

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT BETWEEN FORT BEND COUNTY AND
THE GREATER FORT BEND ECONOMIC DEVELOPMENT COUNCIL
FOR COMMUNITY AND ECONOMIC DEVELOPMENT SERVICES FY23**

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 the Texas Constitution Article 5, Section 18(b) requires that all powers and jurisdiction over all county business has been and is conferred upon the Commissioners Court;

WHEREAS, the Fort Bend Court Commissioners Court seeks to encourage, retain and attract financially, environmentally, and socially sustainable economic development in the County that promotes, community business development, workforce development, job training, equity and opportunity for all;

WHEREAS, the Fort Bend Court Commissioners Court seeks to facilitate initiatives that aim to create business and workforce opportunities, develop and implement policies and programs that create economic pathways for Fort Bend County residents who have been historically disenfranchised and marginalized, and ensure the continued outlook of Fort Bend County as a highly sought-after place to live and do business;

WHEREAS, the Fort Bend Court Commissioners Court intends to collaborate with community members, businesses, government agencies, experts, developers, and other relevant stakeholders, to establish an inclusive vision for the County that aims to enhance economic mobility and opportunity for all Fort Bend County residents, while advancing the continued strength, resilience, and vitality of our region's economy;

WHEREAS, the Fort Bend County Commissioners Court seeks to develop and administer programs to promote development and growth designed to stimulate business and commercial activity in Fort Bend County;

WHEREAS, GFBEDC was established to address business recruitment and retention, infrastructure improvement and development, business climate and other efforts focused on quality growth in Fort Bend County and warrants that the organization is qualified to provide County with Consulting Services for the community and economic development programs described above;

WHEREAS, the Texas County Purchasing Act exempts from competitive bidding contracts that are for a personal or professional services under Texas Local Govt. Code, §262.024 (4) and also exempts contracts for community and economic development made by a county under Texas Local Govt. Code, §262.024 (a) (10) as allowed by Texas Local Govt. Code, §381.004; and

WHEREAS, the Fort Bend County Commissioners Court specifically finds that this Agreement is one for a personal and/or professional service and also one for community and economic development and therefore grants exemption from competitive bidding on both grounds, insofar as any competitive bidding statute might apply; and

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

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

AGREEMENT

Section 1: GFBEDC Qualifications

GFBEDC warrants and represents that:

- A. GFBEDC is a non-profit, private entity authorized to promote economic development in all or a portion of Fort Bend County.
- B. GFBEDC is engaged in on-going efforts to stimulate quality growth, infrastructure sufficient to sustain growth and encourage business and commercial activity in Fort Bend County as delineated in the Recitals.
- C. GFBEDC represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that GFBEDC shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- D. GFBEDC understands and agrees that the most recently adopted or amended GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS adopted by the Commissioners Court and the Drainage District shall apply to all applicable services rendered pursuant to this Agreement, even if they are amended after this Agreement is executed. A copy of the currently approved Guidelines and Criteria is available by request made to Director Economic Opportunity & Development.

Section 2: Duties

During the term of this Agreement, GFBEDC shall render the following Services on behalf of the County:

- A. Develop and present to County, a comprehensive program of quality growth initiatives 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 business attraction and retention for new/existing 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; joint participation in strategic planning with the County and make recommendations for Fort Bend County to compete more successfully for new business and industry.
 - i. The Parties acknowledge and agree that The County will be the lead and point of contact for application and negotiation of available county incentive packages
 - ii. GFBEDC shall provide access to historic economic impact statements in its possession and demographic analysis with tools and systems available through the FBEDC upon reasonable request of the County Economic Opportunity & Development Director
- B. Develop and deliver a Program of Work of Workforce/Entrepreneurship Activities that are to take place through the term of this agreement. This Program of Work shall be delivered by GFBEDC to the Director Economic Opportunity & Development no later than March 1, 2023.
- C. Prepare and Submit a Program of Work of Marketing Activities that GFBEDC intends to conduct on behalf of the County over the term of this agreement. This will include developing and delivering a paid social media marketing editorial calendar that showcases what marketing and advertising channels will be activated with specific action and key performance requirements as defined by the GFBEDC Marketing Committee (MC). The editorial calendar is required to be delivered to the County and MC for periods through June 30, 2023, no later than March 1, 2023. The calendar shall be reviewed and adjusted quarterly as necessary thereafter at MC meetings. The County agrees to assist the GFBEDC and MC to create an actionable calendar.
- D. Undertake activities, as directed by Fort Bend County and agreed to by GFBEDC, that are intended to expand existing primary sector businesses and commercial activity in the area and to promote and advertise the benefits of locating in Fort Bend County achieve one or more of the following:
 - i. The creation of new jobs with a primary focus on jobs with wages at or above the average prevailing wage in Fort Bend County.

- ii. Increase the commercial ad valorem tax base of the County by attracting new businesses in primary sector industries with a primary focus on projects that offer jobs at or above the average prevailing wage in the County. In the provision of Services under this Agreement, "Primary Sector" means manufacturer(s), assembler(s), or service business(s). See also: Sec. 501.002 (12) of the TX Local Govt Code.
 - iii. Encourage the diversification of the local economy to make it more impervious to state and national economic recession.
 - iv. Assist in the coordination of economic development activities and efforts among and between political subdivisions, organizations, institutions, and companies within the County's boundaries as directed by the County.
- E. Submit the following reports to the County by and through the Director of Economic Opportunity & Development:
- i. Annual Services Report: GFBEDC shall provide a detailed written annual performance report describing GFBEDC's success in meeting the objectives and requirements of this Agreement; as well rendering Services on behalf of the County. The Annual Services Report is due no later than October 31, 2023, for the Services provided during the term of this Agreement.
 - ii. Quarterly Report: GFBEDC shall provide a written quarterly performance report in sufficient detail that County may evaluate the continuing progress of the services stipulated in this agreement by the GFBEDC during the term of the Agreement.
1. Quarterly reporting periods:

Reporting Period	Due by
October 1-December 31 First Quarter	Within ____30____ days of the execution of this Agreement
January 1-March 31 Second Quarter	April 30

April 1-June 30 Third Quarter	July 31
July 1-September 30 Fourth Quarter	October 31

2. Quarterly reports shall document progress made by the GFBEDC on the following annual deliverables:

- At least one regional marketing trip outside of the Greater Houston region. May be a standalone trip or in partnership with an existing conference;
- Host at least one Familiarization Tour in the County;
- Partner with local County/Cities on hosting at least two (2) local real estate broker and developer events to build the awareness around Fort Bend County and its communities;
- Summary of all site selection visits and meetings with businesses considering siting or expanding in the County

ii. Financial Statements. GFBEDC shall provide complete, compiled annual financial statements, which must be prepared by an accounting firm, licensed by and in good standing with the Texas State Board of Public Accountancy. These statements shall be delivered to the Director Economic Opportunity & Development within 90 days after the close of the GFBEDC's fiscal year. County may also request a copy of the GFBEDC's financial report that is submitted for the GFBEDC monthly Board meeting.

F. All services provided by GFBEDC pursuant to this Agreement, shall be performed subject to the direction of the Fort Bend Director of Economic Opportunity & Development, who shall report directly to the Fort Bend County Commissioners Court.

Section 3: Appointments to the GFBEDC Board of Directors

As a condition of this Agreement, Fort Bend County Commissioners Court is entitled to appoint five (5) directors, with voting rights, to the GFBEDC Board of Directors who shall serve

for as long as this Agreement is in effect and may be replaced by County with 30 days written notice to the GFBEDC.

Section 5: Compensation and Payment

- A. As compensation for all services provided hereunder, the County shall pay the GFBEDC a total amount not to exceed three hundred thousand and 0/100 dollars (\$300,000.00). GFBEDC understands and agrees that the Maximum Compensation stated is an all inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated herein.
- B. Payment shall be made in one lump sum within 30 days of the execution of this agreement.
- C. GFBEDC 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 three hundred thousand and 0/100 dollars (\$300,000.00) specifically allocated to fully discharge any and all liabilities County may incur for the term of this Agreement

Section 6: Time of Performance or Term

The term of this Agreement is effective as of October 1, 2022 through September 30, 2023, unless terminated in accordance with this Agreement. 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.

Section 7: Termination

- A. For convenience. This Agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) day written notice, except as otherwise provided herein.
- B. Breach of this Contract; If GFBEDC fails to comply with any term of this Contract after County gives written notice to GFBEDC specifying the default and GFBEDC fails to cure the default within thirty (30) days of the date of the notice.
- C. In the event this contract is terminated prior to the end of the contract term, the compensation paid by County to GFBEDC shall be prorated by dividing \$300,000.00 by the number of days this contract is in effect up to, but not including, the date of termination. Any compensation paid by County over such prorated amount shall be refunded by GFBEDC within thirty (30) days of the date of termination.

Section 8: 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.

Section 9: Insurance. The GFBEDC shall, at all times during the term of this Agreement, maintain insurance coverage with not less than the type and requirements in this Article. Such insurance is to be provided at the sole cost of the GFBEDC. These requirements do not establish limits of the GFBEDC's liability: (i) all policies of insurance shall waive all rights of subrogation against the County, its officers, employees, and agents; (ii) upon request, certified copies of original insurance policies shall be furnished to the County; and (iii) the County reserves the right to require additional insurance as it deems it necessary. GFBEDC shall maintain at a minimum:

- A. Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse and explosions, blowout, cratering and underground damage. One Million Dollars (\$1,000,000.00) each occurrence Limit Bodily Injury; Products-Completed/Operations Limit One Million Dollars (\$1,000,000.00); One Million Dollars Personal and Advertising Injury Limit (\$1,000,000.00); General Aggregate Two Million Dollars (\$2,000,000.00) per project; Umbrella/Excess Liability One Million Dollars (\$1,000,000.00) Each Occurrence, Two Million Dollars (\$2,000,000.00) Aggregate. The County shall be named as an "additional insured" on the commercial general liability policy and any separate policies, where applicable, covering the requirements of this Article.

Professional/Errors and Omissions Liability, One Million Dollars (\$1,000,000.00) Each Occurrence, One Million Dollars (\$1,000,000.00) Aggregate.

- B. Workers' Compensation (with Waiver of subrogation to the County) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements, if applicable to the Project, and in accordance with Texas state law.
- C. Automobile Liability Coverage: Combined single limit of One Million Dollars (\$1,000,000.00) Combined Liability Limits for Bodily Injury and Property Damage Combined. The County shall be named as an "additional insured" on the automobile

policy. (d) Proof of insurance with proof of waiver of subrogation and County designated as an "additional insured" must be returned attached to the signed Agreement.

Section 10: Indemnity

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

Section 11: Confidential and Proprietary Information

- A. GFBEDC acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. All information of any form obtained by GFBEDC or its employees or agents from County in the performance of this Agreement marked or otherwise designated Confidential and Proprietary shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by GFBEDC shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by GFBEDC) publicly known or is contained in a publicly available document; (b) is rightfully in GFBEDC's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of GFBEDC who can be shown to have had no access to the Confidential Information.
- B. GFBEDC agrees to hold Confidential Information in strict confidence, using at least the same degree of care that GFBEDC uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. GFBEDC shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, GFBEDC shall advise County immediately in the event GFBEDC learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and GFBEDC will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or GFBEDC against any such person. GFBEDC agrees that, except as directed by County, GFBEDC will not at any time

during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, GFBEDC will promptly turn over to County all documents, papers, and other matter in GFBEDC's possession which embody Confidential Information.

- C. GFBEDC acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. GFBEDC acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. GFBEDC in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. GFBEDC 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. 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 Section 552.305 of the Texas Government Code.
- F. GFBEDC is a not for profit private corporation¹ and if County receives a request for public information from any party for records that have been marked as Confidential and Proprietary by the GFBEDC, County shall not release those records but shall comply with Texas Government Code Section 552.305 and provide GFBEDC with notice of the request and instructions for how the GFBEDC may submit their own comments to the Texas Attorney General for why the information ought not be disclosed. At no time, will the County be required to disregard a ruling from the Texas Attorney General requiring the release of information even if the information has been marked Confidential and Proprietary.
- G. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 12: Independent Contractor

- A. 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

¹ See OR2015-14855, Texas Attorney General Opinion, July 21, 2015 Ref: 10#570346; included for reference purposes only

- B. This Agreement is not intended to direct, promote or restrict the operations of the GFBEDC but does identify those Services that GFBEDC shall perform pursuant to this Agreement on behalf of the County and those Services for which County is obligated to compensate GFBEDC.
- C. In the performance of work or services hereunder, GFBEDC shall be deemed an independent contractor and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of GFBEDC.
- D. GFBEDC 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.

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

Section 14: Compliance with Laws

GFBEDC 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, GFBEDC shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 15: Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights by GFBEDC are prohibited under this subsection, whether they are voluntarily or involuntarily, without first obtaining written consent from County.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 16: Applicable Law

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.

Section 17: Successors and Assigns

County and GFBEDC bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 18: Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 19: Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 20: Publicity

The parties acknowledge they are engaged in mutual efforts to expand Fort Bend County's tax and employment base and in the course of doing business, publicity related to a company's expansion or relocation to Fort Bend County is required. GFBEDC agrees to coordinate and will only release any related information, only after receiving consent from the Director of Economic Opportunity and Development.

Section 21: Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 22: Certain State Law Requirements for Contracts

For purposes of section 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, GFBEDC hereby verifies that GFBEDC and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- A. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- B. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, GFBEDC does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.
- C. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, GFBEDC does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.
- D. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, GFBEDC does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade

association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

Section 23: Human Trafficking

BY ACCEPTANCE OF CONTRACT, GFBEDC 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

Section 24: Entire Agreement

This executed instrument is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the _____ day of _____, 2023.

FORT BEND COUNTY

**GREATER FORT BEND ECONOMIC DEVELOPMENT
COUNCIL**

K.P. George, County Judge

Jeff Wiley, President & CEO

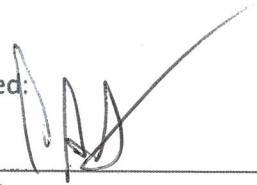
Date

Date

ATTEST:

Laura Richard, County Clerk

Reviewed:



Carlos Guzman
Director
Economic Opportunity & Development

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

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