

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT BETWEEN FORT BEND COUNTY AND THE GREATER FORT BEND
ECONOMIC DEVELOPMENT COUNCIL**

THIS AGREEMENT ("Agreement") is made and entered into by and between Fort Bend County ("County"), a body corporate and politic under the laws of the State of Texas, acting herein by and through its Commissioners' Court, and the Greater Fort Bend Economic Development Council ("GFBEDC").

RECITALS

WHEREAS, pursuant to Tex. Loc. Gov't. Code Ann. § 381.004, as amended, the Commissioners Court of the County desires to stimulate business and commercial activity in the County by contracting with GFBEDC to provide or cause to be provided, certain economic development services in furtherance of the County's statutory goals pursuant to Tex. Loc. Gov't. Code Ann. § 381.004, as amended, and to develop and administer the County's program for local economic development; and,

WHEREAS, the County desires to diversify its economy, increase and broaden its tax base, provide more and better employment opportunities for its citizens, market and promote quality of life and a positive economic climate and promote the general public welfare; and,

WHEREAS, it is important to the County to attract and expand business, commercial and industrial enterprise in order to accomplish this purpose; and,

WHEREAS, it is desirable, productive, and economical to work towards this goal through a unified county effort and through an agency with specific expertise in this field; and,

WHEREAS, the County desires to contract with GFBEDC for such business and industrial development services; and,

WHEREAS, GFBEDC is a county-wide non-profit corporation whose purpose is to accomplish all the above stated objectives; and,

WHEREAS, the County finds this agreement serves a public purpose; and,

WHEREAS, the County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, Texas Local Government Code.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the County and GFBEDC agree as follows:

AGREEMENT

1. Qualifications of the GFBEDC

1.01 Representations and Warranties of GFBEDC. The GFBEDC represents that it:

- (a) Is a non-profit, private entity¹ that is authorized to promote economic development in all or a portion of the County; and
- (b) Is engaged in an on-going effort to attract new businesses to the County, to encourage the expansion of existing businesses in the County, and to retain existing businesses in the County.

2. Scope of Services

2.01. The GFBEDC shall provide two types of supplemental membership services beyond membership services that may be acquired through participation in the organization as a Trustee member of the GFBEDC: (1) Supplemental Membership Services; and (2) Marketing Services.

2.02. Supplemental Membership Services shall consist of development of a comprehensive program directly and/or indirectly benefiting Fort Bend County which will include the solicitation of industrial, business, and commercial prospects for location in Fort Bend County or a municipality located therein. The program will include but not be limited to site selection and analysis services for new business and industry seeking a location in Fort Bend County; dissemination of the demographic information about Fort Bend County to prospective new business and industry; and make recommendations for Fort Bend County to compete more successfully for new business and industry.

2.03. Marketing Services shall consist of developing and implementing a marketing plan directly and/or indirectly benefiting Fort Bend County which markets and brands the County.

2.04. Reports. GFBEDC agrees to submit to the County Judge a written report describing in detail the collaborative efforts performed during the preceding fiscal year prior to this Agreement being renewed by County.

2.05. Independent Contractor. GFBEDC is a 501(c)6 not for profit private corporation focused on economic development and quality growth in Fort Bend County, Texas. The relationship of GFBEDC to County is that of an independent contractor. County has no authority to direct day-to-day activities of any GFBEDC employees, nor does the County have any authority over GFBEDC personnel decisions and GFBEDC may take positions adverse to the County so long as such positions do not constitute a breach of the GFBEDC's obligations under this Agreement. In the event the County receives an open records request for GFBEDC records in County's possession, the County shall notify the GFBEDC of such request and GFBEDC shall have the opportunity to object to the request, as allowed by Texas Government Code Section 552.305

3. Term

3.01. The term of this Agreement is from October 1, 2018 through September 30, 2019.

4. Payment; Termination; Financial Statement; & Limitation of Appropriation

4.01. Payment. As compensation for all services provided hereunder, the County shall pay the GFBEDC an amount not to exceed \$250,000.00 for the term of this agreement.

4.02. Termination. This agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) days written notice. In the event of termination mid-term, the County shall compensate the GFBEDC for all services actually provided hereunder on a pro rata basis according to the ratio of the amount of time elapsed during the contract term bears to the total amount of money agreed upon herein as compensation for such term. Upon termination for cause, the GFBEDC shall promptly reimburse the

¹ As affirmed in OR2015-14855, Texas Attorney General Opinion, July 21, 2015 Ref: ID#570346

County on a pro rata basis according to the ratio of the amount of time elapsed during the contract term bears to the total amount of money agreed upon herein as compensation for such term.

- 4.03. Time of Payment. Payment shall be made in one lump sum during the first quarter of county's fiscal year.
- 4.04. Financial Statements. The GFBEDC must provide within 90 days after the close of the GFBEDC's fiscal year its compiled annual financial statements to the County Judge at 401 Jackson, Richmond, Texas 77469. The financial statements must be prepared by an accounting firm licensed by and in good standing with the Texas State Board of Public Accountancy.
- 4.05. Allocated Funds. Limitation of County's Duties. Prior to the execution of this Agreement, the GFBEDC has been advised by the County and the GFBEDC clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that there is available the total maximum sum of Two Hundred Fifty Thousand Dollars and No/Cents (\$250,000.00) which is specifically allocated to fully discharge all liabilities which may be incurred by the County under the provisions of this Agreement, including the costs, things, or purposes contained in or inferred from the provisions of this Agreement which might in any light by any person be interpreted to the contrary. Once this sum is expended the County has no further obligation hereunder.

5. Board of Directors

- 5.01. The County shall be given the right to appoint five (5) directors, with voting rights, to the GFBEDC, who shall serve for as long as this Agreement is in effect.

6. Indemnification

- 6.01 It is understood and agreed between the parties that the GFBEDC, in performing its obligations hereunder, is acting independently, and the County assumes no responsibilities or liabilities in connection therewith to third parties. THE GREATER FORT BEND EDC AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF THIS AGREEMENT. GREATER FORT BEND EDC'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEY'S FEES AND EXPENSES INCURRED BY THE COUNTY IN CONNECTION WITH THESE CLAIMS, SUITS, AND CAUSES OF ACTION.

7. Miscellaneous Provisions

- 7.01. Parties in Interest. This Agreement shall bind and benefit the County and the GFBEDC and shall not bestow any rights upon any third parties.
- 7.02. Non-waiver. Failure of either party to insist on the strict performance of any of the terms herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance is not a waiver of the right to insist on and to enforce by an appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.
- 7.03. Applicable Laws. This Agreement is subject to and is to be construed in accordance with the laws of the State of Texas. This Agreement is performable in Fort Bend County, Texas. The GFBEDC agrees to perform the services hereunder in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. As required by Chapter 2270, Government Code, GFBEDC hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit

commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. By signature below, GFBEDC represents pursuant to Section 2252.152 of the Texas Government Code, that GFBEDC is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

- 7.04. Notices. All notices required or permitted hereunder must be in writing and are 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 provided below or at such other address as the receiving party may have thereafter provided by notice to the sending party:

To County: Fort Bend County Judge
401 Jackson
Richmond, Texas 77469

To GFBEDC: Greater Fort Bend Economic Development Council
Attention: Jeff Wiley
One Fluor Daniel Drive
Sugar Land, Texas 77478

- 7.05. Ambiguities. In the event of any ambiguity in any of the terms of this Agreement, it is not to be construed for or against any party hereto on the basis that such party did or did not author the same.
- 7.06. Captions. The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles, and therefore, will be given no effect in construing this Agreement and will not be restrictive of the subject matter of any Article, Section, or part of this Agreement.
- 7.07. Merger. This Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.
- 7.08. Execution. The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners Court of Fort Bend County, Texas, so authorizing. This Agreement shall not become effective until executed by all parties hereto.

*[Remainder of Page Intentionally Left Blank]
[Signatures Follow On Next Page]*

IN WITNESS WHEREOF, this Agreement is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge

that they have read and understood this Agreement. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

Robert E. Hebert, County Judge

Date

**GREATER FORT BEND ECONOMIC DEVELOPMENT
COUNCIL**



Jeff Wiley, President

Date

ATTEST:

Laura Richard, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available to pay the obligation of Fort Bend County under and within the foregoing Agreement.

Robert E. Sturdivant, Auditor