

THE STATE OF TEXAS     §  
                                      §  
 COUNTY OF FORT BEND   §

KNOW ALL MEN BY THESE PRESENTS:

**FIRST AMENDMENT TO THE OCCUPANCY AGREEMENT  
 FOR THE FORT BEND COUNTY BUD O'SHIELES COMMUNITY CENTER**

THIS First Amendment is 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.," collectively referred to hereinafter as the "Parties."

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 Parties executed and accepted that certain Occupancy Agreement for the Bud O'Shieles Community Center Renewal dated November 9, 2010, hereinafter referred to as the "Occupancy Agreement" for use of 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;

WHEREAS, F.B.S. desires to extend the current term to permit County to expand and improve its current facilities by expanding the kitchen, and constructing an adjacent building for F.B.S.'s administration as depicted on *Exhibit A* drawings.

WHEREAS, County desires to extend the current term with F.B.S. to expand and improve its current facility by providing the funding for the necessary infrastructure improvements and to construct an administration building, in a total principal amount, excluding kitchen equipment, moveable fixtures and furnishings, estimated at \$1,500,000.00 as shown on *Exhibit B*;

WHEREAS, the Parties desire to amend the Occupancy Agreement to include the Center, (hereinafter referred to as "Leased Premises A"), the kitchen expansion and the proposed administration building, (hereinafter referred to as "Leased Premises B"), restructure rent payments to allocate costs associated with Leased Premises B, to allocate cost associated with the construction of Leased Premises B, and to redefine the primary term.

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 LEASED PREMISES A & B

- A. Subject to and upon the provisions hereinafter set forth by this First Amendment to the Occupancy Agreement for the Bud O'Sheiles Community Center, the "Amendment", the County does, by these presents, grant unto F.B.S., Monday through Sunday, the non-exclusive right to use Leased Premises A, subject to the terms as provided herein, and the exclusive right to use Leased Premises B.
  - 1. Said Leased Premises A & B are located at 1330 Band Road, Rosenberg, Texas.
- B. Consideration.
  - 1. Upon commencement of new primary term, F.B.S. shall pay as rent to County:
    - a. An annual payment in the amount of one dollar (\$1.00); and
    - b. A sum equal to the actual cost of construction of Leased Premises B in a total principal amount estimated at \$1,500,000 as shown on *Exhibit B*.
  - 2. In addition to the payment of amounts stated in I. B. 1. above, F.B.S. shall also pay County the sum of One Hundred and No/100 Dollars (\$100.00) per month for each month during the new primary term commencing upon completion of Leased Premises B.
  - 3. In the event, the principal costs exceed \$1,500,000, F.B.S. shall be responsible for and be required to include such amounts in this Amendment.
  - 4. Principal and interest costs for the construction of Leased Premises B are to be applied as of the date expenses are incurred and shall be paid to County by F.B.S. on a schedule as determined by F.B.S., but in no event later than December 31, 2023. The total amount so determined shall be in addition to the rent for the first one twenty (120) months of the new primary term of the Amendment, which amount shall be stated in writing, signed and dated by County and F.B.S. and attached to this Amendment as *Exhibit "B."* This total amount shall not exceed County's actual cost plus two percent (2%) financing costs over the one hundred twenty (120) month primary term of this Amendment subject to paragraph I.B.2 above.
  - 5. F.B.S. may prepay in whole or in part the amount stated in *Exhibit B* as follows:
    - a. If paid prior to or contemporaneous with the beginning of the new primary term, the amount shall be applied to the principal balance, and shall be reflected in a reduced payment amount sufficient to amortize retirement of the entire cost of the improvements during the first one hundred twenty (120) months of the primary term. Pre-payment adjustments shall be reflected on *Exhibit "B"* attached hereto.
    - b. If paid after the beginning of the new primary term, the amount of any prepayment shall be credited to the unpaid principal balance and interest shall immediately cease on any amount so prepaid.

6. The Parties agree that the amount stated in writing on *Exhibit B* at the time of execution shall represent an estimate of costs to be incurred. The Parties specifically agree that these costs may fluctuate due to market conditions and other outside factors. The Parties specifically agree to compare estimated costs to actual costs and make any adjustments to *Exhibit B*, if necessary, on the 1<sup>st</sup> and 2<sup>nd</sup> anniversary of the current Amendment, such dates being and principal amount shall be adjusted to reflect all actual costs once determined.
7. County agrees to provide copies of actual costs associated with this Amendment including engineering, drainage and construction to F.B.S. upon request.
- C. F.B.S. may use, without additional cost, and subject to the provisions of this Agreement:
  1. Common areas of the Leased Premises A, including, but not limited to parking areas adjacent thereto; and
  2. Any entrances, breezeways, driveways, docks, and openings contained in the Leased Premises A for ingress and egress from said facilities.
- D. F.B.S. recognizes that Leased Premises A 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.
- E. 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.
- F. Prior to its use of any multi-purpose room in the Leased Premises A, Fort Bend County's Parks Department Director, or designee, will consult with F.B.S. 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 County of such rooms or any other areas held in common or otherwise shared by those parties authorized to use Leased Premises A.
  1. Fort Bend County's Parks Department Director shall consider *all* requests for use of portions of Leased Premises A with priority being given:
    - a. First, to F.B.S.;
    - b. Second, to resident's of Fort Bend County; and
    - c. Third, to Fort Bend County
- G. Access to and the use of any parking areas adjacent to Lease Premises A & B 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.
- H. F.B.S. expressly authorizes County and County's designee access to Leased Premises A & B at all times.

## II. TERM & TERMINATION

- A. The new primary term of the Occupancy Agreement shall be one hundred twenty (120) months, commencing with the date this Agreement is executed by County (hereinafter the "Commencement Date"). This Agreement may be renewed or extended for up to five (5) additional three (3) year terms under the same terms and conditions, at the option of F.B.S. upon written agreement of the parties.

- B. 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-six (36) months 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-six (36) month 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 A & B 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 Leased Premises A, and may remove from Leased Premises A & B 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 Leased Premises A & B in the condition herein required, County may, at F.B.S.'s sole expense, restore the Leased Premises A & B to such condition.

### III. INSPECTION

- A. F.B.S. agrees that it:
  - 1. Has made its own inspection of Leased Premises A;
  - 2. Accepts Leased Premises A in the condition in which it exists on the date of this Agreement;
  - 3. Has made its own determination as to the suitability of Leased Premises A 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 Leased Premises A.

### IV. EQUIPMENT, FURNISHING AND REPAIRS

- A. F.B.S. shall be responsible for the equipping and the furnishing of the Leased Premises B 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. Any equipment and furniture at Leased Premises A owned by County shall remain at Leased Premises A throughout the term of this Agreement.
- B. Without limitation, and as part of the consideration for the grant by the County of its right to use Leased Premises A, F.B.S. will, at its own expense, separately secure and contract for internet services and toll-free telephone costs, which may be necessary to F.B.S. in its enjoyment and use of Leased Premises A & B.
- C. F.B.S. will reimburse County for electricity based on a usage determined by direct meter located at Leased Premises B. County will provide a monthly statement of electricity usage and F.B.S. shall reimburse County within thirty (30) calendar days.
- D. Water, sewer, garbage removal, telephone, gas and electricity for Leased Premises A shall be the responsibility of County.
- E. F.B.S. will be responsible for any and all charges of any kind incurred as a result of the installation, commencement or use of any internet service and/or toll-free telephone service, including, by way of description only and not by way of limitation, all deposits, installation or connection fees, charges for upgraded services or other miscellaneous fees,
- F. Notwithstanding anything contained herein to the contrary, the provisions of this section apply equally to any alarm system or service installed for F.B.S., including the provisions

obligating F.B.S. to pay all charges of any kind as to the installation of said system on Leased Premises A & B.

1. For purposes of this agreement, any alarm system, including related sensors, control panels and corresponding annual inspections, shall be governed by the same provisions.
- G. County shall provide pest control for Leased Premises A & B.
- H. Monthly Maintenance Fees are calculated each year by dividing the Commissioners Court approved fiscal year budget for the Facility Maintenance Department by the total number of square feet of air conditioned space in the County to derive a cost factor per square foot of space maintained. The cost factor times the number of square feet for the subject facility divided by 12 equals the Monthly Maintenance Fee. For F.B.S. the Maintenance Fee will be calculated on the square footage of Leased Premises B.
1. For FY 2014, the cost factor is \$0.94 per square foot. Leased Premises B totals 5,000 square feet, so the Monthly Maintenance Fee for FY 2014 equals \$391.67.
- I. In the event the installation of any non-building standard improvement or trade fixture is contemplated, F.B.S. shall consult with County 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 users;
  2. and which will result in the least amount of damage or alteration to the structure.
  3. 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 request needed modifications of County.
    - b. F.B.S. shall alone bear the cost of any alteration or up-grading of existing systems for the installation of any improvement or trade fixture approved by the County and County may restore the same and F.B.S. shall reimburse the County for the reasonable expense thereof.
- J. Notwithstanding anything contained herein to the contrary, any and all repairs, modifications and/or replacements, of any kind, to Leased Premises A & B **must** follow and comply with all County guidelines and be approved by Commissioners' Court, or their designee, in writing, prior to commencement.
- K. Any and all modifications to the appearance of Leased Premises A & B must meet County standards and be approved by County, in writing, prior to commencement.
- L. 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 Leased Premises A & B.
- M. F.B.S. will not permit any mechanic's lien, or liens, or any other type of lien to be placed upon Leased Premises A or B.
1. If a mechanic's lien or any other type of lien is filed on Leased Premises A or B, 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 or against improvements Leased Premises A & B 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.

- N. 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 Leased Premises A & B 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 Leased Premises A & B by all parties involved.
- C. Any F.B.S. event or activity permitted under the terms of this Agreement to be conducted upon Leased Premises A & B 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 Leased Premises A & B 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 Leased Premises A 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 Leased Premises A 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 new primary 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 Leased Premises A & B 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 Leased Premises A & B 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 & B

- 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 Leased Premises A & B 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 Leased Premises A required by the Community Development Block Grant Program.
- C. F.B.S. will not use or allow Leased Premises A & B to be used for any unlawful purposes; nor will F.B.S. cause, maintain or permit any nuisance in or about Leased Premises A & B, or commit or suffer to be committed any waste of or upon Leased Premises A & B.
- D. At all times F.B.S. will operate Leased Premises A & B and its programs 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 Leased Premises A & B or its programs 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 D shall be grounds for immediate termination of this Agreement.
- E. F.B.S. will not, in its use of and operations on and within Leased Premises A & B:
  - 1. Bring or allow to be brought or kept illegal weapons and/or illegal substances;
  - 2. Serve or consume alcoholic beverages, except with prior approval of County and in compliance with all County policies; or
  - 3. Permit upon Leased Premises A & B the existence of any unsafe or unsanitary condition.
- F. The County may enter Leased Premises A & B 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.
- G. F.B.S. shall be allowed to install interior and exterior signage at Leased Premises A & B in accordance with County policies and upon written approval of County.

## 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 A vested in F.B.S. under the terms of the Agreement.

## X. SERVICE PROVIDED BY COUNTY

- A. County will operate and maintain the Leased Premises A in accordance with all Community Development Block Grant Program Requirements.

- B. All utilities, other than internet, toll-free telephone service, and electricity for Leased Premise B, 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 use of any utility service, (except for internet, toll-free telephone service and electricity for Leased Premises B,) 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 Leased Premises A & B are located.)
- D. Notwithstanding anything contained herein to the contrary, the provisions of this Article X. exclude 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 such 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 Leased Premises A, and shall be subject to the maintenance fee for Leased Premises B as provided in Section IV(H) above.
  - 1. Said responsibility shall lie solely with County.
- B. F.B.S. shall not be responsible for the repair and maintenance of Leased Premise A & B's mechanical, utility and plumbing system.
  - 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 Leased Premises A & B.
  - 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 Leased Premises A & B, 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 Leased Premises A & B.
  - 1. F.B.S., at the end of each day, shall leave Leased Premises A & B clean and free of clutter, in order that other renters may have free and unhindered use of Leased Premises A & B.
- 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 Leased Premises A & B in a neat and clean condition at all times.
- I. F.B.S. shall be responsible for the security of the Leased Premises A & B, other than any alarm system or service referenced in Article X.
- J. Should Leased Premises A & B 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 Leased Premises A & B, 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 (\$500,000.00) 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 Leased Premises A or B, 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, 7<sup>th</sup> 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 Arroyos,  
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

- A. F.B.S. expressly states that it understands that Leased Premises A & B are County buildings, and Leased Premises A shall be 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 Leased Premises A & B during the time period that F.B.S. would normally occupy 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 Leased Premises A & B.
2. County agrees that it will endeavor to assist F.B.S. to make reasonable accommodations when it requires F.B.S. to vacate Leased Premises A & B. However, there may be occasions when F.B.S. will be required to cancel all activities at Leased Premises A & B 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 Leased Premises A is to assist the elderly, no member of the public may be precluded from using Leased Premises A.

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 First Amendment to the 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.

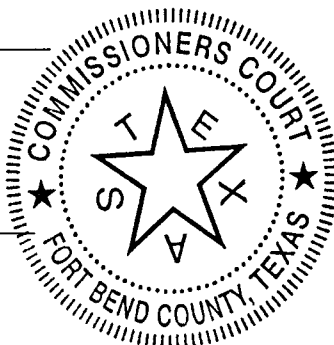
**FORT BEND COUNTY:**

  
\_\_\_\_\_  
Robert E. Hebert, County Judge

12-10-2013  
Date

ATTEST:

  
\_\_\_\_\_  
Dianne Wilson, County Clerk



**FORT BEND SENIORS MEALS ON WHEELS & MUCH MUCH MORE:**

  
\_\_\_\_\_  
Manuela Arroyos, Executive Director

12-2-13  
Date

Attest:


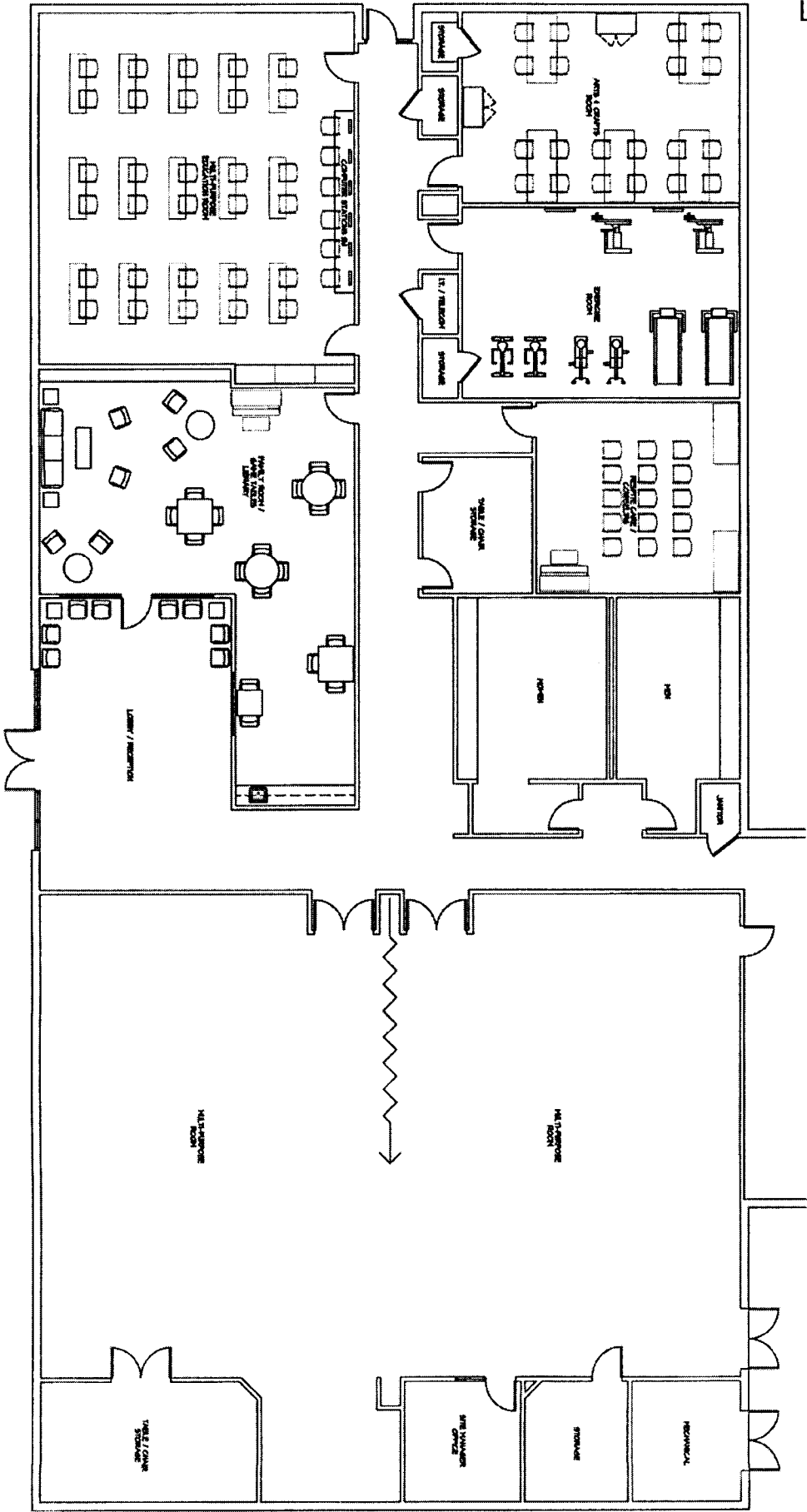
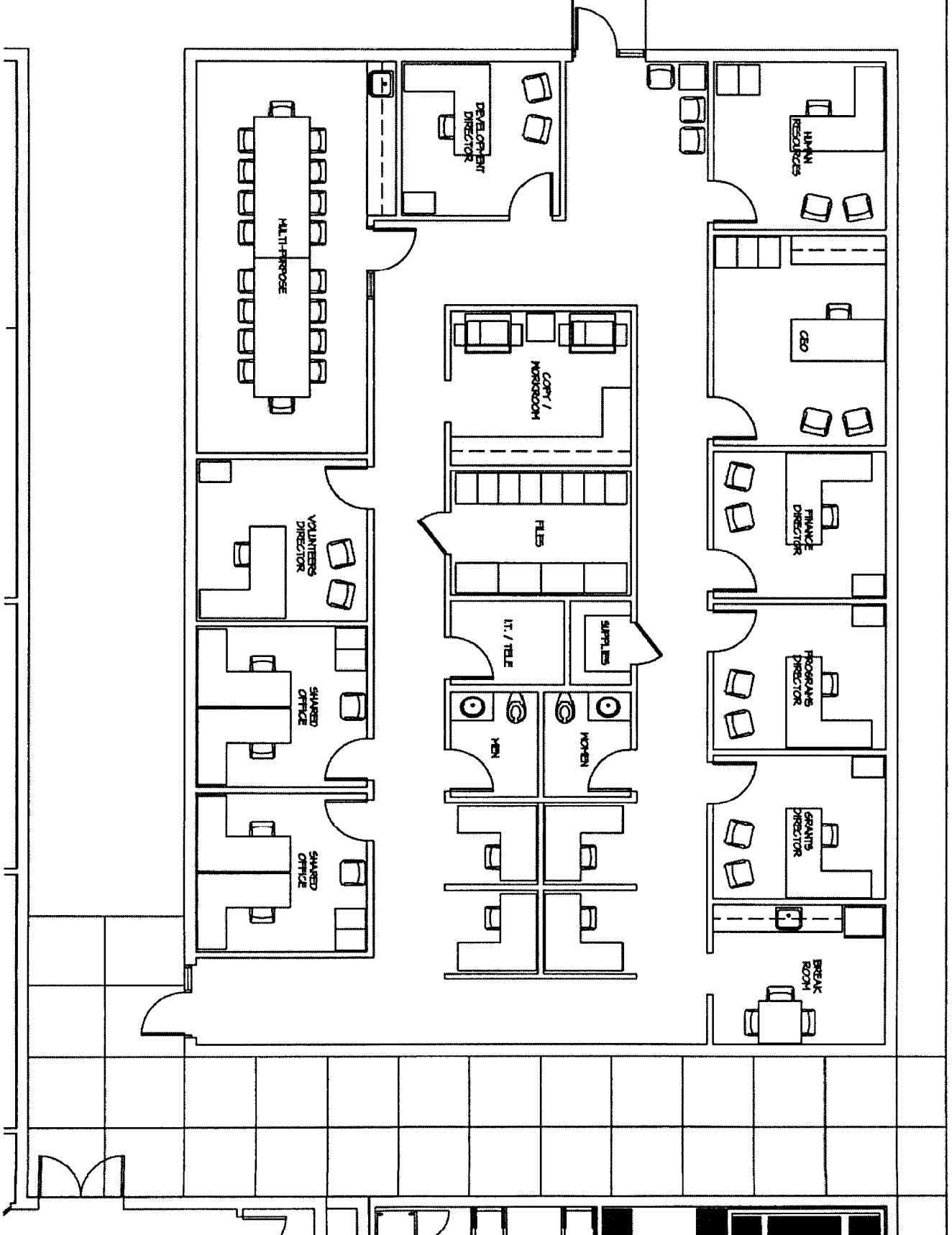
  
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Exhibit A  
Leased Premises

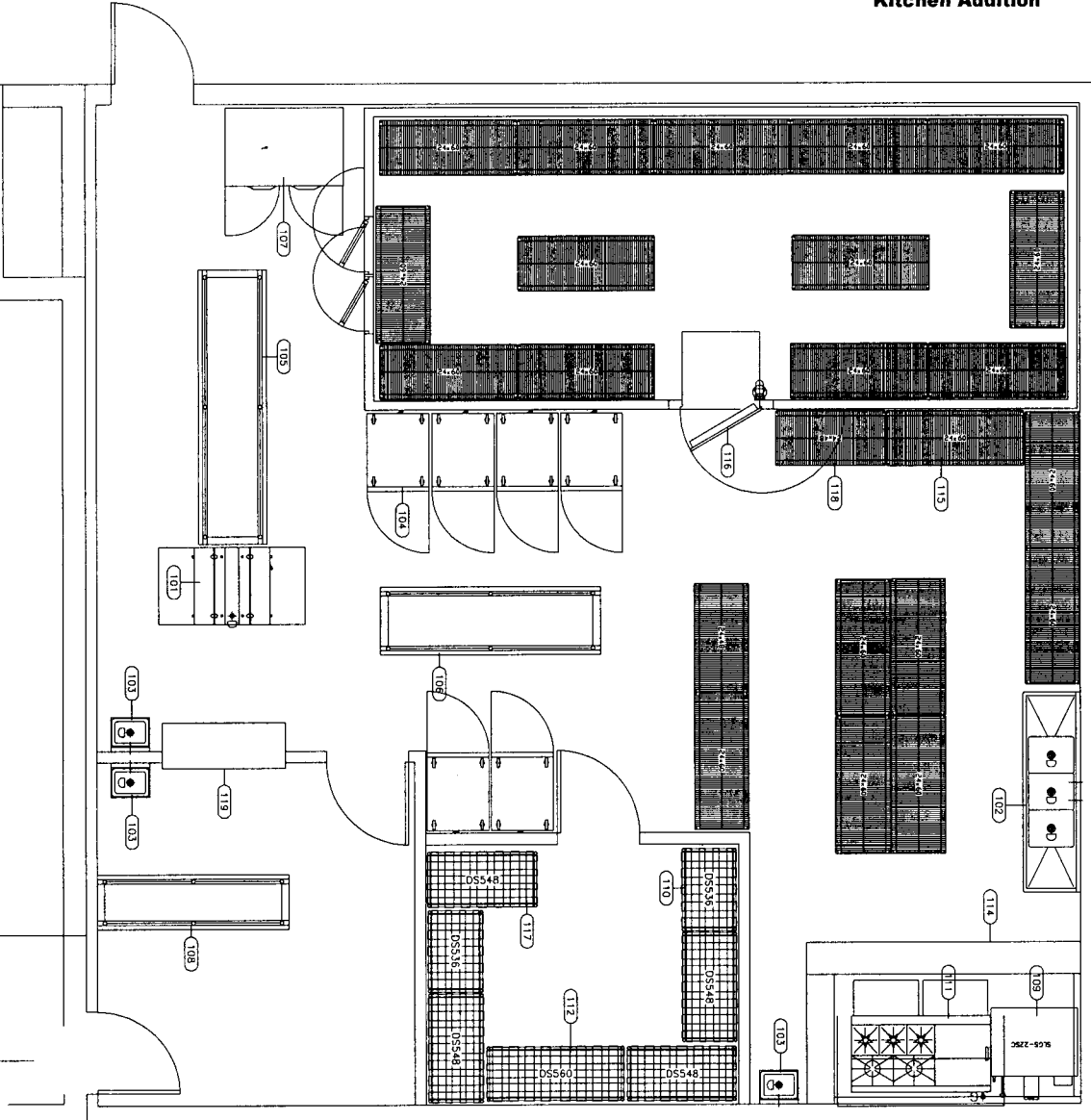


# Exhibit A

## Administration Building



# Exhibit A Kitchen Addition



EQUIPMENT SCHEDULE		
ITEM NO.	QTY	EQUIPMENT CATEGORY
101	1	MIX COOLER
102	1	SINK, SCULLERY, 3 COMPARTMENTS
103	3	SINK, HAND, WALL MOUNT
104	6	PROOFER/HEATER CABINET
105	1	TABLE, WORK
106	1	TABLE, WORK
107	1	REFRIGERATOR, REACH-IN
108	1	TABLE, WORK
109	1	OVEN, CONNECTION, GAS
110	2	SHELF, DINNAGE
111	1	RANGE, RESTAURANT, GAS
112	1	SHELF, DINNAGE
114	1	HOOD, CLASS ONE
115	21	SHELVING, WIRE
116	1	WALK IN FREEZER
117	4	SHELF, DINNAGE
118	2	SHELVING, WIRE
119	1	S/S PASS THROUGH WINDOW

A New Facility For:

**FORT BEND SENIORS-MEALS ON WHEELS**  
FT. BEND COUNTY, TX

NO.	REVISIONS/ISSUES	DATE
1	FOR PRICING	12-14-12



210 Broad Lane • Spring, TX 77177  
281-499-0799 • Fax 281-499-0102

DESIGNED BY:	WCM
DRAWN BY:	WCM
CHECKED BY:	HMB
SCALE:	1/2"=1'-0"
DATE:	12-14-12
PLAN	

**FS-1**

Exhibit B

**MEALS ON WHEELS CONCEPTUAL ESTIMATE**

2/28/2013

**PROJECT:**

Band Rd  
Rosenberg, Tx

DESCRIPTION	QTY	UNIT	RATE	ITEM TOTAL	DIVISION TOTAL	DIVISION SUMMARY
Pre-Construction Fee					\$2,500.00	
Design Fee					\$50,000.00	
Material Testing					\$7,500.00	
General Conditions					\$172,535.94	
					Total Soft Cost	\$232,536
<b>KITCHEN ADDITION</b>						
Demolition					\$4,042.25	
Site Work					\$10,105.63	
Concrete					\$20,211.25	
Masonry					\$21,114.00	
Metals					\$40,422.50	
Moisture Protection					\$1,759.50	
Glass and Glazing					\$1,725.00	
Doors/Frames/Hardware					\$2,910.94	
Finishes					\$33,198.35	
Mechanical					\$86,250.00	
Electrical					\$57,500.00	
					Kitchen Construction Cost	\$279,239.42
<b>NEW ADMINISTRATION</b>						
Site Work					\$39,531.25	
Concrete					\$51,750.00	
Masonry					\$50,508.00	
Metals					\$103,500.00	
Moisture Protection					\$4,209.00	
Millwork					\$26,593.75	
Glass and Glazing					\$23,562.00	
Doors/Frames/Hardware					\$16,495.31	
Finishes					\$78,235.94	
Mechanical					\$80,500.00	
Electrical					\$72,881.25	
					Admin Building Construction Cost	\$547,766.50
<b>Remodel</b>						
Demolition					\$25,412.91	
Wood and Plastics					\$17,789.06	
Glass and Glazing					\$414.00	
Doors/Frames/Hardware					\$2,012.50	
Finishes					\$86,799.64	
Mechanical					\$23,469.00	
Electrical					\$36,128.75	
Foundation Repair					\$70,000.00	
					Remodel Construction Cost	\$262,025.86
Subtotal						\$1,321,567.72
Contractor's Fee			7.50%			\$99,117.58
General Liability anc \$12/1000						\$14,206.85
Contingency Allowance						100,000.00
Grand Total						\$1,534,892.15