

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:	09/29/2009	Submitted By:	Mary Reveles
Court Agenda Date:	10/06/2009	Department:	County Attorney
		Phone Number:	341-4554

SUMMARY OF ITEM:

Commissioner Precinct 1:

Take all appropriate action to renew on a month-to-month basis the Master Agreement between Fort Bend County and the Fort Bend County Fair Association until January 31, 2010.

RENEWAL AGREEMENT/APPOINTMENT YES NO
REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached:

FINANCIAL SUMMARY:BUDGETED ITEM: YES NO N/A

FUNDNG SOURCE: Accounting Unit: Account Number: N/A
Activity (If Applicable):

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 type="checkbox"/> Road & Bridge	<input checked="" type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Sheriff	<input checked="" type="checkbox"/> County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): 10-A-DA orig. ret. to Mary at Co. Attorney

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

FIRST AMENDMENT TO MASTER AGREEMENT
FORT BEND COUNTY & FORT BEND COUNTY FAIR ASSOCIATION

THIS FIRST AMENDMENT to the Master Agreement is made and entered into by and between Fort Bend County, Texas, a body corporate and politic under the laws of the State of Texas, acting herein by and through its Commissioners Court, hereinafter "County," and the Fort Bend County Fair Association, hereinafter referred to as "Association," authorized to conduct business in the State of Texas.

RECITALS

WHEREAS, County and Association entered a Master Agreement for the oversight and conduct of exhibits, use and operation of buildings and improvements of the Fort Bend County Fairgrounds dated August 31, 2004, collectively, the "Agreement" attached hereto as Exhibit A, incorporated by reference as if set forth herein verbatim for all purposes. County and Association desire to amend said Agreement.

NOW, THEREFORE, in consideration of the foregoing, the Agreement between County and Association is hereby amended as follows:

- A. Upon expiration of the Agreement on September 30, 2009, the Agreement shall renew each calendar month until January 1, 2010, wherein the Agreement shall terminate on January 31, 2010.
- B. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
- C. If there is a conflict between this First Amendment and the Agreement, the provisions of this Amendment shall prevail.

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EXECUTION

This Agreement shall become upon effective until by County.

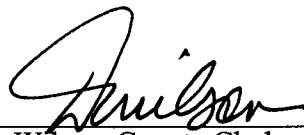
FORT BEND COUNTY:



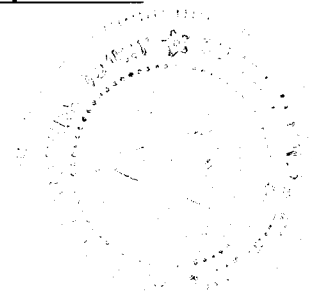
Robert E. Hebert, County Judge

10/6/09
Date

Attest:



Dianne Wilson, County Clerk



ASSOCIATION: FORT BEND COUNTY FAIR ASSOCIATION



9/23/09
Date

MER:I:Agreements/Fair Association Mater Ag. Extension.1108(09112009)

EXHIBIT A

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

**MASTER AGREEMENT
FORT BEND COUNTY & FORT BEND COUNTY FAIR ASSOCIATION**

This Agreement is entered into by and between Fort Bend County, Texas (hereinafter referred to as "County"), a body politic acting herein by and through its Commissioners' Court and the Fort Bend County Fair Association (hereinafter referred to as "Association"), a non-profit Texas corporation.

WHEREAS, Section 319.001 of the Texas Local Government Code authorizes a County to provide for annual exhibits of horticultural, agricultural, livestock, mineral, and other products of interest to the community; and

WHEREAS, the County desires the assistance of the Association in the oversight and the conducting of such exhibits, including but not limited to the use and operation of buildings, and improvements at the Fort Bend County Fairgrounds; and

WHEREAS, the Association desires the County to assist in conducting such exhibits, including but not limited to the use and operation of buildings and improvements at the Fort Bend County Fairgrounds; and

NOW THEREFORE, it is mutually agreed by the parties herein as follow:

**Section I
Definitions**

1.01 **Definitions:** For the purpose of this Agreement, the following shall mean:

- a. **Income:** Proceeds from the annual Fort Bend County Fair.
- b. **Property:** The property commonly referred to as the Fort Bend County Fairgrounds and/or facilities thereon more specifically described in Section III herein.
- c. **Rent:** Rent and security deposits paid by tenants of the Fort Bend County Fairgrounds for use of the facilities.
- d. **Tenant Lease:** An individual, group of individuals, or an entity that pays a rental fee for the use of the Fort Bend County Fairgrounds and/or facilities. The County, when using the Fairgrounds and/or facilities for a county purpose as deemed by Commissioners Court, shall be treated, as any other tenant except no rental charge shall be required.

- e. **Arena:** The open arena with seating used for horse shows, roping competition and rodeo events.
- f. **Barns:** Livestock Buildings erected north of the Arena.
- g. **Repairs:** For the purposes of this Agreement, "repairs" refer to the restoration to sound condition after damage or injury.
- h. **Maintenance:** For the purposes of this Agreement, "maintenance" refers to keeping something in proper condition, i.e. the activity involved in maintaining something in good working order.
- i. **Fairgrounds Rental:** The rental of the entire fairground area that includes buildings arena, barns and all common areas.
- j. **Clean up:** refers to the buildings, barns and arena being "broom clean" and in good order as existed at the commencement of the lease term.
- k. **Appliances:** refers to electrical equipment, air conditioning and coolers located in fairground buildings.

Section II

Term

- 2.01 The Term of this Agreement commences on the 1st day of October, 2004, and expires September 30, 2009, and continues thereafter, subject to cancellation by either party upon giving an 18-month written notice to the other party; unless there is a breach of contract by either party. If contract is breached, the offended party may deliver a written notice of breach and initiate a 90-day period for correction. If breach is not corrected within the 90-day period, the offended party may accelerate termination by giving 6-month written notice of cancellation. (i.e. a breach shortens the 18-month period to 6-months).
- 2.02 Commissioners' Court prior to the expiration of this Agreement must approve extensions of this Agreement.

Section III

Duties & Responsibilities

- 3.01 **Management of Fairgrounds:** The County is responsible for the management of the Fort Bend County Fairgrounds.
- 3.02 **Collection of Rent:** The County shall collect and enforce the collection of all rent and fees due for Buildings B, C, D, attached concession stands, appliances, extra equipment, chairs, tables, stage and Public Announcement (PA) systems. All monies received will be turned over to the County's representative.

3.03 Negotiation of Tenant Leases:

- a. In the event of a rental for the entire Fairgrounds facilities, fees will be established by the Association and the County. Proceeds will be split between the Association and the County according to negotiated tenant agreement. County will assist the Association with set-up of the arena and barns, including return aisle in Arena. Panels for rental will be the responsibility of the Association and its Tenant.
- b. When being used for a County purpose, by letter of authority as recorded in the Commissioners Court records, there shall be no charge for the use of the property by the County, subject to availability of the property. However, when the County has an activity on the property, any third-party users operating under such activities are subject to the terms and conditions of the Tenant's Lease Agreement.
- c. Association shall have the exclusive right and responsibility for the rentals of the Arena and Barns, as specified in this agreement. Association will collect fees and keep schedules on Arena and Barns. Association shall be responsible for all repairs, as defined herein, to the Arena and Barns. County shall perform regular maintenance, as defined herein, on the Arena and Barns, by written request to County's representative. Additionally, the Association shall retain income from the covered Arena, Barn H, Port City Barn, and George Barn, (except utilities).
- d. County will assist the Association with clean up of any shavings remaining in the Arena or Barns. In the event the County performs all clean up, the Association will be invoiced at \$25.00 per hour. The Association will notify Tenant of their loss of deposit.
- e. County agrees to allow the Association, or employee, or beverage corporation to acquire proper license for beer, wine or liquor on premises and to negotiate soft drink contracts.
- f. The Fort Bend County Commissioners' Court may review any approval or denial for the use of the Property, and Commissioners' Court shall have the final authority.

3.04 **Tenant Matters:** County representatives shall handle all tenant concerns and negotiations that may arise from time to time.

3.05 Payment of Utilities:

- a. The Association shall provide and pay for the telephone system used by the Association.

- b. The Association shall pay the County a fee of \$35.00 per hour flat fee from rentals for utility services and appliances..
- c. The Association shall be responsible for all electrical usage charges, which are incurred on the property in preparation for and during the annual County Fair and shall reimburse the County for those charges incurred during said time period. The initial reading of the meter shall occur on the first business day following Labor Day, or the first business day after the last County rental, but no later than 10 days prior to the opening day of the annual County Fair.
- d. In the event of damage to any appliances caused by the activities of the Tenant, Tenant will forfeit deposit. Forfeited deposits shall be paid to the County as partial reimbursement for damages.

3.06 **Liability Insurance:**

The Association shall, during the entire term hereof, keep in full force and effect a policy of commercial general liability insurance with respect to the Property, and the business operated by the Association, in which the limits of commercial general liability shall not be less than \$1,000,000.00 per occurrence. The policy shall name County as an additional insured, and shall contain a clause that the insurer will not cancel, or change the insurance without first giving County thirty (30) days prior written notice. The insurance shall be in a company acceptable to County and a copy of the policy or certificate of insurance shall be delivered to County on the date hereof.

- 3.07 **Income from Fair:** The Association shall retain all income derived from the annual County Fair.

SECTION IV

Limitation of Liability and Indemnity

- 4.01 Notwithstanding any provision of this Agreement to the contrary, the County shall not be liable to the Association or any of its agents, employees, servants or invitees, for any damage to persons or property due to the condition or design or any defect in the Property which may exist or subsequently occur, and the Association with respect to itself and its agents, employees, either proximate or remote by reason of the present or future condition of the Property. Association agrees that it will indemnify and hold County harmless of, from and against all suits, claims, and actions of every kind by reason of any breach, violation or non-performance of any term or conditions on the part of the Association hereunder. Association shall indemnify, protect, and hold harmless County, their successors, assigns, agents, officials and employees, from and against any and all claims, demands, losses, damages, causes of action, suit, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, and including injury to or death of any person, or for damage to any property, in any way arising out of or in connection with the negligent or willful acts or omissions of Association, its agents, employees, or persons operating under Association in the use of the Property. This

paragraph is for the benefit of the County on the Property only, and no right of action shall accrue hereunder to any third party by way of subrogation or otherwise. The foregoing sentence shall not be effective, however, if the result is to invalidate any fire, casualty, commercial general liability or other liability insurance policy.

SECTION V **County Employees**

- 5.01 The County retains sole discretion regarding hiring, termination, discipline, and working conditions of all County employees at the Fairgrounds.
- 5.02 Employees of the County may perform services for the Association upon request submitted to County's supervisor at the Fairgrounds. The Association will be billed monthly, by the County Auditor, based on the time spent for Association work by each employee. The calculation of pay shall be based on the employee's regular rate of pay plus overtime at the County's applicable overtime rate. The Association agrees to reimburse the County for such services at the employees overtime rate including benefits. The Association agrees to schedule employees through the Fort Bend County Parks & Recreation Department's representative on site, or the department head. The Association shall specify the hours and personnel needed in the request for County employees. The Association shall be billed for services provided outside of the employees normal maintenance functions.
- 5.03 County employees and contractors shall have access to all facilities for the purposes of performing maintenance work that may be required by the County or Association.
- 5.04 All County owned equipment can only be used by County employees. Request for assistance by Association shall be made to County's representative. County equipment must be operated by County employees if required during tenant rentals.
- 5.05 County employees are not bonded for handling or transporting money for the Association. No County employee shall be responsible for Association funds, or for transporting or handling beer or liquor at Association events.

Section VI **Association Fund Raising**

- 6.01 **Use of Fairgrounds:**
- a. Subject to availability, the Association may use the Property free of charge for fund raising so long as proceeds are used directly for the Fort Bend County Fairgrounds and/or scholarship fund.

- b. No capital improvement projects can be commenced by the Association on the Property without the prior approval of the Commissioners' Court.

Section VII **Assignments**

- 7.01 The Association shall not assign this Agreement without prior written approval of the Fort Bend County Commissioners' Court.

Section VIII **Other Agreements**

- 8.01 The parties acknowledge that other agreements may exist which relate to the Fort Bend County Fairgrounds, including but not necessarily limited to:
- a. Arena Agreement
 - b. Tower Agreement
 - c. Other Agreements that may be added from time to time by agreement of both parties
- 8.02 In the event of a conflict between the terms and conditions of this Master Agreement and the terms and conditions of any other agreement between the parties relating to the Fairgrounds the parties hereby agree that the terms and conditions of this Master Agreement shall prevail.

Section IX **Independent Contractor / No Co-Partnership**

- 9.01 **Independent Contractor:**
- a. It is agreed by the parties that at all time and for all purposes hereunder Association is an independent contractor and not an employee of the County. No statement contained in this Agreement shall be construed to find Association an employee of the County, and Association, its agents and employees shall be entitled to none of the rights, privileges, or benefits of the County employees.
 - b. The Association is to be and shall remain an independent contractor with respect to all services performed under this Agreement.
- 9.02 **No Co-Partnership:**
- a. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting Association (including its officers, employees, and

agents) the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever.

- b. The Association is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

Section X **Severability**

- 10.0) **Severability:** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement forthwith upon the delivery of written notice of termination by the other party.

Section XI **Entire Agreement: Requirement of a Writing**

- 11.0) **Entire Agreement:** It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

Section XII **Services Not Provided For**

- 12.0) **Services Not Provided For:** The Association shall not perform any work or furnish any materials other than in the normal course of performing reasonable and necessary repairs for proper maintenance of the property unless same is approved in writing by the County and the Association. Such approval shall be considered to be a modification of the Agreement.

Section XIII **Compliance with Laws and Regulations**

- 13.0) **Compliance with Laws:**
- a. It is understood that the terms and conditions of this Agreement are governed by the laws of the State of Texas.
- b. In providing all services pursuant to this Agreement, the Association shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provision of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a

material breach of this Agreement, and shall entitle the County to terminate this contract immediately upon delivery of written notice to the Association.

Section XIV
Notices

14.01 **Notices:** Notices, correspondence, and all other communications shall be addressed to the Fort Bend County Commissioners' Court and submitted to the following representative:

Fort Bend County
Attn: County Judge
301 Jackson, 7th Floor
Richmond, Texas 77469

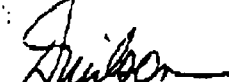
Notices to Association shall be delivered to: Fort Bend County Fair Association
Attn: President
P. O. Box 428
Rosenberg, Texas 77471

IN WITNESS WHEREOF, the parties have herewith set their hands as of the dates written below.


FORT BEND COUNTY

By: 
Robert E. Hebert, County Judge

Date: August 31, 2004

ATTEST: 
Dianne Wilson, Ph.D. County Clerk

FORT BEND COUNTY FAIR ASSOCIATION

By: 
President

Date: 8-23-04

ATTEST: 
Secretary of Association

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