

THE STATE OF TEXAS

§

COUNTY OF FORT BEND

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**PURCHASING COOPERATIVE INTERLOCAL AGREEMENT
BETWEEN FORT BEND COUNTY AND BRAZORIA COUNTY ESD 3**

This Purchasing Cooperative Interlocal Agreement ("Agreement") is by and between Fort Bend County, Texas, a political subdivision of the State of Texas ("Fort Bend County"); and Brazoria County Emergency Services District Number 3, a political subdivision of the State of Texas ("ESD3"); acting by and through their authorized officers.

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code; and

WHEREAS, Section 271.102 of the Texas Local Government Code authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization; and

WHEREAS, a local government that purchases goods and services pursuant to a Cooperative Purchasing Program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods, services and materials; and

WHEREAS, except for competitively bid contracts that are renewable, each party has and will on an annual basis obtain competitive bids for the purchase of goods and services; and

WHEREAS, the parties desire to enter into a Cooperative Purchasing Program which will allow each party to purchase goods and services under each other's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code;

WHEREAS, the parties, in performing governmental functions or in paying for the performance of governmental functions hereunder shall make that performance or those payments from current revenues legally available to that party;

WHEREAS, the governing bodies of each party find that the subject of this Agreement is necessary for the benefit of the public and that each party has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; furthermore, the governing bodies find that the performance of this Agreement is in the common and best interest of both parties; and that the division of cost fairly compensates the performing party for the services under this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**ARTICLE I
PURPOSE**

The purpose of this Agreement is to establish a Cooperative Purchasing Program between the parties, which will allow each party to purchase goods and services under each other's competitively bid contracts (Annual Contracts) pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code.

**ARTICLE II
TERM**

The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution hereof ("Effective Date"). Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

**ARTICLE III
APPOINTMENT OF PURCHASING AGENT;
BIDDING PROCEDURES AND SPECIFICATIONS**

Each party hereby makes, constitutes and appoints the other party its true and lawful purchasing agent for the purchase of selected goods and/or services using Annual Contracts. Each party will maintain a listing of Annual Contracts which are available for the other party's use. To utilize one or more of such Annual Contracts, each party must request authorization, in writing, to the other party. Upon receipt of the request, the receiving party will forward a copy of the appropriate Annual Contract to the requesting party. Each party agrees that the bidding for Annual Contracts shall be conducted by each party according to its usual bidding procedures and in accordance with applicable State of Texas statutes and laws. Furthermore, each party agrees that all specifications for selected goods and/or services shall be determined by the party that conducted the bid for a particular Annual Contract.

**ARTICLE IV
DESIGNATION OF REPRESENTATIVES**

The County Judge of Fort Bend County or his/her designee is authorized to act on behalf of Fort Bend County in all matters relating to this Cooperative Purchasing Program and ESD3 President or designee is authorized to act on behalf of ESD3 in all matters relating to this Cooperative Purchasing Program.

**ARTICLE V
PURCHASING AND PAYMENT TERMS**

Each party shall make payments directly to the vendor under the Annual Contract made pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code. The vendor or vendors of an Annual Contract shall bill the party directly for all items purchased by such party.

**ARTICLE VI
RESPONSIBILITY FOR VENDOR'S COMPLIANCE**

Each party shall be responsible for the respective vendor's compliance with provisions relating to the quality of items and terms of delivery under an Annual Contract.

**ARTICLE VII
TERMINATION**

Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party.

**ARTICLE VIII
MISCELLANEOUS**

- A. Relationship of Parties: Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity. The employees of one party shall not be deemed or construed to be the employees of the other party for any purposes whatsoever.
- B. Notice: Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective party at the address set forth below:

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

To ESD3: Brazoria County ESD3
 Attn: President
 P.O. Box 1253
 6931 Masters Road
 Manvel, Texas 77578

- C. Amendment: This Agreement may be amended only by the mutual written agreement of both parties hereto.
- D. Severability: In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- E. Assignment: No party to this Agreement may assign or transfer its interest in or

obligations under this Agreement without the prior written consent of all parties to this Agreement.

- F. No Third Party Beneficiaries: This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- G. Compliance with Laws: Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement.
- H. Construction: Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.
- I. No Waiver of Immunities: Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either party or their past or present officers, employees, or agents or employees, or to create any legal rights or claim on behalf of any third party. Neither party hereby waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- J. Governing Law: Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Fort Bend County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
- K. Entire Agreement: This Agreement represents the entire agreement among the parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.
- L. Recitals: The recitals to this Agreement are incorporated herein.


**ARTICLE XIII.
EXECUTION**

This instrument, in duplicate originals, has been executed by the parties hereto as follows. This agreement shall not be effective until executed by all parties.

FORT BEND COUNTY

ESD3

KP George, County Judge



ESD3 President

Date: _____

Date: _____

ATTEST:

ATTEST:

Laura Richard, County Clerk

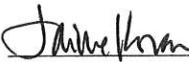


ESD3 Secretary

FRANK G. HAGGORN
Printed Name

REVIEWED:

FORT BEND COUNTY
PURCHASING AGENT



Jaime Kovar