

AGENDA ITEM

STATE OF TEXAS
COUNTY OF FORT BEND

**FIRST AMENDMENT TO TEXANA THERAPY FOR TOTS
OCCUPANCY AGREEMENT
BETWEEN TEXANA CENTER AND FORT BEND COUNTY**

This First Amendment is entered into by and between FORT BEND COUNTY, TEXAS (herein referred to as "COUNTY"), a body corporate and politic under the laws of the State of Texas acting pursuant to the duly authorized act of its Commissioner's Court, and TEXANA CENTER (hereinafter referred to as "TEXANA"), a community center and an agency of the State of Texas under the provisions of Chapter 534 of the Texas Health & Safety Code Ann. (Vernon 2000), as amended.

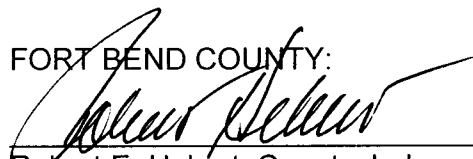
THAT, WHEREAS, the parties accepted the *TEXANA THERAPY FOR TOTS OCCUPANCY AGREEMENT BETWEEN TEXANA CENTER AND FORT BEND COUNTY* (hereinafter, "the Agreement") on or about October 1, 2013 as attached hereto and incorporated by reference; and,

WHEREAS, the following changes are incorporated as if a part of the original Agreement incorporated by reference in the same as if fully set forth verbatim herein:

1. The term of this Agreement is hereby renewed beginning on October 1, 2014 and will expire on September 30, 2015; unless sooner terminated by the Parties.
2. Section 1A of the Agreement is amended to permit Texana to provide Early Childhood Intervention ("ECI") services in addition to (or in lieu of) the Therapy for Tots Program ("T3") program.
3. ECI services are defined as early identification and developmental programming for children with or at risk for developmental delays. Services shall be personalized to assist and enable families to support the child in developing new skills or improving on present skills and assist the family in meeting needs and developing resources. The program shall also provide parent/ family training in furtherance of the ECI services.
4. All terms and conditions of the Agreement, including any addenda, not modified herein shall remain in full force and effect and for the term of any renewal. If there is a conflict between this First Amendment and the original Occupancy Agreement, the provisions of this First Amendment shall prevail.

[execution page follows]


FORT BEND COUNTY:


Robert E. Hebert, County Judge

10-7-2014

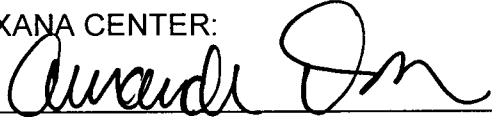
Date

ATTEST:


Dianne Wilson, County Clerk



TEXANA CENTER:


Signature

10-1-14
Date

AMANDA DOAN, CFO
Name and Title

I/MTR/Agreements/Leases

Exhibit A: Agreement dated October 1, 2013

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ NIA to accomplish and pay the obligation of the Fort Bend County under this Agreement.


Ed Sturdivant, Fort Bend County Auditor

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

**TEXANA THERAPY FOR TOTS
OCCUPANCY AGREEMENT
BETWEEN TEXANA CENTER AND FORT BEND COUNTY**

THIS AGREEMENT is now made by and between **FORT BEND COUNTY, TEXAS** (herein referred to as "COUNTY"), a body corporate and politic under the laws of the State of Texas acting pursuant to the duly authorized act of its Commissioner's Court, and **TEXANA CENTER** (hereinafter referred to as "TEXANA"), a community center and an agency of the State of Texas under the provisions of Chapter 534 of the Texas Health & Safety Code Ann. (Vernon 2000), as amended.

WITNESSETH:

WHEREAS, since 1999, the County and Texana have entered into an Interlocal Agreement to establish and provide a unified delivery system for Behavioral Health and Intellectual Development Disabilities services for residents of Fort Bend County; and

WHEREAS, Texana Center is a community center and an agency of the State of Texas that provides behavioral healthcare and developmental disabilities services to residents of a six county area that includes Fort Bend County; and is designated by the Texas Department of Aging and Disabilities Services as the local Mental Retardation Authority, and by the Texas Department of State Health Services as the local Mental Health Authority, and

WHEREAS, Texana has established programs and services that serve those groups of persons with mental illness or mental retardation in Fort Bend County that are most in need of such services; and

WHEREAS, the governing body of Texana has duly authorized this Agreement; and,

WHEREAS, this is a contract for professional services and is exempt from competitive bidding as authorized by Section 262.024 of the Local Government Code;

WHEREAS, this Agreement is made pursuant to and under the provisions of Chapter 791 of the Texas Government Code, V.T.C.A., the Interlocal Cooperation Act.

NOW, THEREFORE, in consideration of the foregoing and further consideration of the mutual promises, covenants and conditions herein, the parties hereby agree as follows:

**SECTION ONE
TEXANA USAGE OF THE LEASED PREMISES**

- A. As consideration for this Occupancy Agreement, TEXANA by and through their Therapy for Tots Program ("T3") will implement a system of early identification and delivery of therapeutic services to Fort Bend County area children who demonstrate mild delays or risk

factors but do not qualify for Early Childhood Intervention services.

- B. County will provide TEXANA with office space which shall consist of a room to be used for interviews and a second room to be used by T3 staff to provide therapy to clients located at 307 Texas Parkway Suite 235, Missouri City, Texas 77459. Room assignment shall be determined by the Fort Bend County's Social Services Director.
- C. TEXANA 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.
- D. Prior to its use of any other multi-purpose, conference or meeting room at the Leased Premises, TEXANA will consult with Fort Bend County's Social Services Director, or their designee for the purpose of scheduling such use and TEXANA will abide by and respect all reasonable requests that may be made by Fort Bend County's Social Services Director regarding the use by TEXANA of such rooms or any other areas held in common or otherwise shared by those parties authorized to use the Center.
- E. Access to and the use of any parking areas adjacent to the premise by TEXANA shall be shared with all other parties entitled to use the same.
 - 1. TEXANA has no entitlement to reserved parking on the part of County 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 "TEXANA" includes TEXANA's guests, clients, patrons, invitees, permittees, licensees or any other persons, whether natural or corporate, holding under TEXANA, and TEXANA will, to the extent practicable, advise such parties of their responsibilities regarding the use of any common shared areas.
- F. TEXANA 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.

SECTION TWO TERM & TERMINATION

- A. Both parties agree that the effective term of this Agreement will be effective upon signature of County and will terminate at midnight on September 30, 2014.
- B. This Agreement may be terminated at anytime, without cause, by either the County or Texana by giving (30) days written notice to the other party.
- C. 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, TEXANA 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.
- E. If TEXANA fails to surrender possession as herein required, County may initiate any and all legal action as County may elect to dispossess TEXANA and all of its property, and all persons or firms claiming by, through or under TEXANA 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 TEXANA's sole cost and expense.
- F. If TEXANA fails to surrender possession of the Leased Premises in the condition herein required, County may, at TEXANA's sole expense, restore the Leased Premises to such condition.

SECTION THREE INSPECTION

- A. TEXANA 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 TEXANA 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.

SECTION FOUR EQUIPMENT, FURNISHING MAINTENANCE AND REPAIRS

- A. In addition to the office space described in Section IB, County agrees to provide the following to TEXANA:
1. Provide access to staff break room, copy room, and staff restrooms;
 2. Supply furniture for designated office space;
 3. Clear furniture or other stored items from designated therapy room;
 4. Offer assistance from maintenance department as needed; and
 5. Notify T3 staff or direct T3 clients to the appropriate therapy room upon arrival for scheduled appointments.
- B. TEXANA 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; except as provided in Section 4A.
- C. Without limitation, and as part of the consideration for the grant by the County of its right to use the premise, TEXANA 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 TEXANA in its enjoyment and use of the Leased Premises. All utilities, other than telephone, shall be the responsibility of County.
- D. In the event the installation of any non-building standard improvement or trade fixture is contemplated, TEXANA 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, TEXANA may use the same.
 - a. Should any such systems be inadequate for TEXANA's needs, and it becomes necessary for such systems to be upgraded or modified, TEXANA may do so upon the prior written consent of Commissioners' Court.
 - b. Consent shall include the right of TEXANA 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. TEXANA 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 TEXANA shall reimburse the County for the reasonable expense thereof.
- 3. TEXANA 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.
- E. 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.
- F. 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.
- G. 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;
- H. TEXANA 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, TEXANA will promptly pay the lien.
 - 2. If default in payment of the lien continues for thirty (30) days after written notice from County to TEXANA, 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 TEXANA, including expenses and interest, shall be due from TEXANA to County and shall be repaid to County immediately on rendition of written notice.
- I. 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.

SECTION FIVE USAGE BY TEXANA

- A. TEXANA shall use the Leased Premises for the purpose of operating its programs and for no other activity or event which is not sponsored by TEXANA 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. TEXANA 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 TEXANA event or activity permitted under the terms of this Agreement to be conducted upon the Leased Premises shall be supervised by TEXANA'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.

SECTION SIX COMPLIANCE WITH FEDERAL LAW

TEXANA 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 TEXANA's services on the basis of creed.
2. TEXANA will publicize this policy.

SECTION SEVEN REMOVAL OF TEXANA 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 TEXANA shall be removed by TEXANA 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, TEXANA 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.

SECTION EIGHT OPERATION OF THE LEASED PREMISES

- A. TEXANA acknowledges and agrees that the services provided under this Agreement are subject to state and federal laws, rules and regulations relating to, among other subjects, the confidentiality or security of patient/inmate information, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations hereunder as may be amended from time to time. TEXANA will at all times comply and requires that any personnel comply with all applicable provisions of such laws, regulations and policies.
- B. In addition to Section 8A, TEXANA will promptly and fully comply with all 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 TEXANA's use or occupancy thereof.
- C. To the extent applicable and allowed by law, TEXANA will participate in the record keeping system and/or requirements of the Center required by Fort Bend County.
- D. TEXANA will not use or allow the Leased Premises to be used for any unlawful purposes; nor will TEXANA 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.
- E. At all times TEXANA 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 TEXANA 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 TEXANA allow and/or tolerate any such activity.
 2. Breach of this subsection C. shall be grounds for immediate termination of this Agreement.
- F. TEXANA 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.
- G. The County may enter the Leased Premises at any time:
1. To inspect same;
 2. To determine whether TEXANA 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.

SECTION NINE INSURANCE REQUIREMENTS

- A. Texana shall maintain General Liability Coverage with limits of not less than \$400,000 per occurrence, \$400,000 in aggregate, and to provide County with a certificate reflecting these limits.
- B. Texana shall maintain Automobile Liability Insurance that provides coverage for owned, hired, and non-owned automobiles. Liability limits shall be greater than or equal to \$400,000 combined single limit per accident for bodily injury and property damage.
- C. Texana shall maintain Workers' Compensation Insurance with statutory limits as required by the State of Texas.
- D. Texana shall name Fort Bend County, its' elected and appointed officials, employees and agents as additional insureds to required coverages, except for Workers Compensation.
- E. Texana shall provide coverage with a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certificate of coverage shall be delivered to County on or before the date of this Agreement. All coverage specified shall remain in effect during the term of this Agreement. Texana shall provide sixty (60) days prior written notification to the County for any change or cancellation of the certificates or policies described herein. Any termination of coverage shall result in immediate termination of this Agreement. All required policies shall provide waiver of subrogation in favor of the County.

SECTION TEN 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

Copy to:
Director of Fort Bend County Social Services
1330 Band Road

Richmond, Texas 77469
Attn: County Judge

4520 Reading Road, Suite 900-A
Rosenberg, TX 77471

To TEXANA:
4706 Airport Ave.
Rosenberg, TX 77471
ATTN: Assistant Director of Texana Therapy for Tots

SECTION ELEVEN INDEMNIFICATION

- A. TO THE EXTENT ALLOWED BY LAW, TEXANA 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 TEXANA ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES AND VOLUNTEERS INCIDENT TO THIS AGREEMENT.
- B. TEXANA WILL INDEMNIFY AND PROTECT THE COUNTY FROM THE ALLEGED JOINT, CONCURRENT OR SOLE NEGLIGENCE, OR OTHER FAULT OF TEXANA
- C. TEXANA WAIVES AND RELEASES ANY CAUSE OF ACTION OR RIGHT OF RECOVERY WHICH TEXANA MAY HAVE AGAINST COUNTY FOR ANY LOSS OR DAMAGE TO TEXANA'S PERSONAL PROPERTY LOCATED AT OR NEAR THE LEASED PREMISES

SECTION TWELVE COUNTY'S USAGE OF LEASED PREMISES

- A. TEXANA 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 TEXANA.
- B. TEXANA 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 TEXANA would normally occupy the Leased Premises and TEXANA 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.
- C. County agrees that it will endeavor to inform TEXANA as far in advance as possible of an event that would cause it to displace TEXANA from the Leased Premises.
- D. County agrees that it will endeavor to assist TEXANA to make reasonable accommodations when it requires TEXANA to vacate the Leased Premises. However, there may be occasions when TEXANA will be required to cancel all activities at the Leased Premises in order to accommodate the County's needs during an emergency.
- E. TEXANA expressly states that it understands that, notwithstanding the service provided under this Agreement, no member of the public may be precluded from using the Leased Premises.

SECTION THIRTEEN

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. TEXANA 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.

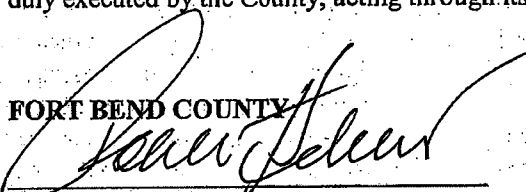
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**SECTION FOURTEEN
EXECUTION**


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 TEXANA.

FORT BEND COUNTY



Robert E. Hebert, County Judge

10-1-2013
Date

ATTEST:


Dianne Wilson, County Clerk

TEXANA CENTER:


Amanda Darr
Texana Chief Financial Officer

10-1-13
Date

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