

§

§

COUNTY OF FORT BEND

§

**COMMUNITY AND ECONOMIC DEVELOPMENT PROGRAM
AGREEMENT BETWEEN FORT BEND COUNTY AND
FORT BEND HISTORY ASSOCIATION**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Fort Bend History Association (hereinafter "FBHA"), a non-profit organization in the State of Texas.

WITNESSETH

WHEREAS, Fort Bend County desires that FBHA develop and assist County in the furtherance of community and economic development programs (hereinafter "Services");

WHEREAS, the Texas County Purchasing Act, Texas Local Govt. Code, §262.024 (4) and §262.024 (10) exempt from competitive bidding contracts for a personal or professional service; as well as work performed under a contract for community and economic development;

WHEREAS, the Fort Bend County Commissioners Court specifically finds that this Agreement is for personal or professional services and that the Agreement is one for community and economic development made by a county under Texas Local Govt. Code, Section 381.004 (b); and

WHEREAS, the Fort Bend County Commissioners Court therefore grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply.

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

AGREEMENT

1. Services

- A. FBHA shall provide one or more of the following services as requested by County:
 1. Attract visitors to the county for tours, rental events, to be promoted through social media, press releases and print ads, billboards, websites.
 2. Provide programs that elevate the level of social/historical literacy for the benefit of county residents through gallery exhibits, lectures, special tours & school programs aligned with TX Essential Knowledge & Skills (TEKS) used in the local school districts.
 3. Provide educational programs and exhibits that focus on history and social studies.
 4. Provide gallery exhibit space for local artists (including students in public & private schools) to present their work for the benefit and enjoyment of county residents.

5. FBHA will provide to the County documentation of its reasonable and necessary costs in connection with the provision of Service under this Agreement. FBHA may also use Funds for the operational expenses that are needed to perform these services.

2. Term

The term of this Agreement is October 1, 2021 through September 30, 2022. The Parties acknowledge and agree that Services have been and will be supported by good and valuable consideration during the Term of this Agreement, the sufficiency of which is acknowledged by the Parties. On October 1, 2022, this Agreement will automatically renew for an additional year period through September 30, 2023, subject to the same terms and conditions. County may terminate this Agreement in accordance with the Termination Provision of this Agreement.

3. Compensation and Payment

- A. For Services provided, County will reimburse FBHA up to one million dollars (\$1,000,000.00) over the life of this Agreement (through September 2023). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order
- B. FBHA understands and agrees that the Maximum Compensation stated is an inclusive amount and no additional fee, cost or reimbursed expense shall be added to the County paid by County.
- C. All performance of the Scope of Services by FBHA including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- D. County will pay FBHA based on the following procedures: FBHA shall submit to County two (2) original copies of invoices showing actual costs incurred in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed and/or receipt of appropriate documentation of same.

4. Independent Contractor

- A. In the performance of work or services hereunder, FBHA shall be deemed an independent subcontractors and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of FBHA or, where permitted, of its subcontractors.

- B. FBHA and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

5. Limit of Appropriation

- A. FBHA clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of one million dollars (\$1,000,000.00) specifically allocated to fully discharge any and all liabilities County may incur.
- B. FBHA does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that FBHA may become entitled to and the total maximum sum that County may become liable to pay to FBHA shall not under any conditions, circumstances, or interpretations thereof exceed one million dollars (\$1,000,000.00).

6. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

7. Insurance

- A. Prior to commencement of the Services, FBHA shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. FBHA shall provide certified copies of insurance endorsements and/or policies if requested by County. FBHA shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. FBHA shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - 1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of FBHA shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, FBHA warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. FBHA shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of FBHA.

8. Indemnity

FBHA SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF FBHA, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF FBHA OR ANY OF FBHAS AGENTS, SERVANTS OR EMPLOYEES. THE PARTIES AGREE THAT THIS INDEMNIFICATION PROVISION SHALL APPLY DURING THE PERFORMANCE OF SERVICES AS WELL AS DURING THE PERORMANCE OF ANY CONTINUING OBLIGATIONS THAT MAY EXIST (IF ANY) AFTER THE EXPIRATION OF THIS AGREEMENT.

9. Assignment

Neither party to this contract shall assign the contract, nor any interest arising herein, without the written consent of the other.

10. Termination and Notice

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice issued by the County Judge.
- B. Termination for Default
 - 1. County may terminate the whole or any part of this Agreement for cause in if FBHA materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
 - 2. If, after termination, it is determined by County that for any reason whatsoever that FBHA was not in default, or that the default was excusable, services may continue in accordance with the terms and conditions of this Agreement or the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 9A above.
- C. Upon termination of this Agreement, County shall compensate FBHA in accordance with the Compensation section above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. FBHA's final invoice for said services will be presented to and paid by County in the same manner set forth in the Compensation section.
- D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to FBHA.
- E. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

- F. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

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

Copy to: Fort Bend County
 Attn: Purchasing Agent
 301 Jackson, Ste. 201
 Richmond, Texas 77469

FBHA: Fort Bend History Association
 Attn: Michael Moore
 500 Houston Street
 Richmond, TX 77469

- G. A Notice is effective only if the party giving or making the Notice has complied with the requirements of this Section and if the addressee has received the Notice. A Notice is deemed received as follows:
1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

11. Miscellaneous

- A. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas. As required by Chapter 2270, Government Code, FBHA 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, FBHA represents pursuant to Section 2252.152 of the Texas Government Code, that FBHA 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.

- B. In the event of 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 any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- C. The waiver by either party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.
- D. Any amendments to this agreement shall be of no effect unless in writing and signed by both parties hereto.
- E. HUMAN TRAFFICKING. BY ACCEPTANCE OF CONTRACT, FBHA ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

12. Entire Agreement.

It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject.

*REMAINDER LEFT BLANK
EXECUTION PAGE FOLLOWS*

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

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

FORT BEND HISTORY ASSOCIATION



Signature of Authorized Agent

Claire Rogers

Name of Authorized Agent

Executive Director

Title of Authorized Agent

January 20, 2022

Date

AUDITOR'S CERTIFICATE

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

Robert Ed Sturdivant, Auditor