

STATE OF TEXAS

FISCAL YEAR 2022-2023

COUNTY OF FORT BEND

AGREEMENT BETWEEN FORT BEND COUNTY AND
NORTH EAST FORT BEND COUNTY FIRE DEPARTMENT
FOR USE OF FIRE FIGHTING EQUIPMENT

This Agreement is entered into by and between Fort Bend County, (“COUNTY”), a body corporate and politic under the laws of the State of Texas, on behalf of the Fort Bend County Sheriff’s Office, (“FBCSO”), and Northeast Fort Bend County Fire Department, (“FIRE DEPARTMENT”), a non-profit organization in the state of Texas, with its principal office being located at 14007 Old Richmond Rd., Sugar Land, Texas 77498; hereinafter referred to collectively as “Parties.”

WITNESSETH:

WHEREAS, FORT BEND COUNTY COUNTY, TEXAS, hereinafter (COUNTY), a political subdivision of the State of Texas, has the authority under Texas Local Government Code, Chapter 352.005 to provide fire-fighting equipment for the use and benefit of FIRE DEPARTMENT under contract contract with an unincorporated volunteer fire department that is located within the COUNTY to provide fire protection and first responder services to an area of the COUNTY that is located outside the municipalities in the COUNTY; and

WHEREAS, the NORTH EAST FORT BEND COUNTY FIRE DEPARTMENT, hereinafter (“FIRE DEPARTMENT”), is an unincorporated volunteer fire department located within FORT BEND COUNTY and has worked closely with the FORT BEND COUNTY FIRE MARSHAL and FORT BEND COUNTY SHERIFF’S OFFICE to provide a county wide dive and water rescue team; and

WHEREAS, COUNTY and FIRE DEPARTMENT represent that each is independently authorized to perform the functions contemplated by this Agreement; and

WHEREAS, COUNTY is contracting with a private entity to provide a public service because the FIRE DEPARTMENT has fire protection vehicles and other equipment designed for the dive and water rescue team to provide emergency services, and the prevention of damage to property and injury to persons from fire and other emergencies and has the control and use of volunteer members who are trained to properly utilize such vehicles and equipment and to provide fire protection and emergency services as described in the FIRE DEPARTMENT letter attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, This agreement and contract is made between the COUNTY and the FIRE DEPARTMENT pursuant to the authority of Subchapter A of Chapter 352 of the Texas Local Government Code and pursuant to the general authority of the Commissioners Court to contract with private providers for services for the public.

NOW, THEREFORE in consideration of the above recitals, mutual benefits and promises each to the other made herein, the parties named above do hereby agree as follows:

PUBLIC PURPOSE

The purpose of this contract is to provide first responder and other limited emergency response services through the county wide dive and water rescue team with the use of COUNTY'S air boat to be utilized in for areas within the COUNTY that lie outside the boundaries of any municipal government. The COUNTY has no authority to provide fire protection or most other emergency response services within the territorial limits of unincorporated municipalities and by this contract does not attempt to usurp the authority of municipalities to manage, regulate and provide fire protection and emergency response services within their boundaries.

FIRE EQUIPMENT

For purposes of this agreement, equipment is meant to refer to the Fort Bend County air boat and trailer in the care and custody of the Fort Bend County Sheriff's Office, described in more detail as follows:

2004 20' American Airboat, Hull Identification No (HIN): AMAxxxxxx405; with

2008 Trailer Coastline VIN (4C9BBxxxxxxxxx220).

FIRE DEPARTMENT OBLIGATION

The FIRE DEPARTMENT as a part of this agreement, and as a condition for the use of COUNTY'S air boat for under this agreement, agrees that:

- (a) The FIRE DEPARTMENT will use the COUNTY'S air boat to provide water rescue and other emergency response services for all persons and property within the unincorporated area of said COUNTY. Further, the FIRE DEPARTMENT agrees that it shall be the First Responder for emergency medical services within the unincorporated portion of the designated primary service area of the FIRE DEPARTMENT. Additionally, the FIRE DEPARTMENT agrees that it shall respond to mutual aid calls from any other fire department for fire protection services at any location within the unincorporated area of the COUNTY.
- (b) Use of the COUNTY'S air boat and trailer for emergency water rescue services other than those concerning fire protection and other emergency response services is not the subject of this contract. All emergency services provided within the territorial boundaries of municipal corporations are solely within the jurisdiction and the area of responsibility of the relevant municipal government. No provision is made in this contract to provide services in any municipality. However, nothing in this contract is

intended to prevent the FIRE DEPARTMENT from providing other services in addition to the services contracted for herein, nor from providing services within municipalities, but in doing so, the FIRE DEPARTMENT does not act as an agent of the COUNTY and the COUNTY assumes no responsibility for such services. In event the FIRE DEPARTMENT provides services not provided for by this contract, it is expressly agreed and understood that the FIRE DEPARTMENT ASSUMES ALL RESPONSIBILITY FOR ANY INJURY OR DAMAGE SUFFERED BY ANY PERSON OR PROPERTY RESULTING FROM SUCH ACTION AND INCLUDING ANY DAMAGE OR INJURY CAUSED OR CONTRIBUTED TO BY REASON OF THE USE OR OPERATION OF ANY EQUIPMENT OR TANGIBLE PROPERTY OWNED BY THE COUNTY OR PURCHASED BY THE COUNTY FOR THE FIRE DEPARTMENT, AND THE FIRE DEPARTMENT AGREES TO INDEMNIFY THE COUNTY FOR ANY AMOUNT SPENT BY THE COUNTY IN DEFENDING ITSELF IN ANY COURT ACTION ARISING OUT OF A SITUATION IN WHICH THE FIRE DEPARTMENT UTILIZED SUCH EQUIPMENT TO PROVIDE NON-FIRE RELATED EMERGENCY RESPONSE SERVICES OR WHICH OTHERWISE BENEFIT COUNTY ARISES FROM THE PROVIDING OF NON-FIRE EMERGENCY RESPONSE SERVICES, INCLUDING ATTORNEY FEES, COSTS OF COURT, AND OTHER EXPENSES REASONABLY NECESSARY IN PREPARING AND PRESENTING ANY DEFENSE IN SUCH MATTER AS WELL AS FOR ANY DAMAGES FOR WHICH THE COUNTY IS HELD RESPONSIBLE BY ANY COURT OF COMPETENT JURISDICTION. It is further expressly understood and agreed that no official, employee or agent of the COUNTY has authority to bind the COUNTY to be liable for the manner or means of providing fire protection or other services in an incorporated municipality.

- (c) The FIRE DEPARTMENT shall use reasonable diligence and effort to use COUNTY'S equipment to provide the water rescue and emergency response services it has contracted to provide by this contract and to provide immediate and direct supervision of the FIRE DEPARTMENT members, employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms, and conditions of this contract. The parties do not hereby waive any immunity, defense, privilege, or remedy provided by law.
- (d) FIRE DEPARTMENT agrees to cause its members and personnel using the COUNTY'S air boat to provide water rescue services in performance of this contract, when performing said services, to conduct themselves in a professional manner and to comply with applicable laws. Non-member volunteers will not be used for fire protection by the FIRE DEPARTMENT. All fire fighters of the FIRE DEPARTMENT must be members of the FIRE DEPARTMENT and properly trained and equipped to perform fire protection duties and specifically properly trained and equipped to use the COUNTY'S air boat. Radio communications will be conducted in accord with any rules, procedures or directives of the Sheriff of Fort Bend County and/or Fort Bend County Fire Marshal. The FIRE DEPARTMENT further agrees that it will cooperate with the County Fire Marshal to the extent provided for in Texas law.

- (e) The FIRE DEPARTMENT warrants that in carrying out the terms of this contract, it will not utilize any person under 18 years of age in the performance of the services to be provided under this contract.
- (f) It is agreed that the FIRE DEPARTMENT shall (1) furnish a satisfactory place in which to keep the equipment (i.e. COUNTY'S air boat); (2) pay all the costs of operating the equipment; and (3) furnish the personnel necessary to operate the equipment.
- (g) FIRE DEPARTMENT shall keep the equipment in good-working order, make all necessary repairs or replacements, and provide labor and materials for repairs.
- (h) FIRE DEPARTMENT shall be responsible for safekeeping of the equipment and shall be liable to COUNTY for any loss through theft or for any negligence by an officer, agent, or employee of the municipality.
- (i) The books and records maintained for operating FIRE DEPARTMENT shall be open to inspection by the COUNTY or its designated representatives during normal business hours.
- (j) The FIRE DEPARTMENT shall file a TXFIRS report with the State Fire Marshal's office within two weeks of the end of the month that an incident occurred. The Fort Bend County Fire Marshal is authorized to review and update all fire incident reports filed by the Fire Department with the State Fire Marshal's office.
- (k) FIRE DEPARTMENT shall maintain a "current" status throughout the term of this agreement as a First Responder Organization (FRO) per Texas Administrative Code 157.14.
- (l) In order for FIRE DEPARTMENT to utilize COUNTY'S air boat, FIRE DEPARTMENT must complete the attached "Fort Bend County Asset Control Verification Form" must be completed and returned with this agreement. If the form is not completed and returned with the agreement, said property will become subject to forfeit to the COUNTY.
- (m) The FIRE DEPARTMENT shall maintain statutory workers' compensation coverage for its employees, officers and volunteers regarding the FIRE DEPARTMENT's performance under this contract. The FIRE DEPARTMENT recognizes that the COUNTY has no responsibility to furnish this coverage and FIRE DEPARTMENT waives any right to pursue the COUNTY for liability regarding payments for this coverage or for liability regarding payments for claims filed against this coverage.

CONSIDERATION

For the services provided above, the COUNTY shall provide to FIRE DEPARTMENT the use COUNTY equipment to be used in water rescue and assistance in emergency medical services to the unincorporated surrounding areas for the benefit of Fort Bend County residents.

GENERAL APPORTIONMENT OF RESPONSIBILITY AND IMMUNITY IN ACCORDANCE WITH GOVERNMENT CODE 791.006 (A-I)

In difference to 791.006(a), in the event of joint or concurrent negligence of the parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to either party individually under Texas law. The FIRE DEPARTMENT shall be responsible for its sole negligence. The COUNTY shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person.

DEFAULT

In the event either party shall fail to keep, observe, or perform any provision of this contract, the breaching party shall be deemed in default. If such default shall continue for a period of thirty (30) days after notice thereof by the non-breaching party to the other, then the non-breaching party shall be entitled to terminate this contract immediately.

EFFECTIVE DATE

The effective date of this agreement shall be October 1, 2022, or the date that both parties have signed within the fiscal year, whichever is the later, and this contract shall expire at midnight of September 30, 2023.

Consequently, there shall be no automatic renewal of this contract. It is agreed that renewal of this contract between the COUNTY and the FIRE DEPARTMENT, must be by execution of a new contract for each fiscal year on or before October 1 of the fiscal year covered by the contract that is expiring.

NON-APPROPRIATION OF FUNDS

The parties agree that no funds have been appropriated for the performanc of the obligations of this Agreement and no funds are anticipated to be paid.

TERMINATION

- A. **By Mutual Agreement:** This Agreement may be terminated by mutual agreement of the FIRE DEPARTMENT and the COUNTY, as evidenced by a written termination agreement.

- B. **For Nonappropriation of funds:** The parties agree that no funds have been appropriated for the performance of the obligations of this Agreement; however, in the event the COUNTY determines that by law funds should be appropriated and paid for use of the fire fighting equipment outlined herein for performance of the obligations under this Agreement, this Agreement shall immediately terminate upon notice to FIRE DEPARTMENT.
- C. **By Either party:** This agreement may be terminated at any time for convenience or fault upon thirty (30) days written notice to the other party.

GENERAL PROVISIONS

Agent of the COUNTY for Certain Limited Purposes Only: The COUNTY and the FIRE DEPARTMENT understand and agree that Section 352.004 of the Texas Local Government Code applies to the services performed by the FIRE DEPARTMENT for the COUNTY under this contract and that when engaged in the scope of its duty to provide water rescue and other emergency services for the residents in any part of the area of the COUNTY that lies outside the territorial limits of any municipal corporation, the FIRE DEPARTMENT acts as an agent of the COUNTY to the limited extent said law mandates. However, it is understood that the FIRE DEPARTMENT is a private non-profit corporation and not a governmental entity, and is not an agent of the COUNTY for any other purpose.

Severability: If any term, covenant or condition of this contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this contract or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this contract shall be valid and shall be enforced to the fullest extent permitted by law.

MMS- National Incident Management Systems: All FIRE DEPARTMENTS shall supply the COUNTY at the time of execution of this contract a list of personnel for the Fire Department as well as the Certificate of NIMS compliant testing for each person on the list. Testing shall be in accordance with FEMA guidelines as to what level, who and when training is done to remain compliant. All departments must be NIMS compliant.

Department Chief Officers shall complete NIMS 300 and are encouraged to complete NIMS 400 training. NIMS 300 shall be completed as soon as possible following appointment to office.

All DEPARTMENT members shall complete MMS 100, 200, 700 and 800 training. The FIRE DEPARTMENT shall submit records for each member documenting completion of NIMS training. The FIRE DEPARTMENT shall maintain supporting records for each member and shall be made available to the COUNTY within forty-eight (48) hours notice.

NOTICES

To COUNTY: Any Notice permitted or required to be given to the COUNTY hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

Fort Bend County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

With copy to:
Fort Bend County Sheriff's Office
Attn: Sheriff
1840 Richmond Parkway
Richmond, Texas 77469

To FIRE DEPARTMENT: Any notice permitted or required to be given to the FIRE DEPARTMENT hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

Northeast Fort Bend County Fire Department
Attn: Fire Chief
14007 Old Richmond Road
Sugar Land, Texas 77498

Any notice permitted or required to be given hereunder shall be deemed to have been given upon deposit of the notice in the United States Mail as aforesaid.

Authority to Contract: The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

Governing Law/Venue: This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Texas and the venue for enforcement shall be Fort Bend County, Texas.

Limitation of Liability: By entering into this agreement, neither party waives sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act.

Applicable Law; Arbitration; Attorney Fees: The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. County does not agree to pay any and/or all attorney fees incurred by FIRE DEPARTMENT in any way associated with the Agreement. Each party paying for the performance of services must make those payments from current revenues available to the paying party.

Human Trafficking: BY ACCEPTANCE OF CONTRACT, FIRE DEPARTMENT 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.

Compliance with Laws: FIRE DEPARTMENT 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, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, FIRE DEPARTMENT shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Public Information Act: FIRE DEPARTMENT expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by FIRE DEPARTMENT shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Entire Agreement: This contract is a total and complete integration of any and all understandings existing between the parties hereto and supersedes any prior oral or written agreements, promises or representations between them. The headings of the various paragraphs of this contract are for convenience only, and shall not define, interpret, affect or prescribe the meaning and interpretation of the provisions of this contract.

Amendment: If the Parties desire to amend this Agreement during or after the initial term, any modifications may be either incorporated herein by a written amendment or set forth in an entirely new agreement. Any modifications must be approved and signed by authorized representatives of the Parties

Electronic and Digital Signatures: The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

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{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 and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Agreement is effective upon execution by both parties.

FORT BEND COUNTY

NORTH EAST FORT BEND COUNTY FIRE DEPARTMENT

KP George, County Judge

Authorized Agent – Signature

Date

Authorized Agent- Printed Name

ATTEST:

Title

Laura Richard, County Clerk

Date

REVIEWED:

Eric Fagan,
Fort Bend County Sheriff

Attachment:

Exhibit A – Letter from Northeast Fort Bend County Fire Department



Northeast Fort Bend County Fire Department
14007 Old Richmond Road
Sugar Land, Texas 77498
Phone: 281-242-8283
Fax: 281-242-6597

To Whom it may concern,

Northeast Fort Bend County fire department would like to respectfully request for the donation of the Fort Bend County Sheriff Department's air boat. [Capital Asset 1032340 – 2004 American Airboat 20', VIN: AMA00265L405]

Northeast Fort Bend County Fire Department is a non-profit organization (EIN 76-0095271). It was formed in 1972 for the fire protection and emergency needs of the citizens that line in the unincorporated, northeast corner of Fort Bend County.

Over the last four years, Our department has worked closely with the Fort Bend County Fire Marshal's office and the Fort Bend County Sheriff's office to provide a county wide dive and water rescue team. The airboat will be deployed in Fort Bend County to Benefit its citizen's and guests. The air Boat May be Deployed to surrounding counties if a disaster or emergency is declared but will not be operated or deployed in the Gulf of Mexico.

The formal request of the boat donation would greatly enhance our rescue response capabilities and allow for access in difficult geographical locations of non-public areas such as: river access, man-made ponds or lakes, low water crossings or areas that may be flooding due to excessive rain water or fast rising water.

In addition, this asset will be a great tool and prove to be useful in serving the citizens as a manned and ready to respond unit anywhere in the county and surrounding counties if needed.

Thank you for your consideration.

Respectfully,

Travis Baxter
Fire Chief
NEFBCFD