

INTERLOCAL COOPERATION AGREEMENT
between
TEXAS PARKS AND WILDLIFE DEPARTMENT
and
FORT BEND COUNTY
for
COMMUNICATIONS TOWER AT BRAZOS BEND STATE PARK

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between Texas Parks and Wildlife Department (“TPWD”) and Fort Bend County, (“COUNTY”), a body corporate and politic under the laws of the State of Texas,, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. TPWD and COUNTY shall be referred to individually hereinafter as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, The State of Texas must be prepared to ensure the continuing performance of critical government functions under all conditions, including emergencies that disrupt normal operations;

WHEREAS, TPWD owns and manages Brazos Bend State Park (“Park”) located in Fort Bend County, Texas;

WHEREAS, COUNTY serves the residents of Fort Bend County in four main ways: preparedness, response, recovery, and mitigation;

WHEREAS, TPWD is currently in the process of acquiring an uninstalled 180 foot radio tower (the “Tower”) from the Department of Public Safety and relocated in the Park. Once installed, the Tower will support TPWD’s LAN access, cellular communications, and Wi-Fi antennas, and bridge a critically important communication gap for safety and park operations;

WHEREAS, COUNTY, by their proximity, will benefit from improved traffic and weather coverage by TPWD installing an antenna on the Tower and communications building in the Park; and

WHEREAS, both TPWD and COUNTY, by virtue of their mutually beneficial resources, desire to make available those resources to each other as stated in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, TPWD and COUNTY have agreed to work together to facilitate the completion of the project entitled “Brazos Bend State Park’s Communications Tower and Building” (hereinafter referred to as “the Project”).

I. PURPOSE

The purpose of this Agreement is to describe the relationship between and obligations of TPWD and COUNTY in relation to the Project.

II. RESPONSIBILITIES OF THE AGENCIES

In regards to the completion of the Project, both Parties agree:

1. COUNTY shall:

- a) Provide TPWD funding in the amount of \$55,377 to be used towards the completion of the Project. Funding shall be submitted to TPWD within 60 days of contract execution.
- b) Provide and install COUNTY radio communication equipment into approved equipment building.

- c) Maintain all of COUNTY's antennas, coaxial cables, and equipment for the term of this Agreement.
- d) If authorized by the Commissioners Court, provide additional monetary assistance or services for site maintenance, when available. Prior to any commitment of future funding by COUNTY, the parties must execute an amendment to this Agreement.
- e) Notify Park personnel by phone or email when a site visit is required. A minimum 3-day notice must be given for non-emergency visits and 24-hour notification for emergency responses before coming on site. COUNTY personnel or their representatives will check in and out of the park upon arrival and departure from site.

2. TPWD agrees to:

- a) Provide funding towards the completion of the Project and a fully functioning radio Tower and building structure.
- b) Coordinate all services necessary for the completion of the Project unless otherwise specified herein. Services to include but not limited to the following:
 - i. Provide the land and footprint, inside the Park, for the Tower and radio equipment building, at a site chosen by TPWD. The location of the Tower and building will be at the sole discretion of TPWD.
 - ii. Deliver the 180 foot Tower to the Park.
 - iii. Provide any clearing of native vegetation as needed for the erection of the Tower and building.
 - iv. Provide Sealed Engineer drawings for Tower base and Tower erection with required antennas and hardware as needed for the Federal review and permitting process.
 - v. Provide geotechnical report for Tower base and anchors.
 - vi. Provide Consultant to conduct Federal review and permitting process, including acquiring permit.
 - vii. Fund and obtain the Federal Permit, if applicable.
 - viii. Provide Contractors to construct and erect Tower. Construction includes: base, guys, and anchors.
 - ix. Provide inspection services for the installation of the approved Tower and building for radio equipment on site.
 - x. Review all building and wind load specifications to ensure the Project meets safety and building code standards for the designated Tower site location. This includes all engineering designs and product submittals, if applicable.
 - xi. Provide and install all TPWD and COUNTY radio antennas and coaxial cables on Tower and into radio equipment building.
 - xii. Install COUNTY antenna at approximately 120 feet, and TPWD antennas to be installed at 20 foot intervals starting at 140 foot, 160 foot and 180 foot.
 - xiii. Provide and install TPWD radio communication equipment into approved equipment building.
 - xiv. Provide Contractors to connect electrical power and emergency generator as provided by TPWD, to radio equipment building and distribution within the building for radio equipment.
 - xv. Provide electricity at this site for the benefit of TPWD and COUNTY. COUNTY may use the existing emergency stand-by generator(s) at this Tower if available; however, TPWD makes no representation or warranties as to the fitness of such generator(s) for COUNTY's requirements.
 - xvi. Maintain Tower, guys, anchors, and radio equipment building for the term of this Agreement, unless otherwise dictated by TPWD's business needs.
 - xvii. Fund and perform necessary maintenance on Tower, guys, anchors, and radio equipment building at site.
- c) Provide COUNTY access to the use of the Tower and equipment building for the purpose of housing, maintaining and repairing necessary communications equipment in order to provide adequate coverage for public safety data, video, and voice technologies.

3. COUNTY and TPWD mutually agree:

- a) Each Party shall maintain administrative control of their radio frequencies and will be responsible for all use of the frequencies.
- b) Each Party shall furnish their own radio communications equipment to operate on their frequencies.
- c) Each Party will be responsible for installing and maintaining their own radio equipment in the equipment building.
- d) Equipment shall remain the property of each Party that furnished it, and that Party shall be the licensee pursuant to the Federal Communications Commission (FCC) and International Radio Advisory Committee (IRAC) regulations.
- e) Each Party shall operate and maintain their equipment in accordance with FCC and NTIA regulations and operational parameters.
- f) Each Party will observe and abide by all applicable statutes, laws, ordinances, rules and regulations, including but not limited to those of the FCC (such as waiver and eligibility requirements). If the FCC should ever change permit requirements, TPWD will be responsible for updating permits for this site. If applicable, COUNTY shall cooperate with TPWD by providing any information necessary to update permits, as requested by TPWD.
- g) Each Party will operate their own equipment so as not to cause undue interference with any other users using the Tower. Each Party will provide the other with copies of the relevant FCC rules and compliance information. Each Party recognizes that applicable FCC rules and other statutes, laws, ordinances, rules and regulations may change from time to time and that, accordingly, the Parties agree to modify the agreement to comply with such changes, or if such agreement cannot be reached, a Party may terminate the agreement for convenience. Each Party further warrants that it will operate the equipment for the purposes contemplated by this Agreement, and shall not re-sell service, interconnect, or patch any equipment with another user without written consent.
- h) Should any interference problems arise as a result of a Party's frequencies, that Party will take actions to correct the problem(s) within five (5) days of notification. This responsibility would include reasonable costs, if sufficient funds are appropriated, or actions necessary to correct the interference problems up to and including moving to a different frequency.

III. POINT OF CONTACT INFORMATION

TPWD Project Coordinator

Robert Crossman
Director of Facility Management, State Parks
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
512-389-4301
robert.crossman@tpwd.texas.gov

TPWD Agreement Point of Contact

Christy Orr-Petrolawicz, CTPM, CTCM
Contract Specialist
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
512-389-4527 office
christy.orr-petrolawicz@tpwd.texas.gov

Brazos Bend State Park Site Contact

Richard Taylor, Lead Operations Ranger
(979) 553-5126
richard.taylor@tpwd.texas.gov

COUNTY Project Coordinator

Alan Spears
Deputy Emergency Management Coordinator
Fort Bend County Office of Emergency Management
307 Fort Street
Richmond, Texas 77469-7728
office
Alan.Spears@fortbendcountytexas.gov

COUNTY Agreement Point of Contact

IV. TERM OF AGREEMENT

This Agreement is granted for a term of ten (10) years effective on the date signed by the last of the Parties to this Agreement.

An extension to this Agreement may be granted with prior written approval by TPWD. Any extensions shall be at the same terms and conditions, plus any approved changes.

V. GENERAL TERMS AND CONDITIONS

Disclaimer Of Warranties; Limitation Of Remedies: COUNTY acknowledges and agrees that TPWD is not the manufacturer of equipment, and TPWD hereby disclaims all representations and warranties, direct or indirect, express or implied, written or oral, in connection with the equipment or its function (whether purchased or leased by COUNTY from TPWD or another), including but not limited to any and all express and implied warranties of suitability, durability, merchantability, and fitness for a particular purpose. TPWD to the extent permitted by law assigns to COUNTY any and all manufacturers' warranties relating to equipment purchased by COUNTY, if any, and COUNTY acknowledges receipt of any and all such manufacturers' warranties.

COUNTY acknowledges and agrees that its sole and exclusive remedy in connection with any defects in any equipment, including manufacture or design, shall be against the manufacturer of the equipment under the manufacturers' warranties and that TPWD shall have no liability to COUNTY in any event for any loss, damage, injury, or expense of any kind or nature related directly or indirectly to any equipment or service provided hereunder. Without limiting the above, TPWD shall have no liability or obligation to COUNTY, in either contract or tort, for special, incidental, or consequential damages of any kind incurred by COUNTY, such as, but not limited to, claims or damages for personal injury, wrongful death, loss of use, loss of anticipated profits, or other incidental or consequential damages or economic losses of any kind incurred by COUNTY directly or indirectly resulting from or related to any equipment or service described hereunder, whether or not caused by TPWD's negligence, to the full extent same may be disclaimed by law. Any references to equipment in this paragraph shall be deemed to apply to all equipment purchased by COUNTY or leased by COUNTY from TPWD, if any, or another lessor. Notwithstanding the foregoing, TPWD shall be liable to any damage to COUNTY's equipment caused by the negligence of TPWD's officers, employees, agents, or representatives.

Compensation: TPWD and the COUNTY are only responsible for the compensation and benefits of their respective employees participating in this Agreement, including but not limited to workers compensation benefits.

Liability: Each Party to this Agreement shall be responsible for the actions, inactions and negligence of its officers, employees, agents, or representatives. Neither Party shall indemnify the other Party.

No Waiver of Immunity: It is expressly understood and agreed that the entering into and execution of this Agreement does not waive, nor shall be deemed to waive, a Party's sovereign immunity, or any immunity or defense that would otherwise be available to a Party against third-Party claims arising from activities performed under this Agreement.

Obligation: Nothing in this Agreement may be construed to obligate any Party to any current or future expenditure of resources. Nor does this Agreement obligate any Party to spend funds on any particular project or purpose, even if funds are available.

Funding: Any endeavor involving reimbursement or contribution of funds between the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Any expenditure of resources must be from current revenues available to the paying Party. This Agreement is

subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise made available to TPWD. This Agreement is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Fort Bend County Commissioners Court.

Other Law: The Parties shall observe and comply with all federal, state, county and city laws, rules, ordinances and regulations in any manner affecting the conduct of services herein provided and performance of all obligations herein undertaken by this Agreement.

Modification: This Agreement may not be altered, amended, or modified except in writing and approved by the Parties.

No Partnerships: This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.

Dispute Resolution: As provided by Texas Government Code § 791.015, in the event of substandard performance or other failure to conform to the requirements of the Agreement or applicable law, the Parties will settle disputes in accordance with Chapter 2009 of the Texas Government Code.

Attorney's Fees: If any action at law or equity including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

Entire Agreement: This Agreement contains the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement shall be binding or valid.


Termination for Convenience: This Agreement may be terminated upon convenience and without penalty by either Party with thirty (30) days written notice to the other Party. Upon termination of this agreement, COUNTY shall have one hundred eighty (180) days to remove all of its radio equipment from the site at COUNTY's sole risk and expense.

Termination: This Agreement is subject to cancellation, without penalty, either in whole or in part, if
1. Funds are not appropriated by the Texas Legislature, or otherwise made available, to either Party;
2. Either Party fails to comply with the terms and conditions of this Agreement; or
3. Either Party fails to comply with the provisions of applicable state or federal laws or regulations.

WHEREFORE, this Agreement is executed to be effective the date of the last Parties' signature to this Agreement.

TEXAS PARKS AND WILDLIFE DEPARTMENT

FORT BEND COUNTY

By: 

Tammy Durham
Purchasing & Contracting Director

By: _____
Robert Hebert,
County Judge

Date: 9/27/17

Date: _____

ATTEST:

By: _____
Laura Richard,
County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ _____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor