such use be authorized by law, rule, regulation or agreement.
- E. Prior to its use of any multi-purpose, conference or meeting room in the Center, F.B.S. will consult with Fort Bend County's Parks Department Director, or their designee for the purpose of scheduling such use and F.B.S. will abide by and respect all reasonable requests that may be made by Fort Bend County's Parks Department Director regarding the use by F.B.S. of such rooms or any other areas held in common or otherwise shared by those parties authorized to use the Center.
 - 1. Fort Bend County's Parks Department Director shall consider *all* requests for use of all or portions of the Center, excluding the Leased Premises, with priority being given:
 - a. First, to Fort Bend County;
 - b. Second, to resident's of Fort Bend County; and
 - c. Third, to F.B.S.
- F. Access to and the use of any parking areas adjacent to the premise by F.B.S. shall be shared with all other parties entitled to use the same.
 - 1. F.B.S. has no entitlement to reserved parking on the part of F.B.S. and that its access to and use of the parking areas shall be on a first come, first served basis.
 - 2. As used in throughout this Agreement, whenever the context otherwise requires, the term "F.B.S." includes F.B.S.'s guests, clients, patrons, invitees, permittees, licensees or any other persons, whether natural or corporate, holding under F.B.S., and F.B.S. will, to the extent practicable, advise such parties of their responsibilities regarding the use of any common shared areas.
- G. F.B.S. expressly authorizes County and County's designee access and use of the Leased Premises at all other times than those set forth in Section IA above.

II. TERM & TERMINATION

- A. Both parties agree that the effective term of this Agreement will be **October 1, 2009** ending at midnight, on **September 30, 2010**.
- B. This Agreement may be renewed or extended for a one (1) year extension under similar terms and conditions, at the request of F.B.S., upon giving written notice to County in the manner and form provided for herein.
 - 1. Said notice of renewal must be received by County no later than sixty (60) days prior to the date such term expires.
 - 2. In like manner, the term of the Agreement may be extended without limit for successive and additional periods of one (1) year each.
- C. This Agreement may be terminated without cause prior to the expiration of the term herein at the option of either County or F.B.S. upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
 - 1. The termination of the Agreement will be effective upon the last day of the month in which the expiration of the thirty (30) day period occurs.
- D. Upon the expiration or termination of the Term, for whatever cause, F.B.S. shall immediately, quietly and peaceably, surrender to County possession of the Leased Premises in "broom clean" and good order, condition and repair, except only for ordinary wear and tear.
 - 1. If F.B.S. fails to surrender possession as herein required, County may initiate any and all legal action as County may elect to dispossess F.B.S. and all of its property, and all persons or firms claiming by, through or under F.B.S. and all of

- their property, from the Leased Premises, and may remove from the Leased Premises and store (without any liability for loss, theft, damage or destruction thereto) any such property at F.B.S.'s sole cost and expense.
2. If F.B.S. fails to surrender possession of the Leased Premises in the condition herein required, County may, at F.B.S.'s sole expense, restore the Leased Premises to such condition.

III. INSPECTION

- A. F.B.S. agrees that it:
 1. Has made its own inspection of the Leased Premises;
 2. Accepts the Leased Premises in the condition in which it exists on the date of this Agreement;
 3. Has made its own determination as to the suitability of the Leased Premises for the uses for which F.B.S. may put the same;
 4. Has received and is receiving from the County hereunder absolutely no warranty or representation as to the condition of, or suitability of the Leased Premises.

IV. EQUIPMENT, FURNISHING AND REPAIRS

- A. F.B.S. shall be responsible for the equipping and the furnishing of the Leased Premises in a manner suitable for the uses which it will be put, including the installation of any personal property, trade fixtures or other special equipment or the making of any non-building standard improvement, as well as the cost thereof.
- B. Without limitation, and as part of the consideration for the grant by the County of its right to use the premise, F.B.S. will, at its own expense, separately secure and contract for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service, which may be necessary to F.B.S. in its enjoyment and use of the Leased Premises.
- C. In the event the installation of any non-building standard improvement or trade fixture is contemplated, F.B.S. shall consult with Commissioners' Court and receive written permission prior to commencing any work and shall comply with any special instructions which Commissioners' Court, or its designee, may have concerning the installation.
 1. All work shall be performed in a manner that minimizes the disruption to any other user of the Center's facilities and which will result in the least amount of damage or alteration to the structure.
 2. Subject to the terms and provisions of this subsection, to the extent the existing wiring, plumbing or other systems are adequate for its needs, F.B.S. may use the same.
 - a. Should any such systems be inadequate for F.B.S.'s needs, and it becomes necessary for such systems to be upgraded or modified, F.B.S. may do so upon the prior written consent of Commissioners' Court.
 - b. Consent shall include the right of F.B.S. to make alterations for the above described purposes in those areas of the Center outside the Leased Premises so long as they are done without unnecessary disruption to the operation of the Center and with reasonable dispatch.
 - c. F.B.S. shall alone bear the cost of any alteration or up-grading of existing systems and shall promptly restore the affected areas to an architecturally whole condition, or in the alternative, County may restore the same and F.B.S. shall reimburse the County for the reasonable expense thereof.
 3. F.B.S. will secure the services of reputable contractors in the conduct of any work performed and will be liable for any damages occurring to the Center, including the Leased Premises, caused by the acts of its contractors or agents.

- D. Notwithstanding anything contained herein to the contrary, any and all repairs, modifications and/or replacements, of any kind, to the Leased Premises *must* follow and comply with all County guidelines and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- E. Any and all modifications to the appearance of the Leased Premises must meet County standards and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- F. County shall be responsible for all modifications or alterations necessary to comply with the Americans with Disabilities Act and/or the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations and other requirements, now or hereafter in force, of all federal, state and local governmental bodies and agencies which are applicable to the Leased Premises and common areas of the Center;
- G. F.B.S. will not permit any mechanic's lien, or liens, or any other type of lien to be placed upon the Center and/or Leased Premises or upon improvements on the Center and/or Leased Premises.
 - 1. If a mechanic's lien or any other type of lien is filed on the Center and/or Leased Premises or on improvements to the Center and/or Leased Premises, F.B.S. will promptly pay the lien.
 - 2. If default in payment of the lien continues for thirty (30) days after written notice from County to F.B.S., County may, at its option, pay the lien or any portion of it without inquiry as to its validity.
 - 3. Any amounts paid by County to remove a mechanic's lien or any other type of lien caused to be filed against the Center and/or Leased Premises or against improvements on the Center and/or Leased Premises by F.B.S., including expenses and interest, shall be due from F.B.S. to County and shall be repaid to County immediately on rendition of written notice.
- H. A lien will be filed under Chapter 9 of the Business and Commerce Code to pledge equipment listed as security for payment of this Agreement.

V.
USAGE BY F.B.S.

- A. F.B.S. shall use the Leased Premises for the purpose of operating its programs and for no other activity or event which is not sponsored by F.B.S. or not otherwise permitted or sanctioned under its articles of incorporation, charter, by-laws, policies or which is not otherwise provided for under the laws, rules or regulations governing recipients of grants or financial assistance.
- B. F.B.S. will at all times comply with any and all orders, regulations and policies, and amendments thereto, issued by the County for the purpose of maintaining an orderly and compatible use of the Center by all parties involved.
- C. Any F.B.S. event or activity permitted under the terms of this Agreement to be conducted upon the Leased Premises shall be supervised by F.B.S.'s personnel or designated representatives who shall be properly trained, adequate in number and who shall remain on the Leased Premises during the course of the event or activity.

VI.
COMPLIANCE WITH FEDERAL LAW

F.B.S. shall comply with, and cause all who take advantage of its programs and offerings at the Center 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."

1. In addition, no person shall be excluded from participation or denied the benefits of F.B.S.'s services on the basis of creed.
2. F.B.S. will publicize this policy.

VII.
REMOVAL OF F.B.S. PROPERTY

- A. Upon the expiration of the initial term of this Agreement, or upon the expiration of any extended term, should such term have been extended, whether once or successively, all personal property, trade fixtures or non-building standard improvements placed on the Leased Premises by F.B.S. shall be removed by F.B.S. upon the request of County.
- B. Should the installation of any such personal property, trade fixture or non-building standard improvement alter the Leased Premises such that its removal will damage the premise, F.B.S. shall repair and restore the same to an architecturally whole condition such that it may again be used for the purposes for which it was originally constructed.

VIII.
OPERATION OF THE LEASED PREMISES

- A. F.B.S. will promptly and fully comply with all valid laws, ordinances, regulations or other requirements, now or hereafter in force, of all federal, state and/or local governmental bodies and agencies which have jurisdiction of any nature over the Leased Premises or F.B.S.'s use or occupancy thereof.
- B. To the extent applicable and allowed by law, F.B.S. will participate in the record keeping system and/or requirements of the Center required by Fort Bend County.
- C. F.B.S. will not use or allow the Leased Premises to be used for any unlawful purposes; nor will F.B.S. cause, maintain or permit any nuisance in or about the Leased Premises, or commit or suffer to be committed any waste of or upon the Leased Premises.
- D. At all times F.B.S. will operate the Center and its programs at the Center in a manner that portrays the County in a positive light and in a manner that upholds the lofty ideals and standards of the County, as reasonably determined solely by County.
 1. At no time will F.B.S. operate the Center or its programs at the Center in a manner that would bring harm or disrepute to County, as reasonably determined solely by County, nor will F.B.S. allow and/or tolerate any such activity.
 2. Breach of this subsection C. shall be grounds for immediate termination of this Agreement.
- E. F.B.S. will not, in its use of and operations on and within the Leased Premises:
 1. Bring or allow to be brought or kept upon the Leased Premises illegal weapons, illegal substances and/or alcoholic beverages of any kind; or
 2. Permit upon the Leased Premises the existence of any unsafe or unsanitary condition.
- F. The County may enter the Leased Premises at any time:
 1. To inspect same;
 2. To determine whether F.B.S. is complying with the provisions of this Agreement;
 3. To post notices;
 4. To make repairs or provide maintenance; and/or
 5. For any reason that County may, in its sole discretion, deem worthy.

XI.
NON-ASSIGNMENT

- A. F.B.S. 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.

- B. Any such transfer, assignment, abandonment or other disposition, without the prior written consent of County, or any assignment of F.B.S.'s rights hereunder by operation of law, is void and of no force and effect as against County.
- C. Subject to the above requirement that County's written consent first be obtained upon the assignment or transfer of rights under this Agreement by F.B.S., the party to which such rights are assigned or transferred shall be bound by the terms and provisions of this Agreement to the same extent as F.B.S., and the instrument of assignment or other written evidence of the transfer of rights under this Agreement shall include a provision to such effect.
- D. Notwithstanding anything contained herein to the contrary, an assignment, or transfer of rights under the terms of this Agreement by F.B.S. shall be subject to the terms of 45 CFR 74.134 regarding the use and disposition of any interest in the Leased Premises vested in F.B.S. under the terms of the Agreement.

X.

SERVICES PROVIDED BY COUNTY

- A. All utilities, other than telephone, shall be the responsibility of County.
- B. County will alone bear and will be solely responsible for any and all charges of any kind incurred as a result of the installation, commencement or use of any utility service, (except for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service), including, by way of description only and not by way of limitation, all deposits, installation or connection fees, charges for monthly service, charges for upgraded services or other miscellaneous fees, whether such expenses or charges are for electricity, water, sewage, gas, cable or other utility available to the public in the area where the Leased Premises are located.
- C. Notwithstanding anything contained herein to the contrary, the provisions of this Article X. apply equally to any alarm system or service installed by F.B.S. on the premise, including the provisions obligating F.B.S. to pay all charges of any kind as to the installation or use of any utility.
 - 1. For purposes of this agreement, an alarm system, including related sensors, or control panels, shall be considered and treated as a separate metering system and will be governed by the same provisions.

XI.

MAINTENANCE OF LEASED PREMISES

- A. F.B.S. shall not be responsible for the maintenance and repair of the building structure of the Leased Premises including the maintenance and repair of the foundation, load bearing walls, exterior walls, sub-flooring and roof.
 - 1. Said responsibility shall lie solely with County.
- B. F.B.S. shall not be responsible for the repair and maintenance of the Center's mechanical, utility and plumbing system (subject to the provision of Articles V and XI).
 - 1. Said responsibility shall lie solely with County.
- C. The responsibility of F.B.S. does not extend to or include the repair and maintenance of any heating, ventilation and air-conditioning system or the outdoor lighting serving the Leased Premises.
 - 1. Said responsibility shall lie solely with County.
- D. The care, maintenance and up-keep, including the landscaping of any common or shared areas, such as breezeways, parking lots, sidewalks, multi-purpose rooms and storage areas shall not be the responsibility of F.B.S.
 - 1. Said responsibility shall lie solely with County.
- E. Should the Center or any part thereof, including the Leased Premises, become unfit because of its condition or state of repair, then in such event, this Agreement may be

terminated at the option of F.B.S., by giving written notice to that effect to County in the manner and form provided for herein.

- F. County shall perform all maintenance, repair and painting of the interior of the Leased Premises.
 - 1. F.B.S., at the end of each day, shall leave the Leased Premises clean and free of clutter, in order that other renters may have free and unhindered use of the Leased Premises.
- G. F.B.S. shall repair and replace the indoor lighting and electrical fixtures, carpets, water fountains, flooring materials, cabinets, doors and locks, plumbing fixtures in the kitchen and restroom areas and all other items customarily included in and considered as part of F.B.S.'s responsibility, that are damaged as the result of F.B.S.'s misuse or negligence, as determined solely by County.
- H. F.B.S. will keep the Leased Premises in a neat and clean condition at all times.
- I. County shall furnish pest control, janitorial and custodial services for the Leased Premises and for their payment and supervision.
- J. F.B.S. shall be responsible for the security of the Leased Premises.
Should the Leased Premises be destroyed or damaged to such an extent that the same shall be thereby rendered unfit, then, in such event, this Agreement may be terminated at the option of F.B.S., by giving written notice to that effect to County, and this Agreement shall be deemed terminated as of the end of the calendar month during which such notice is received by County.

XII. INSURANCE REQUIREMENTS

- A. F.B.S. shall secure, and at all times during the term of this Agreement (including any extension thereof), carry and maintain, at its own expense, liability insurance providing for fire and general liability coverage as to all of its personal property located at or near the Leased Premises, including any trade fixtures or non-building standard improvements made or installed by F.B.S.
 - 1. Such policy or policies of insurance shall specifically be endorsed to cover damage due to vandalism, mischief and sprinkler leakage.
- B. F.B.S. shall also secure, and at all times during the term of this agreement (including any extension thereof), carry and maintain, at its own expense, comprehensive general liability and property liability insurance with liability limits of not less than One Million Dollars (\$1,000,000.00) for injury to or death of one or more persons in any one occurrence, and Five Hundred Thousand Dollars (\$500,00.00) for damage to or destruction of, property in any one occurrence.
- C. F.B.S. shall secure and at all times during the term of this Agreement (including any extension thereof) carry and maintain, at its own expense, Workers' Compensation and Employers' Liability Insurance as prescribed by applicable law, including insurance covering liability under the Longshoremen's and Harbor Workers' Act and the Jones Act, if applicable.
- D. County shall be named as an additional insured, as its interest may appear, and the policies shall contain cross liability endorsements.
- E. F.B.S. may carry said insurance under a blanket policy.
- F. Insurance required hereunder shall be maintained by insurance rated A or better by "Best's Insurance Guide."
- G. No insurance policies required hereunder shall be cancelable or subject to reduction of coverage except after ten (10) days prior written notice to County.
- H. F.B.S. shall furnish County with certificates of all insurance required under this Agreement. If F.B.S. does not provide such certificates within thirty (30) days of obtaining possession of the Leased Premises, or if F.B.S. allows any insurance required hereunder to lapse, County may, at its option, take out and pay the premiums on the necessary insurance to comply with F.B.S.'s obligations. County is entitled to immediate

reimbursement from F.B.S. for all amounts spent by it to procure and maintain such insurance.

XIII.
NOTICE

- A. Any notice required or permitted hereunder to be given, shall be given by registered or certified United States Mail, return receipt requested, postage prepaid, addressed to:

<u>To County:</u>	<u>To F.B.S.:</u>
Fort Bend County	Fort Bend Senior Citizen's, Inc.
301 Jackson, 7 th Floor	1330 Band Road
Richmond, Texas 77469	Rosenberg, Texas 77471
Attn: County Judge	Attn: Manuela Arroyos
	Executive Director

To Fort Bend County Parks Department
2725 FM 521 North
Fresno, Texas 77545
Attention: Mike Davis, Director
Phone: (281) 431-0131
Fax: (281) 431-3079

XIV.
INDEMNIFICATION

- A. **F.B.S. EXPRESSLY AGREES TO INDEMNIFY AND HOLD COUNTY, ITS AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO HEREIN AS "COUNTY"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS AND RELATED EXPENSES IN ANY MANNER WHATSOEVER, ARISING OUT OF THE USE OF THE LEASED PREMISES AND ALL EVENTS AND/OR ACTIVITIES OF F.B.S., ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.**
- B. **F.B.S. WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF F.B.S.**
- C. **F.B.S. WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH F.B.S. MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO F.B.S.'S PERSONAL PROPERTY LOCATED AT OR NEAR THE LEASED PREMISES.**

XV.
COUNTY'S USAGE OF LEASED PREMISES

- A. F.B.S. expressly states that it understands that the Center is a County building, open to the public, and that at times this fact may impose a hardship on F.B.S.
- B. F.B.S. expressly states that it understands that there will be emergency related times when County or its designee shall commandeer the Leased Premises during the time period that F.B.S. would normally occupy the multi-use room and F.B.S. expressly agrees to accommodate such disruptions immediately and without notice. Such emergencies shall include, but not be limited to, weather-related emergencies, medical related emergencies, etc.

1. County agrees that it will endeavor to inform F.B.S. as far in advance as possible of an event that would cause it to displace F.B.S. from the multi-use room.
 2. County agrees that it will endeavor to assist F.B.S. to make reasonable accommodations when it requires F.B.S. to vacate the Leased Premises. However, there may be occasions when F.B.S. will be required to cancel all activities at the Leased Premises in order to accommodate the County's needs during an emergency.
- C. F.B.S. expressly states that it understands that, notwithstanding that the primary purpose of the Leased Premises is to assist the elderly, no member of the public may be precluded from using the Leased Premises.

XVI.
MISCELLANEOUS

- A. All rights and remedies provided hereunder shall be cumulative and none shall exclude any other provision of this Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- B. A waiver by either party of a breach of this Agreement by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- C. F.B.S. hereby agrees that no representations or grants or rights or privileges shall be binding upon County unless expressed in writing in this Agreement.
- D. This Agreement shall supersede any and all prior agreements between the parties hereto relating to the Leased Premises 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.
- E. Except as otherwise provided for herein, all consents, rules, and regulations as provided for herein by the County shall only be those approved or adopted by the Commissioners Court of Fort Bend County, Texas.

XVII.
F.B.S. STATEMENTS

- A. F.B.S. warrants and represents unto County that:
 1. F.B.S. is a duly organized and existing legal entity, in good standing in the state of Texas;
 2. F.B.S. has full right and authority to execute, deliver and perform this Agreement;
 3. The person executing this Agreement on behalf of F.B.S. was authorized to do so; and
 4. Upon request of County, such person will deliver to County satisfactory evidence of his or her authority to execute this Agreement on behalf of F.B.S.

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XVIII.
EXECUTION

This Occupancy 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 F.B.S.

FORT BEND COUNTY

Robert Hebert
Robert E. Hebert, County Judge

September 22, 2009
Date

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE

Manuela Arroyos
Manuela Arroyos, Executive Director

8/31/09
Date

I:/MER/Agreements/FB Seniors.Fifth Street.Renewal.08-09/2482