

FORT BEND COUNTY FY 2010
COMMISSIONERS COURT AGENDA REQUEST FORM

25

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

Date Submitted: 03/17/2010

Submitted By: Mary Reveles

Court Agenda Date: 03/23/2010

Department: County Attorney

Phone Number: 341-4554

SUMMARY OF ITEM:

PRECINCT 2 Commissioner:

Take all appropriate action on the Lease Agreement between Fort Bend County and Fort Bend Family Health Center, Inc. for operation of a health clinic at the Precinct 2 Annex for a term of ten (10) years.

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

List Supporting Documents Attached: Lease Agreement

FINANCIAL SUMMARY:BUDGETED ITEM: YES ☐ NO ☐ N/A

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

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

COUNTY JUDGE
RECEIVED

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): 3-25-10 3 orig's. ret
to Mary at Co. Attorney

MAR 17 2010

THE STATE OF TEXAS
COUNTY OF FORT BEND

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KNOW ALL MEN BY THESE PRESENTS:

**LEASE AGREEMENT BETWEEN FORT BEND COUNTY AND
FORT BEND FAMILY HEALTH CENTER, INC. – RFP 08-098**

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 FAMILY HEALTH CENTER, INC., hereinafter referred to as “FBFHC,” a Texas corporation, acting herein by and through its duly authorized officers.

W I T N E S S E T H:

WHEREAS, FBFHC is a nonprofit community based incorporated organization and a Federally Qualified Health Center (FQHC) addressing the needs of County’s citizens by providing health care to low-income and uninsured residents of County; and,

WHEREAS, County is in the process of constructing a facility located at 307 Texas Parkway, Missouri City, Texas, known as the Fort Bend County Missouri City Annex, hereinafter referred to as “Center;” and

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 FBFHC for the purpose of providing and administering health care for the County’s citizens; and

WHEREAS, said portion of the Center is well suited for the purposes for which FBFHC was established and would further facilitate the implementation of its program of services and the delivery of such services to those persons served by the Center who would benefit thereby;

WHEREAS, pursuant to RFP 08-098, County is willing to furnish to FBFHC and FBFHC is willing to lease a portion of the Center for the sole and exclusive purpose of providing health care to County residents who reside within the Center’s service area, such use of the Center is in the public interest and a proper exercise of the authority of County under law to provide for its citizens;

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

AGREEMENT

I. TERM AND TERMINATION

- A. Subject to and upon the provisions hereinafter set forth, County does, by these presents, grant unto FBFHC the right to lease 6,048 square feet of office space in the Center, commencing April 1, 2010 and ending September 30, 2020. Said designated area to be hereinafter called “office space,” is located in the Center. Thereafter, this Lease Agreement may be renewed for annually by written amendment.
- B. As consideration of this Lease Agreement, FBFHC will pay to County, without demand, an annual lease payment in the amount of TEN DOLLARS (\$10.00), commencing no later than October 1, 2010, with successive annual payments at the rate of TEN DOLLARS (\$10.00) thereafter each October 1 until this Agreement is terminated. FBFHC is also responsible for payment of operating costs and other cost obligations for

the office space included in this Agreement. Payments shall be made in the following manner:

Checks must be payable to: Fort Bend County

Checks must be sent to: Facilities Management & Planning Department
301 Jackson,
Richmond, Texas 77469

- C. This Agreement may be terminated, with or without cause, prior to the expiration of any term herein, at the option of either County or FBFHC, upon the giving of ninety (90) days written notice to the other party in the manner and form provided for herein.
- D. Upon the expiration or termination of the Term, for whatever cause, FBFHC shall quietly and peaceably surrender to County possession of the office in "broom clean" and good order, condition and repair, except only for ordinary wear and tear.
 - 1. In the event FBFHC fails to surrender possession as herein required, County may initiate any and all legal action as County may elect to dispossess FBFHC and all of its property, and all persons or firms claiming by, through or under FBFHC and any and all property, from the assigned office, and may remove from the assigned office and discard (without any liability for loss, theft, damage or destruction thereto) any such property left at the Center belonging to FBFHC.
 - 2. In the event FBFHC fails to surrender possession of the assigned office space in the condition herein required, County may restore the assigned office space to the same condition at the commencement of this Agreement, less normal wear and tear. FBFHC shall reimburse County, within thirty (30) business days of receipt of invoice, any costs to County to restore such condition.
- E. FBFHC 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.
- F. Prior to its use of any multi-purpose conference or meeting room in the Center, FBFHC shall consult County for the purpose of scheduling such use. FBFHC will abide by and respect all rules and policies that may be made by County regarding the use of the Center by FBFHC of such rooms or any other areas held in common or otherwise shared by those parties authorized to use the Center.
- G. Access to and the use of any parking areas adjacent to the Center by FBFHC shall be shared with all other parties entitled to use the same.
 - 1. FBFHC has no entitlement to reserved parking; 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 "FBFHC" includes FBFHC's clients, patrons, invitees, permittees, licensees or any other persons, whether natural or corporate, holding under FBFHC, and FBFHC will, to the extent practicable, advise such parties of their responsibilities regarding the use of any common shared areas.
- H. FBFHC expressly authorizes County and County's designee access and use of the office space, for inspection or repairs, at any time. Both parties will adhere to requirements of

the Health Information, Portability and Accountability Act (HIPAA) for the protection of protected health information.

- I. FBFHC will provide the County with an annual statistical report and a copy of its annual financial audit.

II. ACCEPTANCE OF OFFICE SPACE

- A. FBFHC agrees that it:
 1. Has made its own inspection of the office space;
 2. Accepts the office space 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 office space for the uses for which FBFHC may put the same;
 4. Has received and is receiving from County hereunder, absolutely no warranty or representation as to the condition of or suitability of the office space.

III. MODIFICATIONS TO OFFICE SPACE

- A. FBFHC shall be responsible for the equipping and the furnishing of the office space in a manner suitable for the uses to 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. In the event the installation of any non-building standard improvement or trade fixture is contemplated, FBFHC shall consult with County and receive written permission prior to commencing any work and shall comply with any special instructions which County 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, FBFHC may use the same.
 - a. Should any such existing wiring, plumbing or other systems be inadequate for FBFHC's needs, and it becomes necessary for such systems to be modified, FBFHC will submit its plans and specifications for such modifications to the County. Upon approval and the prior written acceptance by the County to make any modifications, FBFHC will, at its sole cost and expense, pay for such modifications of any existing wiring, plumbing or other systems incurred by the County.
 - b. In making alterations in those areas of the Center outside the assigned office space, County will use its best efforts to minimize any disruption to the operation of the office space.
 - c. FBFHC shall alone bear the cost of any alteration, modification or upgrading of existing systems and FBFHC shall reimburse County for the expense thereof within thirty (30) business days of receipt of invoice.
- C. Notwithstanding anything contained herein to the contrary, any and all repairs, modifications, upgrades and/or replacements, of any kind to the assigned office space must follow and comply with all County guidelines and be approved by County in writing, prior to commencement.

- D. 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 assigned office space and common areas of the Center.

IV. LIENS

- A. FBFHC will not permit any mechanic's lien, or liens, or any other type of lien to be placed upon the Center and/or the assigned office space or upon improvements on the Center and/or the assigned office space.
1. If a mechanic's lien or any other type of lien is filed on the Center and/or the assigned office space or on improvements to the Center and/or the assigned office space, FBFHC will promptly pay the lien.
 2. If default in payment and/or removal of the lien continues for thirty (30) days after written notice from County to FBFHC, 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 the assigned office space or against improvements on the Center and/or the assigned office space by FBFHC, including expenses and interest, shall be due from FBFHC to County and shall be repaid to County immediately on rendition of written notice. Any payment and/or removal of any lien by County shall constitute FBFHC's default of this Agreement and shall result in immediate termination of this Agreement.
- B. 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 in the assigned office space by FBFHC shall be removed by FBFHC upon the request of County.
- C. In the event the installation of any such personal property, trade fixture or non-building standard improvement alters the assigned office space such that its removal will damage the Center, FBFHC 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.

V. USE OF OFFICE SPACE

- A. FBFHC shall use the assigned office space for the purpose of operating its programs and for no other activity or event which is not sponsored by FBFHC 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. FBFHC shall at all times comply with any and all orders, regulations and policies, and amendments thereto, issued by County for the purpose of maintaining an orderly and compatible use of the Center by all parties involved.

- C. Any FBFHC event or activity permitted under the terms of this Agreement to be conducted in the assigned office space shall be supervised by FBFHC's personnel or designated representatives who shall be properly trained, adequate in number and who shall remain in the assigned office space during the course of the event or activity.
- D. FBFHC will not use or allow the assigned office space to be used for any unlawful purposes; nor will FBFHC cause, maintain or permit any nuisance in or about the assigned office space, or commit or suffer to be committed any waste of or upon the assigned office space.
- E. FBFHC will keep the assigned office space in a neat and clean condition at all times.
- F. At all times FBFHC will operate its programs at the Center in a manner that portrays County in a positive light and in a manner that upholds the lofty ideals and standards of County, as reasonably determined solely by County.
 - 1. At no time will FBFHC operate its programs at the Center in a manner that would bring harm or disrepute to County, as reasonably determined solely by County, nor will FBFHC allow and/or tolerate any such activity.
 - 2. Breach of this subsection shall be grounds for immediate termination of this Agreement.
- G. FBFHC will not, in its use of and operations on and within the assigned office space:
 - 1. Bring or allow to be brought or kept in the assigned office space, or the Center, illegal weapons, illegal substances and/or alcoholic beverages of any kind; or
 - 2. Permit in or around the assigned office space, or the Center, the existence of any unsafe or unsanitary condition.
- H. County may enter the assigned office space at any time:
 - 1. To inspect same;
 - 2. To determine whether FBFHC is in compliance 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.
- I. Both parties will adhere to requirements of the Health Information, Portability and Accountability Act (HIPAA) for the protection of protected health information.

VI. ASSIGNMENT

- A. FBFHC 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 FBFHC's rights hereunder by operation of law, is void and of no force and effect as against County.

VII. UTILITIES

- A. Without limitation, and as part of the consideration for the grant by the County of its right to use the premise, FBFHC 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 FBFHC in its enjoyment and use of the assigned office space. FBFHC will reimburse County for electricity based on a prorated allocation of square footage. County will provide a monthly statement of electricity usage and FBFHC shall reimburse County within thirty (30) calendar days.
- B. Water and gas shall be the responsibility of County.
- C. Except as provided in Paragraph E of this section, County 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 electricity, 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 water, sewage, gas or other utility available to the public in the area where the assigned office space is located.
- D. Notwithstanding anything contained herein to the contrary, the provisions of this Article VII. apply equally to any alarm system or service installed by FBFHC on the premise, including the provisions obligating FBFHC 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.
- E. FBFHC shall reimburse County for the costs of pest control, janitorial and custodial services for the assigned office space. County shall provide an invoice to FBFHC for FBFHC's reimbursement to County. FBFHC shall reimburse County for all costs associated with pest control, janitorial and custodial services within thirty (30) days of FBFHC's receipt of written notice. County shall not be responsible for any loss or damage to FBFHC as a result of theft by any janitorial or custodial services.
- F. FBFHC shall be responsible for the security of the assigned office space.

VIII. MAINTENANCE AND REPAIRS

- A. County shall be responsible for the maintenance and repair of the building structure of the assigned office space, including the maintenance and repair of the foundation, load bearing walls, exterior walls, sub-flooring and roof.
- B. County shall be responsible for the repair and maintenance of the Center's mechanical, utility and plumbing system.
- C. County shall be responsible for the repair and maintenance of any heating, ventilation and air-conditioning system or the outdoor lighting serving the assigned office space.
- D. County shall be responsible for 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.

- E. In the event the Center or any part thereof, including the assigned office space, becomes unfit because of its condition or state of repair, this Agreement may be terminated at the option of FBFHC by giving written notice to that effect to County in the manner and form provided for herein.
- F. FBFHC shall be responsible for all maintenance, repair and painting of the interior of the assigned office space, save and except normal wear and tear. Any damage to the interior of the office space including but not limited to: indoor lighting, electrical fixtures, carpets, water fountains, walls, flooring materials, cabinets, doors and locks, plumbing fixtures in the kitchen and restroom areas caused by FBFHC's employees shall be repaired at FBFHC's sole expense.

IX. INSURANCE

- A. FBFHC 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 assigned office space, including any trade fixtures or non-building standard improvements made or installed by FBFHC.
 - 1. Such policy or policies of insurance shall specifically be endorsed to cover damage due to vandalism, mischief and sprinkler leakage.
- B. FBFHC 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. FBFHC 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. FBFHC 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. FBFHC shall furnish County with certificates of all insurance required under this Agreement. Failure on the part of FBFHC to provide such certificates within thirty (30) days of obtaining possession of the office space, or the lapse of any insurance required hereunder shall call for the immediate cancellation of this agreement.

X. NONDISCRIMINATION POLICY

- A. FBFHC 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 FBFHC's services on the basis of creed.
 2. FBFHC will post this policy.

XI. 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 77479
Attn: County Judge

To FBFHC:

Fort Bend Family Health Center, Inc.
400 Austin Street
Richmond, Texas 77469
Attn: Lynda Bible, CEO

To Fort Bend County:

Facilities Management and Planning
Attn: Don Brady, Director
301 Jackson Street
Richmond, Texas 77469

XII. INDEMNIFICATION

- A. **FBFHC 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 FORT BEND FAMILY HEALTH CENTER, INC., ITS OFFICERS, EMPLOYEES, FBFHCS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.**
- B. **FBFHC SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF FBFHC.**
- C. **FBFHC WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH FBFHC MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO FBFHC'S PERSONAL PROPERTY LOCATED AT OR NEAR THE ASSIGNED OFFICE SPACE.**

XIII. MISCELLANEOUS

- A. FBFHC 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 office space or FBFHC's use thereof.
- B. FBFHC expressly agrees that the Center is a County building, open to the public, and that at times could pose a hardship on the operations of FBFHC.
- C. FBFHC expressly states that it understands that there may be times when County or its designee shall need to use the common areas of the premises during the time period that FBFHC might occupy the areas and FBFHC expressly agrees to accommodate such disruptions.
- D. County agrees that it will endeavor to inform FBFHC as far in advance as possible of an event that would cause it to displace FBFHC from any common areas and to make reasonable accommodations.
- E. 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.
- F. 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.
- G. To the extent applicable and allowed by law, FBFHC will participate in the record keeping system and/or requirements of the Center required by Fort Bend County.

XIV. WARRANTIES AND REPRESENTATIONS

- A. FBFHC warrants and represents unto County that:
 - 1. FBFHC is a duly organized and existing legal entity, in good standing in the state of Texas;
 - 2. FBFHC has full right and authority to execute, deliver and perform this Agreement;
 - 3. The person executing this Agreement on behalf of FBFHC 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 FBFHC.
- B. This 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 FBFHC.
- C. FBFHC 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 assigned office space 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.

XV. EXECUTION

IN TESTIMONY AND WITNESS OF WHICH this Agreement has been executed as follows:

FORT BEND COUNTY:

By: *Grady Prestage*
Grady Prestage, Commissioner Precinct 2
Presiding Officer, Commissioners Court,
ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

FORT BEND FAMILY HEALTH
CENTER, INC.

By: *Lynda Bille*
Lynda Bille, CEO

Date: *03/15/10*

March 23, 2010

Approved:

Don Brady
Don Brady, Director
County Facilities & Management Department

I:\MER\Leases\Fort Bend Family Health Cetrer. Lease. MC Annex.3753(02252010)

