

2010

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted:	09/29/2009	Submitted By:	Mary Reveles
Court Agenda Date:	10/06/2009	Department:	County Attorney
		Phone Number:	341-4554

SUMMARY OF ITEM:

Commissioner, Precinct 4:

Take all appropriate action on the Sales Tax Agreement between Fort Bend County and the Aliana Management District for payment to County of 25% of all sales and use tax revenues reported by the Texas Comptroller of Public Accounts.

RENEWAL AGREEMENT/APPOINTMENT YES NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached:

FINANCIAL SUMMARY:BUDGETED ITEM: YES NO N/A

FUNDNG SOURCE: Accounting Unit: Account Number: N/A
Activity (If Applicable):

DESCRIPTION OF LAWSOM ACCOUNT: _____ N/A

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input checked="" type="checkbox"/> Auditor (281-341-3774)	<input checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input checked="" type="checkbox"/> Budget Officer (281-344-3954)	<input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Road & Bridge	<input checked="" type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Engineering	<input checked="" type="checkbox"/> County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): 10-A-DA 3 orig's ret. to Mary at Co. Attorney

SALES TAX AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF FORT BEND

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THIS SALES TAX AGREEMENT (this "Agreement"), is dated as of this _____ day of _____, 2009 by and between the ALIANA MANAGEMENT DISTRICT, a political subdivision of the State of Texas created in accordance with Article III, Sections 52 and 52-a and Article XVI, Section 59 of the Constitution of the State of Texas, as amended (the "District"), and FORT BEND COUNTY, a body corporate and politic under the laws of the State of Texas (the "County").

RECITALS:

WHEREAS, the District was created pursuant to an Act of the 81st Texas Legislature, Acts 2009, 81st Regular Session, Chapter 142, codified in Chapter 3865, Texas Special District Local Laws Code (the "Creation Legislation"); and

WHEREAS, pursuant to the Creation Legislation, the District has the power, if approved by a majority of the qualified voters residing within the District, to assess and levy a sales and use tax; and

WHEREAS, Section 3865.005 of the Creation Legislation requires that the County consent to the creation of the District prior to the District commencing operation; and

WHEREAS, by Declaration dated August 4, 2009, the County agreed to consent to the creation of the District on the condition that the District conduct an election to authorize a sales and use tax, and if such election is successful, to pay to the County an amount equal to twenty-five percent of all sales and use tax revenues collected by the District.

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

ARTICLE I
SALES AND USE TAX

1.01. Election.

The District hereby agrees, as soon as practicable, to call a Sales and Use Tax Election (the "Election"), to be conducted within the District at the next available Uniform Election Date, for the purpose of authorizing the District to assess and collect a sales and use tax within the boundaries of the District at a rate equal to two percent (2%).

1.02. Imposition of Sales and Use Tax.

Upon authorization by the qualified voters within the District, as described in Section 1.01 above, the District shall impose a sales and use tax within the boundaries of the District. The sales and use tax shall be imposed on the receipts from the sale and use at retail of taxable items at the rate of two percent (2%). Chapter 321, Texas Tax Code, as amended governs the imposition, computation, administration, enforcement and collection of the sales and use tax, except to the extent it is inconsistent with the Creation Legislation.

1.03. Payment of Sales and Use Tax to the County.

As consideration for the County's consent to the creation of the District, the District hereby agrees to pay to the County an amount equal to twenty-five percent (25%) of all sales and use tax revenues that are reported on the monthly sales tax report provided by the Comptroller of Public Accounts of the State of Texas (the "Comptroller") and received by the District from the Comptroller. The District shall make payments due to the County quarterly, within thirty (30) days of the end of each calendar quarter following the District's receipt of said taxes from the Comptroller.

The District agrees to make reasonable efforts to obtain amended and supplemental reports from the Comptroller to reflect, to the greatest extent practicable, all sales and use tax revenues generated within the boundaries of the District. Revenues resulting from such amended and supplemental reports will be divided and paid as provided above.

1.04. County Use of Sales Tax Revenue.

The County may use any and all funds received pursuant to this Agreement for additional infrastructure and services serving the land within the District, or for any other public purpose, as determined by the County in its sole discretion.

1.05. County Audit Rights.

The County may audit the sales and use tax collections by the District solely to determine whether the sales and use tax revenue payments provided by Section 1.03 have been made to the County in accordance with this Agreement. If the County discovers inaccuracies in the report provided by the Comptroller or in the payments from the District, the District will use its best reasonable efforts to cooperate with the County in resolving the inaccuracies in a timely manner. Any audit shall be made at the County's sole cost and expense and may be performed at any time during the District's regular business hours by an auditor hired by the County on 30 days written notice to the District. For the purpose of any audits, the District shall maintain and make available to the County or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form sufficiently maintained to reflect the collection of all sales and use tax revenues that are subject to this Agreement.

ARTICLE II
MISCELLANEOUS PROVISIONS

2.01 Notice.

Any notices, certifications, approvals, or other communications (a “Notice”) required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the parties are set forth below. The parties may change the information set forth below by sending Notice of such changes to the other party as provided in this Section 3.01.

To the County:

Fort Bend County, Texas
Honorable County Judge and Commissioners Court

To the District:

Aliana Management District
Attn: John Cannon
3 E. Greenway Plaza, Suite 2000
Houston, Texas 77046
FAX: 713-651-0220

2.02. No Waiver.

Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement shall not be deemed a waiver thereof, and the party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

2.03. Governing Law and Venue.

This Agreement must be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in Fort Bend County, Texas and hereby submit to the jurisdiction of the courts of Fort Bend County, Texas, and hereby agree that any such courts shall be a proper forum for the determination of any dispute arising hereunder.

2.04. Authority to Execute.

The County warrants that this Agreement has been approved by the Commissioner's Court in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the County has been authorized to do so. The District warrants that this Agreement has been approved by its board of directors in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the board has been authorized to do so.

2.05. Severability.

The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances except to the extent that the severed provision(s) is a dependent substantive term the removal of which affects the intent and effect of the remaining provisions.

2.06. Changes in State or Federal Laws.

If any state or federal law changes so as to make it impossible for the County or the District to perform its obligations under this Agreement, the parties will cooperate to amend the Agreement in such a manner that is most consistent with the original intent of the Agreement as legally possible.

2.07. Additional Documents and Acts.

The parties agree that at any time after execution of this Agreement, they will, upon the request of any other party, execute and/or exchange any other documents necessary to effectuate the terms of this Agreement and perform any further acts or things as the other party may reasonably request to effectuate the terms of this Agreement.

2.08. Captions.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the Agreement.

2.09 Term.

This Agreement commences and binds the County and the District on the date of countersignature by the County, and continues for thirty (30) years from said date.

2.10. Assignment.

Neither the County nor the District may assign this Agreement without the written consent of the other party.

2.11. Amendment.

This Agreement may be amended only with the written consent of the governing bodies of the County and the District.

2.12. Interpretation.

The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “including” means “including without limitation” and the term “days” means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

2.13. No Third Party Beneficiary.

This Agreement is solely for the benefit of the parties, and neither the County nor the District intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the County and the District.

2.14. Counterpart Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

EXECUTED as of the 26th day of August, 2009.

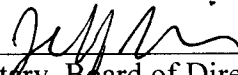
“DISTRICT”

ALIANA MANAGEMENT DISTRICT

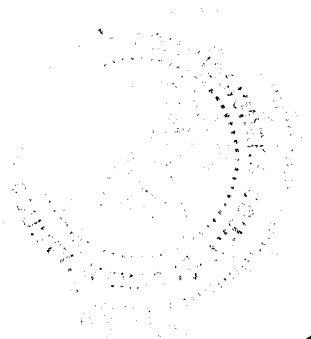
By: 

President, Board of Directors

ATTEST:

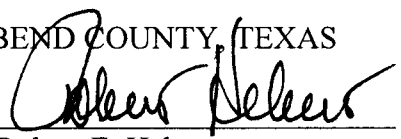
By: 

Secretary, Board of Directors




"COUNTY"

FORT BEND COUNTY, TEXAS

By: 
Robert E. Hebert
County Judge

Date: 10-6-09

ATTEST:

By: 
~~Dianne~~ Diane Wilson
County Clerk