

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

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**INTERLOCAL AGREEMENT FOR
IMPROVEMENTS TO MISSOURI CITY MIDDLE SCHOOL GYMNASIUM
BETWEEN FORT BEND COUNTY AND FORT BEND INDEPENDENT SCHOOL DISTRICT**

This Interlocal Agreement (the "Agreement") is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the Fort Bend Independent School District, a body corporate and politic under the laws of the State of Texas, acting by and through its Board of Trustees and Superintendent, ("District"), and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, ("County"). The District and the County are herein collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the District owns an athletic facility located on the campus of Missouri City Middle School, also referred to as the Cougar Gym (the "Facility"), and currently has funds allocated to make certain improvements to the Facility; and

WHEREAS, the currently allocated funds would not be sufficient for the long-term maintenance and operational costs associated with the Facility; and

WHEREAS, it is the mutual benefit of the District and the County to jointly participate in the improvements to the Facility and provide for its long-term maintenance and operation under the terms of this Interlocal Agreement; and

WHEREAS, the governing bodies of the District and County have authorized this Agreement;

WHEREAS, the Commissioners Court of Fort Bend County finds that the improvements, maintenance and operation of the Facility contemplated in this Agreement serve a County purpose, as well as an educational purpose; and

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

AGREEMENT

Section 1. Definitions

1.1 ***District*** means the Fort Bend Independent School District.

1.2 **County** means Fort Bend County, Texas.

1.3 **Project** means the renovations to the Facility, as described in this Agreement.

Section 2. Incorporation of Recitals

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

Section 3. District Obligations

3.1 The District is responsible for making the District Contribution (as defined below) available for the funding of the costs of the renovations of the Facility, which are estimated to include the following items, referred to hereinafter as “Construction Tasks” (to the extent the District Contribution will be sufficient for such items):

3.1.1 Restoring the electrical power to the Facility and grounds;

3.1.2 Restoring water and sewer service to the Facility;

3.1.3 Repairing the heating, ventilation and air conditioning (HVAC) system to the entire Facility;

3.1.4 Repairing the roof of the Facility; and

3.1.5 Stripping and repairing the floors of the Facility.

3.2 The District shall provide access to the Facility to representatives and contractors of the County as necessary for the construction and inspection of the Project, provided that such access shall not unreasonably interfere with ongoing work, or the District’s operations within the Facility.

3.3 In the event the District or the County determines the Project lacks feasibility or for any other reason elects to forego its construction, the District or the County shall provide written notice to the other party of its decision to forego construction.

3.4 During the work on the Project, District shall have the right to review all documents, records, photographs, reports and drawings affecting the construction and to inspect the work in progress. Any deficiencies noted by District shall be brought to the attention of County and the County shall take all reasonable actions to address such deficiencies.

3.5 District shall have the right to participate in the final inspection of the Project. At that time, any deficiencies noted by the District shall be promptly addressed by the County.

3.6 No later than sixty (60) days following completion of the Project, the District agrees to convey the Facility to the County for use as a public facility for educational, athletic, recreational, performing arts, and other related general public purposes consistent with other County-owned facilities; and the County agrees to accept such conveyance. The conveyance

documents used to transfer title of the Facility to the County shall be mutually agreeable to the District and the County, and shall expressly state the use restrictions set forth in the preceding sentence. Such conveyance shall be subject to the Joint Use Agreement (as defined below).

Section 4. County Rights and Obligations

4.1 The County is responsible for managing the design and buildout of the Project, subject to the District's written approval thereof, in compliance with all applicable state and federal laws. The County's buildout obligations of the Project shall include the Construction Tasks listed in 3.1.1 – 3.1.5 above.

4.2 The County shall submit reports to the District describing in sufficient detail the progress of the Project. These reports shall be submitted to District at increments agreed to between the parties as appropriate for the various phases of the Project. Reports received by the County from contractors detailing the progress of the Project shall suffice for the requirements of this section, so long as the County has reviewed such reports and confirmed accuracy of the contractor's report.

4.3 During the work on the Project, the County shall make available to the District for review, any documents, records, photographs, reports, and drawings pertaining to the Project.

4.4 No later than sixty (60) days following completion of the Project, the County will furnish the District with an electronic copy of the record drawings showing the Project as constructed.

4.5 Upon completion of construction of the Project, County is to accept ownership of the Facility and enter into a long-term Joint Use Agreement with District substantially in the form of the document attached as Exhibit A, attached hereto and incorporated herein.

Section 5. Liability

The District and County are entitled to the immunities and defenses of the Texas Tort Claims Act, as well as applicable Texas and federal laws.

Section 6. Maintenance

Upon completion of the Project and conveyance of the Facility to County, County shall be solely responsible for maintaining the Facility, as set forth in the Joint Use Agreement. Until such time of conveyance and execution of Joint Use Agreement, District shall be solely responsible for maintaining the Facility.

Section 7. Limit of Appropriation

Prior to the execution of this Agreement, the County has been advised by the District, and the County clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the District shall have available the total maximum amount not to exceed \$1,100,000.00 (the "District Contribution"), specifically

allocated to the payment of costs associated with the Project. The District shall not be obligated to pay any amount in excess of the District Contribution in connection with the Project.

The District agrees to make the District Contribution available to the County as a reimbursement incrementally based on County's completion of each Construction Task listed in 3.1.1 – 3.1.5 up to the total amount available agreed to herein as the District Contribution. Upon completion of each Construction Task, the County shall submit to the District a detailed accounting of all construction costs actually incurred in connection with the Construction Task (the "Construction Task Costs"), along with reasonable supporting documentation. District shall remit payment to County within thirty (30) of receipt of such detailed accounting.

Each party paying for the performance of governmental functions or services must make those payments from current revenues available to such Paying party.

Section 8. Insurance Requirements

County agrees that it will require the County's General Contractor's insurance policies to name the County as well as District as additional insureds on all policies except for Workers' Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:

8.1 Worker's Compensation in the amount required by law. The policy shall include the All States Endorsement.

8.2 Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense costs excluded from face amount of policy).

8.3 Comprehensive Automatic Liability Insurance, including owned, non-owned and hired vehicles used for the Project, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.

8.4 The District or the County may require insurance in excess of the amount of coverage set out above, as it deems necessary, in such cases the County and the District shall remain an additional insured. The County will provide the District with proof of insurance within thirty (30) days of County's award of the contract for the Project construction.

Section 9. Assignment

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

Section 10. No Third Party Beneficiaries

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

Section 11. Notices

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

County: Fort Bend County
Attn: Robert E. Hebert, County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

With a copy to: Fort Bend County Facilities Management and Planning
Attn: James Knight, Director
301 Jackson Street
Richmond, Texas 77469

District: Fort Bend Independent School District
Attn: Steve Bassett, Chief Financial Officer
16431 Lexington Boulevard
Sugar Land, Texas 77479

Section 12. Entire Agreement

This Agreement, and the Exhibits attached hereto, contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all parties hereto.

Section 13. Execution

This Agreement has been executed by the District and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party.

Section 14. Miscellaneous

This Agreement shall be governed by Texas law without regard to its conflicts of law principles

FORT BEND COUNTY, TEXAS

FORT BEND INDEPENDENT SCHOOL DISTRICT

Robert E. Hebert, County Judge

Dr. Charles E. Dupre, Superintendent

Date: _____

Date: _____

ATTEST:

ATTEST:

Laura Richard, County Clerk

_____, District Secretary

APPROVED:

James Knight, Director
Facilities Management and Planning

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EXHIBIT A

Joint Use Agreement

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

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**INTERLOCAL AGREEMENT FOR
JOINT USE OF THE MISSOURI CITY MIDDLE SCHOOL GYMNASIUM
BETWEEN FORT BEND COUNTY AND FORT BEND INDEPENDENT SCHOOL DISTRICT**

This Interlocal Agreement for Joint Use ("Joint Use Agreement") is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the Fort Bend Independent School District, a body corporate and politic under the laws of the State of Texas, acting by and through its Board of Trustees and Superintendent, ("District"), and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, ("County").

RECITALS

WHEREAS, the County and the District jointly participated in the improvements to the athletic facility located on the campus of Missouri City Middle School, also referred to as the Cougar Gym (the "Facility"); and

WHEREAS, as consideration for District's conveyance of the Facility to the County upon completion of such improvements, District and County agreed to enter an agreement for the joint use of the Facility to memorialize the County's commitment to maintain, and accommodate District's future use of the Facility; and

WHEREAS, the Commissioners Court of Fort Bend County finds that the improvements, maintenance and operation of the Facility contemplated in this Agreement serve a County purpose; and

WHEREAS, the governing bodies of the District and County have authorized this Agreement;

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

AGREEMENT

Section 1. Incorporation of Recitals

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

Section 2. County Obligations

2.1 County shall work with District to accommodate all requests by District for use of all or portions of the Facility for educational, athletic, recreational, and performing arts purposes.

2.2 In addition to the conveyance of the Facility to County, as additional consideration, District will pay to the County, without demand, at the office of the County Treasurer, Fort Bend County, Texas, an annual payment in the amount of one dollar (\$1.00).

2.3 The County shall be solely responsible for maintenance and repair of the Facility in good order, condition and repair.

Section 3. District Obligations

3.1 District shall use the Facility for educational, athletic, recreational, and performing arts purposes, as made available by the County, and for no other activity or event which is not sponsored by the District or not otherwise permitted the County.

3.2 District 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 Facility by all parties involved, provided that such amendments shall not diminish the District's right to utilize the Facility as set forth herein.

3.3 Any District event or activity permitted under the terms of this Agreement to be conducted at the Facility shall be supervised by the District's personnel or designated representatives who shall be properly trained, adequate in number and who shall remain at the Facility during the course of the event or activity.

Section 4. Liability

The District and County are entitled to the immunities and defenses of the Texas Tort Claims Act, as well as applicable Texas and federal laws.

Section 5. Insurance Requirements

District agrees furnish County with insurance certificate(s) for each policy that is in effect as of the date of the Agreement for verification by the County Risk Management Department as to compliance with the insurance requirements of this Agreement. District shall carry Comprehensive General Liability Insurance at minimum combined single limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate (defense costs excluded from face amount of policy) for bodily injury and property damage, which coverage shall include independent contractors and contractual liability each at \$1,000,000 per occurrence. Coverages shall be written on per occurrence forms.

Section 6. Assignment

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

Section 7. No Third Party Beneficiaries

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

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All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

County:	Fort Bend County Attn: Robert E. Hebert, County Judge 401 Jackson Street, 1 st Floor Richmond, Texas 77469
With a copy to:	Fort Bend County Facilities Management and Planning Attn: James Knight, Director 301 Jackson Street Richmond, Texas 77469
District:	Fort Bend Independent School District Attn: Steve Bassett, Chief Financial Officer 16431 Lexington Boulevard Sugar Land, Texas 77479

Section 9. Entire Agreement

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all parties hereto.

Section 10. Execution

This Agreement has been executed by the District and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party.

Section 11. Miscellaneous

Each Party paying for the performance of governmental functions or services must make those payment from current revenues available to such paying Party.

This Agreement shall be governed by Texas law without regard to its conflicts of law principles.

FORT BEND COUNTY, TEXAS

FORT BEND INDEPENDENT SCHOOL DISTRICT

Robert E. Hebert, County Judge

Dr. Charles E. Dupre, Superintendent

Date: _____

Date: _____

ATTEST:

ATTEST:

Laura Richard, County Clerk

_____, District Secretary

APPROVED:

James Knight, Director

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