

Actions, Incorporated of Brazoria County and City of Angleton, Texas

Use Agreement

THE STATE OF TEXAS §
 § **KNOWN ALL MEN BY THESE PRESENTS:**
COUNTY OF BRAZORIA §

THIS USE AGREEMENT (the “Agreement”) is made and entered into on this the _____ day of October 1, 2021, by and between the **CITY OF ANGLETON**, a home-rule city and municipal corporation of the State of Texas (the “City”) and **Actions, Incorporated of Brazoria County**, (“Actions”), a Texas non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Code.

WITNESSETH:

WHEREAS, the City is the owner of the Angleton Recreation Center located at 1601 North Valderas, Angleton, Texas; and

WHEREAS, Actions offers and conducts programs and activities for senior citizens; and

WHEREAS, both the City and Actions agree that it would be mutually beneficial for Actions to conduct programs and activities for senior citizens at the City’s Angleton Recreation Center; and

WHEREAS, the parties desire to establish the terms of their agreement;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, the City and Actions hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

“**Actions**” means Actions, Incorporated of Brazoria County, a Texas non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Code, which has been established to plan and coordinate services for senior citizens of ages sixty (60) years and older.

“**City**” is defined as Angleton, Texas.

“**City Manager**” means the City Manager of the City of Angleton or designee.

“**Senior Citizen(s)**” means a person who is fifty (60) years of age or older and his/her spouse of any age as long as one spouse is fifty (60) years of age or older.

“**Senior Citizens Center**” means the City’s Room 1 facility located at 1601 North Valderas, Angleton, Texas consisting of a meeting room and serving area.

“**Senior Citizens Center Rules**” means the Rules and Regulations for Operation and Use of Angleton Recreation Center and any City rules and regulations regarding the use of the Angleton Recreation Center, in effect as of the date of this agreement, and as amended.

ARTICLE II.

USE OF SENIOR CITIZENS CENTER

2.01 Permitted Use of Facility.

Actions shall provide programs and activities for senior citizens in the Angleton area and is authorized to use Room 1 of the Angleton Recreation Center for that purpose.

Actions shall be allowed to use those areas of the Angleton Recreation Center specified in writing by the City Manager, or designee, to conduct senior citizen programs and activities. The City Manager, or designee, shall determine the days and times that Actions shall be authorized to use the Senior Citizens Center. The days and times of general use are Monday through Friday for the hours 8:00 a.m. to 1:00 p.m. and are subject to modification or cancellation by the City. A city of Angleton employee must be present and on duty in the Angleton Recreation Center during all Actions activities and for the entire duration of time Actions is in the Recreation Center.

Actions shall comply with Angleton Recreation Center Rules in existence, and any created or as amended. The City understands that persons must meet the guidelines of Actions in order to participate in the programs and activities. Actions’ use of the Angleton Recreation Center is expressly conditioned upon its strict compliance with the laws, rules and regulations governing the operation of the city of Angleton, the Angleton Recreation Center and that of Actions.

2.02 Maintenance.

Actions agrees that it will maintain the Angleton Recreation Center in a clean condition.

Actions agrees to provide all supplies (trash bags, paper towels, cleaning supplies, or any similar supplies) needed to maintain the Angleton Recreation Center. Actions shall sweep, mop the floor and remove all trash to the designated dumpster prior to leaving each day.

Actions agrees to accept the Angleton Recreation Center in its present condition and admits its suitability and sufficiency for the use proposed to be made thereof by Actions. The City is not required to make any improvements, modifications, repairs or restoration to the Angleton Recreation Center or any improvements located thereon.

Actions shall not place any improvements on or at the Senior Citizens Center without written approval of the City Manager, or designee. The City shall be responsible for the utilities furnished to the Angleton Recreation Center.

2.03 No Waste, Nuisance or Unlawful Use.

Actions shall not commit, or allow to be committed, any waste on or at the Angleton Recreation Center; nor shall Actions create or allow any nuisance or unsafe condition to exist on or at the Angleton Recreation Center.

Actions shall not use or allow the Angleton Recreation Center to be used for any unlawful purpose.

Actions shall immediately report any type of breakage or facility maintenance problems to the building supervisor.

2.04 The City may simultaneously use the Angleton Recreation Center at any time for any purpose necessary, incidental to or connected with Actions' use of the Angleton Recreation Center or in the exercise of the City's governmental functions. Actions does not have an exclusive right of access or exclusive right of use to the Angleton Recreation Center.

2.05 Security Measures.

Actions shall comply with any of the City of Angleton security requirements in effect with respect to the Angleton Recreation Center or adopted in the future. Actions will comply with all safety and security directives the City of Angleton recommends and requires in effect at the time of execution of this agreement and as created or amended.

ARTICLE III.

TERM AND TERMINATION

3.01 Term.

The term of this Agreement commences on October 1, 2021, and shall end on September 30, 2023, unless terminated earlier in accordance with the terms of this Agreement. Upon mutual

agreement of the parties, this Agreement may be renewed for an additional two (2) year term upon the same terms and conditions of this Agreement and no renewal is effective unless in writing. Either party may send notice to the other party not later than sixty (60) days prior to the expiration of this Agreement indicating its desire to renew or extend this Agreement. Renewal of this Agreement shall require City Council approval.

3.02 Termination.

This Agreement may be terminated by either party for any reason by giving written notice at least sixty (60) days prior to termination.

**ARTICLE IV.
CONSIDERATION**

Actions understands and agrees that the City's operation and maintenance of a senior citizens' center constitutes a governmental function as set forth in Sec. 101.0215 Tex. Civ Practices and Remedies Code. The consideration for this Agreement are the provision of programs and activities that Actions will conduct for the senior citizens in the City of Angleton area. In exchange, the City will provide the Angleton Recreation Center solely for that purpose.

**ARTICLE V.
INSURANCE**

Actions agrees that at its sole cost it will procure, within seven (7) days after its execution of this Agreement, and thereafter keep in full force and effect during the term hereof, and any authorized or unauthorized holding over, insurance coverage for its operations at the Senior Citizens Center of the type(s) and limit(s) set forth below:

COVERAGE

Commercial General Liability
(i) Products/completed operations
(ii) Personal and advertising injury
(iii) Fire Damage

Comprehensive Automobile Liability
(i) owned/leased vehicle
(ii) non-owned vehicles

LIABILITY

Combined single limit for bodily injury and property damage of \$500,000 per person. General Aggregate of \$1,000,000 (not including products/completed operations)

Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence

(iii) hired automobiles

Workers Compensation

Statutory requirements per state law

Insofar as the insurance provides protection against liability for damages to a third party for personal injury, death or property damage, the City shall be included as an additional insured, provided, however, such liability insurance coverage shall also extend to damage, destruction and injury, to City-owned or leased property and City personnel, caused by or resulting from work, acts or omissions of Actions, its officers, agents, employees, licensees, invitees, sublessees, and independent contractors. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as an additional insured is not intended to and shall not make the City a partner or joint venturer with Actions in its operations at the Angleton Recreation Center.

Actions shall furnish the City with a duplicate original of all policies evidencing the coverage required hereunder, or a photostat copy or other reproduced copy of the original policy or policies and all amendments and riders thereto for approval. Upon renewal of such insurance, if no change is made in the policies and copies of those policies have theretofore been furnished to the City, a certificate of coverage certifying such fact will be sufficient. All insurance must be written by companies authorized to do business in the State of Texas and on forms approved by the Insurance Commission of the State of Texas and shall be performable in the State of Texas, County of Brazoria.

All the insurance required to be carried by Actions hereunder shall be by policies which shall require on their face, or by endorsement, ten (10) days' written notice to the City before they may be cancelled and within which ten (10) day period Actions covenants that it will provide other suitable policies in lieu of those about to be cancelled so as to maintain in effect the coverage required under the provisions hereof.

Failure or refusal of Actions to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Agreement at once, notwithstanding any provision of this Agreement to the contrary.

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, agents, employees and volunteers or shall specifically allow Actions when providing insurance in compliance with these requirements to waive the right of recovery prior to a loss. Actions thereby

waives its own right of recovery against the City and shall require similar written express waivers from its directors.

ARTICLE VI.

INDEMNIFICATION

ACTIONS SHALL INDEMNIFY AND HOLD THE CITY OF ANGLETON, ITS OFFICERS AND EMPLOYEES HARMLESS FROM ANY CLAIM, SUIT, OR PROCEEDING ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, AND USER SHALL INDEMNIFY THE CITY OF ANGLETON, ITS OFFICERS AND EMPLOYEES FOR ALL EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) INCURRED IN DEFENDING SUCH CLAIMS.

ARTICLE VII.

MISCELLANEOUS PROVISIONS

7.01 Modification.

This Agreement cannot be modified except upon written authorization of the City Manager. No other officer or employee shall have the right to extend, modify, or change the terms hereof except by written authority of the City Council.

7.02 Assignment.

Actions shall not assign or transfer any of its rights under this Agreement without the prior written consent of the City Manager. Actions herein is an independent contractor and not the agent or employee of the City of Angleton.

7.03 Failure to Exercise Rights.

Failure by the City to exercise any of its rights arising hereunder by reason of any act of Actions hereunder shall not be deemed a waiver of any subsequent act, similar or dissimilar by Actions.

7.04 Notices.

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt

requested) addressed to the respective other party at the address set forth below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party:

City of Angleton

City Manager
1601 N Valderas
Angleton, Texas 77515

Actions, Incorporated of Brazoria
County

Executive Director
1524 E. Mulberry, Suite 135
Angleton, Texas 77515

7.05 Applicable Laws.

Actions covenants and agrees that it will fully comply with all laws, ordinances, rules and regulations of the City, the State of Texas, and the United States applicable to, related to or touching upon its operations within and upon the Angleton Recreation Center.

7.06 Licenses and Permits.

Actions shall obtain and pay for all licenses, permits and certificates required by any statute, ordinance, rule, or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder.

7.07 Entire Agreement.

This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

7.08 Severability.

In the event any covenant, condition or provision contained herein is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision contained herein, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the Actions in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

7.09 Remedies Cumulative.

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the City, or Actions,

at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

7.10 Place of Performance.

This Agreement shall be performable and enforceable in Brazoria County, Texas, and shall be construed in accordance with the laws of the State of Texas.

7.11 Benefits.

This Agreement is made for the sole and exclusive benefit of the City and Actions, their successors and assigns, and is not made for the benefit of any third party.

7.12 Ambiguities.

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

7.13 Successors and Assigns.

All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

7.14 Captions.

The captions of the articles and sections of this Agreement are inserted for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

Actions, Incorporated of Brazoria County

CITY OF ANGLETON, TEXAS

By: _____
Name: **Breah Knape**
Title: Executive Director

By: _____
Jason Perez, Mayor

ATTEST/SEAL

ATTEST/SEAL

By: _____

By: _____

Name: Dottie Cornett
Title: Board Chairperson

Frances Aguilar, City Secretary