

AGENDA ITEM

110

FORT BEND COUNTY FY 2010 COMMISSIONERS COURT AGENDA REQUEST FORM

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

Date Submitted: 11/10/09

Submitted By: Nicole Mehrens, County Attorney's Office

Department: CONSTABLE, PCT. 4

Court Agenda Date: 11/17/09

Phone Number: 281-341-4555

SUMMARY OF ITEM:

Take all appropriate action on Contract Deputy Agreement between Fort Bend County and New Territory Residential Community Association, effective for a twelve-month period from October 1, 2009 through September 30, 2010.

RENEWAL AGREEMENT/APPOINTMENT YES ☒ NO ☐
REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES ☒ NO ☐

List Supporting Documents Attached:

FINANCIAL SUMMARY:

BUDGETED ITEM: YES ☐ NO ☐

FUNDING SOURCE: Accounting Unit: Account Number:
Activity (If Applicable):

COUNTY JUDGE
RECEIVED
NOV 10 2009

DESCRIPTION OF LAWSON ACCOUNT:

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:

☒ Auditor (281-341-3774)	☒ Comm. Pct. 1 (281-342-0587)
☒ Budget Officer (281-344-3954)	☒ Comm. Pct. 2 (281-403-8009)
☒ Facilities/Planning (281-633-7022)	☒ Comm. Pct. 3 (281-242-9060)
☒ Purchasing Agent (281-341-8642)	☒ Comm. Pct. 4 (281-980-9077)
☒ Information Technology (281-341-4526)	☒ County Clerk (281-341-8697)
☒ Other: <u>Constable Troy Nehls, Pct. 4</u>	☒ County Atty. (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

11-24-09 orig. ret. to Nicole at Co Attorney

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR ADDITIONAL LAW ENFORCEMENT SERVICES
BETWEEN FORT BEND COUNTY AND
NEW TERRITORY RESIDENTIAL COMMUNITY ASSOCIATION**

This Agreement, made and entered into by and between Fort Bend County, Texas, a body corporate and politic acting herein by and through its Commissioners Court ("County"), and **New Territory Residential Community Association** ("Association").

WITNESSETH:

WHEREAS, the County and the Association desire to further promote public safety and to protect the public interest by having the County provide additional law enforcement services to a certain Area in Fort Bend County, Texas, generally referred to as New Territory, as authorized by Section 351.061, Texas Local Government Code;

WHEREAS, *the Association agrees to pay the County for all of the costs and additional expenses the County will incur for providing such additional law enforcement services for a twelve (12) month period, beginning October 1, 2009 and ending September 30, 2010.*

WHEREAS, the Fort Bend County Constable Precinct 4, ("Law Enforcement Official") has law enforcement authority in the Association's geographical area; and

WHEREAS, the County and the Law Enforcement Official desire to provide said additional law enforcement services; and

WHEREAS, if a Contract Deputy(ies) deviates from the terms of the Contract, the employment of the Contract Deputy(ies) may be immediately terminated by the County. If law enforcement support staff alters or falsely adapts reports, their employment will be terminated. If the elected Law Enforcement Official promotes or in any manner allows a deviation from the terms of the Contract, it may be grounds for an Action for Removal of the elected Official by the County.

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

**ARTICLE I.
DEFINITIONS**

For the purpose of this Agreement, the following terms shall mean:

- A. Area. That Area herein referred to generally as the New Territory Subdivision. In no event shall the defined Area exceed the geographical area represented by the Association or the jurisdictional boundaries of the County.

- B. Contract Deputy(ies). Means the additional Deputy(ies) (whether one or more) provided by the County to the Association to provide the additional law enforcement services contemplated and provided for in this Agreement.
- C. Working Time. Means the usual or normal hours (including overtime) that a Contract Deputy(ies) is required by the Law Enforcement Official to work in any calendar month. In addition, working time includes one hundred percent (100%) of the time the Contract Deputy(ies) is on vacation leave, is on sick leave and receives workers' compensation benefits.

ARTICLE II. PURPOSE

The purpose of this Agreement is for the County to authorize (but not require) the Law Enforcement Official to provide additional law enforcement personnel to the designated Area under the terms and conditions herein contained. By signing this Agreement the Law Enforcement Official agrees to provide the services referred to in Article IV under the terms and conditions herein contained.

ARTICLE III. TERM

The term of this Agreement shall be for a twelve (12) month period commencing **October 1, 2009** at 12:01 a.m. and expiring on **September 30, 2010** at 12:00 a.m., unless sooner terminated pursuant to the terms herein contained.

- A. It is expressly understood and agreed to by the parties that the period or term of this Agreement may be terminated without cause at any time by either party giving to the other party at least thirty (30) days advance written notice of its intent to terminate, specifying in the notice the effective date of the termination. Such notice shall be given by certified mail, return receipt requested, and shall be effective when mailed to the address stated herein.
- B. It is expressly understood and agreed to by the parties that, notwithstanding the ability of either party to terminate this Agreement upon thirty (30) days written notice, this Agreement may be terminated by the County, with or without notice to the Association, at any time after the Association has defaulted in the payment of any obligation hereunder.
- C. It is expressly understood and agreed to by the parties that if the Association shall at any time be in default of any obligation hereunder, the Association shall be liable to the County for any and all expenses incurred by the County as a result of such default, including, but not limited to, attorney's fees, costs of court and interest at the rate of one percent (1%) simple interest per month, on all past due amounts.
- D. The amount of expenses incurred and interest accrued, if any, shall be deemed to be in addition to any money due for law enforcement services rendered hereunder.
- E. If the term of this Agreement is terminated at any time other than at the end of a contract month; the monthly installment payment for such month shall be prorated.
- F. The Association shall have the option to renew this Agreement, upon the terms and conditions mutually agreed to in writing by both parties, by giving the County written notice of its election not later than thirty (30) days prior to the expiration of the initial term.

**ARTICLE IV.
CONTRACT DEPUTY(IES)**

- A. The County, by and through the Law Enforcement Official's Office, agrees to provide the Association, with **four (4) Contract Deputy(ies)**, to the Area. The Contract Deputy(ies) shall perform his/her duties under this Agreement in full compliance with the appropriate Fort Bend County policies and the policies and procedures of the Law Enforcement Official's Office.
- B. The Law Enforcement Official, or his representative, shall use reasonable effort to notify the Association at least ten (10) days in advance of the vacation time to be taken by a Contract Deputy(ies).
- C. The Law Enforcement Official, or his representative, shall use reasonable effort to notify the Association as soon as possible when a Contract Deputy(ies) is on sick leave.
- D. The Contract Deputy(ies) shall perform his/her duties under this Agreement in the same manner as if the Contract Deputy(ies) were performing the duties in the absence of an Agreement.
- E. The Contract Deputy(ies) shall submit written copies of any felony offense reports and subsequent copies of investigative reports to the Fort Bend County Sheriff's Office. In the event the Area is within the incorporated limits of a municipality, the Contract Deputy(ies) shall also submit written copies of any felony offense reports and subsequent copies of investigative reports to the municipal police department that serves the Area.
- F. The Contract Deputy(ies) performing the duties hereunder shall promptly notify the Fort Bend County Sheriff's Office of the receipt and response to a complaint constituting a felony offense and on request shall secure and preserve the scene of the offense for a reasonable time until the arrival of a representative of the Fort Bend County Sheriff's Office.

**ARTICLE V.
AUTHORITY AND COUNTY'S PEROGATIVE TO APPOINT CONTRACT DEPUTY(IES)**

- A. It is expressly understood and agreed to by the parties that the Contract Deputy(ies), if any, shall be subject to the control and supervision of the Law Enforcement Official to the same extent as the Law Enforcement Official's other deputies, and that the Contract Deputy(ies), if any, shall have no duty or obligation to the Association or the residents of the Area other than those duties and obligations that the Law Enforcement Official's deputies have to the public generally.
- B. The Law Enforcement Official hereby expressly retains full and complete authority to supervise the Contract Deputy(ies) and, in an emergency, determined solely at the Law Enforcement Official's discretion, may assign any Contract Deputy(ies) to duties other than those to be performed pursuant to this Agreement.
- C. It is expressly understood and agreed to by the parties that this Agreement is not intended (nor shall it be construed) to obligate the County and/or the Law Enforcement Official in any manner, *whatsoever*, to assign the Contract Deputy(ies) to devote any portion of his/her Working Time to the Area.

It is expressly understood and agreed to by the parties that:

1. In the event the Law Enforcement Official does not assign the Contract Deputy(ies) to devote his/her Working Time to the Area;
2. In the event the Contract Deputy(ies) is removed from the Area by the Law Enforcement Official; and/or
3. If for some other reason the Contract Deputy(ies) does not devote his/her Working Time to the Area for the term of this Agreement;

then and in that event, Fort Bend County shall have no liability *whatsoever* to the Association and/or the resident's of the Area, other than to credit the Association an appropriate refund, if any be due, as provided for herein.

ARTICLE VI. COUNTY EMPLOYEES

- A. The Contract Deputy(ies) performing duties under this Agreement shall at all times remain a county employee subject to the same rights and responsibilities as the Law Enforcement Official's other deputies.
- B. The County agrees that the Contract Deputy(ies) shall perform the services described herein in accordance with the appropriate Fort Bend County policies and the policies and procedures of the Law Enforcement Official's Office; provided, however, that, while Fort Bend County shall be responsible for the acts and omissions of its employees, such responsibility shall be subject to the terms, provisions and limitations of the Constitution and of the laws of the State of Texas and, particularly, TEX. CIV. PRAC. & REM. §101.001, et. seq., the Texas Tort Claims Act. THERE ARE NO WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY COUNTY OR THE LAW ENFORCEMENT OFFICIAL TO ASSOCIATION, AND COUNTY AND THE LAW ENFORCEMENT OFFICIAL EXPRESSLY DISCLAIM ANY SUCH WARRANTIES AND CONDITIONS.
- C. The County retains sole and independent authority regarding the hiring, supervision, discipline, and termination of the Contract Deputy(ies).

ARTICLE VII. INCREASES

- A. The Association agrees to pay any and all increases in the Contract Deputy(ies)'s salary, allowances, benefits, etc. that may occur during the term of this Agreement, including, but not limited to:
 1. Social Security;
 2. Medicare;
 3. Retirement;
 4. Workers Compensation/unemployment;
 5. Health and Life Insurance;
 6. Certification pay;
 7. Any overtime incurred at the request of the Association;
 8. Any overtime incurred because of circumstances related to the Area;
 9. Death and Dismemberment Insurance; and/or
 10. Cost of Living Adjustments.

- B. Salary. Upon notice by the County to the Association of any such increases and/or additional expenses (whether included on Exhibit "A" or not), the Association shall pay said increased salary, allowances, benefits, additional expenses etc., in accordance with the provisions contained herein.

ARTICLE VIII. PAYMENT BY ASSOCIATION

- A. All payments shall be made payable to Fort Bend County and shall be delivered to the Fort Bend County Auditor, 301 Jackson Street, 5th Floor, Richmond, Texas 77469, and the Auditor then will ensure that the payments are directed to the Office of the County Treasurer for proper receipt.
- B. The Association agrees to pay Fort Bend County *an estimate sum of \$371,773.64* ("Contract Amount" or 100% Contract Cost") for **four (4) Contract Deputy(ies)** to be used by Fort Bend County for the purpose of paying one hundred percent (100%) of the cost to the County for supplying the additional law enforcement services. See attached Exhibit "A", Contract Deputy(ies) Cost Worksheet for all presently known expenses. Actual cost of contract will be reviewed at least semiannually and no more than quarterly, at the discretion of the Fort Bend County Auditor. Proper notification of any changes will be sent no later than thirty (30) days following the end of the period being reported. The Contract Amount shall be due and payable, without demand, in twelve (12) equal monthly installments of **\$30,981.14**, subject to any adjustments as provided herein.
1. The first installment shall be due on **October 1, 2009**.
 2. Each subsequent monthly installment shall be due and payable, without demand, on or before the 1st day of each month during the term of this Agreement.
- C. The Association hereby expressly agrees to pay for all costs incurred by the County for providing the services hereunder, regardless of whether said expenses are set forth in Exhibit A, including but not limited to, Contract Deputy(ies) overtime, uniforms, equipment, portable cellular phones, vehicles, vehicle maintenance and/or vehicle appearance. Said Cost to be all of the allocated costs as determined by the County Auditor.
- D. In the event that any additional equipment, including but not limited to vehicles, uniforms, cellular phones, radios, etc., is necessary to carry out the terms of this Agreement, the Association, at its option, may purchase the equipment and donate it to the County or the Association may provide the County, in advance, with the funds and have the County purchase the equipment.
1. In the event that the Association purchases the equipment and donates it to the County, the equipment must meet the County's standards and be approved by the Law Enforcement Official before being used by the Contract Deputy(ies).
 2. In the event that the Association desires to provide the County with the funds, in advance, to purchase the equipment, all County procedures must be followed.
 3. Regardless of which option the Association chooses, the equipment shall forever become and remain the sole property of the County and shall remain the sole property of the County, even upon termination, for any reason, of this Agreement.
- E. If any installment is for a fraction of a contract month, the amount of such installment shall be appropriately prorated.

- F. It is expressly understood and agreed to by the parties that if a payment due under the terms of this Agreement is not received by County within thirty (30) days of the due date, the County is authorized to terminate this Agreement without further notice. Failure of County to make demand for payments due shall not be a waiver of Association's obligations to make timely payments.

ARTICLE IX. ASSIGNMENTS

This Agreement is not assignable.

ARTICLE X. INDEMNITY AND HOLD HARMLESS

- A. **THE ASSOCIATION AGREES FOR ITSELF, ITS HEIRS, ASSIGNS, AND LEGAL REPRESENTATIVES TO INDEMNIFY THE COUNTY AND TO RELEASE AND HOLD HARMLESS FORT BEND COUNTY, TEXAS AND ALL OF ITS ELECTED AND APPOINTED OFFICIALS, STAFF, EMPLOYEES AND SERVANTS FOR ANY AND ALL LOSSES, CLAIMS, DAMAGES, ATTORNEY'S FEES, COSTS, AND/OR INJURIES, INCLUDING DEATH, THAT THE ASSOCIATION, ITS HEIRS, ASSIGNS, AND LEGAL REPRESENTATIVES MAY SUSTAIN AND WHICH MAY ARISE, DIRECTLY OR INDIRECTLY OUT OF THE COUNTY'S, LAW ENFORCEMENT OFFICIAL'S AND/OR EXTRA DEPUTY(IES)'S PERFORMANCE PURSUANT TO THIS AGREEMENT.**
- B. Association shall furnish County with insurance certificates(s) and a copy of each policy that is in effect as of the effective date of this Agreement for verification and approval by the County Risk Management Department. Association shall provide County subsequent insurance certificates throughout the term of the Agreement upon request. Association shall carry Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include independent contractors, and contractual liability each at \$1,000,000 per occurrence. Coverages shall be written on per occurrence forms. Policies shall name the County, its elected and appointed officials, agents, and employees as additional insureds.

ARTICLE XI. SEVERABILITY

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof, to any person or circumstance, shall ever be held by any court or regulatory authority of competent jurisdiction, to be invalid, illegal or unconstitutional for any reason, the remainder of this Agreement shall not be affected thereby, unless, in the sole opinion of the County, the purposes of this Agreement have been rendered useless.

ARTICLE XII. ENTIRE AGREEMENT; REQUIREMENT OF A WRITING

- A. It is understood and agreed to by the parties that the entire Agreement of the parties is contained herein and in the attached Exhibit "A" and that this Agreement supersedes all prior

communications and negotiations between the parties, oral or written, relating to the subject matter hereof as well as any previous Agreements presently in effect between the parties relating to the subject matter hereof.

- B. Any modifications, alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

ARTICLE XIII.

NOTICE

- A. Any notice required or permitted under this Agreement shall be sent, postage prepaid, certified or registered mail, or delivered in person or by facsimile, with verification, as follows:

To the **County**: Fort Bend County Judge
301 Jackson, Suite 719
Richmond, Texas 77469

To the **Association**: New Territory Residential Community
6101 Homeward Way
Sugar Land, Texas 77479

- B. Either party may designate a different address by giving at least ten (10) days written notice to the other party in the manner provided above.

ARTICLE XIV.

THIRD PARTY APPROVAL MAY BE REQUIRED

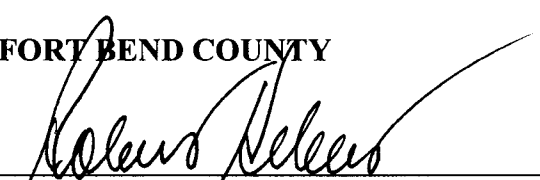
- A. In the event that the Area lies within the corporate limits of any incorporated city, it is understood and agreed to by the parties that pursuant to Section 351.067, Texas Local Government Code, this Agreement is subject to the approval (or the failure to disapprove) of the governing body of the incorporated city ("City") within which corporate limits the Area lies.
- B. Such approval (or failure to disapprove) must occur by the 30th day after the date this Agreement is received by the City.
- C. It is further understood and agreed to by the parties that, upon thirty (30) days written notice from the City to the County, this approval may be withdrawn and, thereby, this Agreement terminated.

[EXECUTION PAGE FOLLOWS]

**ARTICLE XV.
EXECUTION**

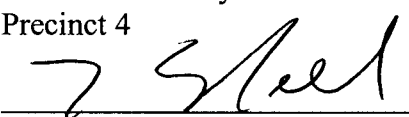
IN WITNESS WHEREOF, the parties put their hands to this Agreement on the dates indicated below,
but effective **October 1, 2009**.

FORT BEND COUNTY


Robert E. Hebert, County Judge

Date: 11-17-09

Fort Bend County Constable
Precinct 4


Troy Nehls, Constable

ATTEST:


Dianne Wilson, County Clerk

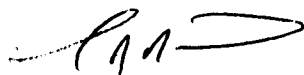
NEW TERRITORY RESIDENTIAL COMMUNITY ASSOCIATION

By:

Title:

Date:


TREASURER
10/28/09


VICE PRESIDENT
10/28/09

Attachment: Exhibit "A" – Cost Estimate Sheet

MTR/nm: New Territory Constable Pct.4 Renewal: 3042- (10/14/09)

THE STATE OF TEXAS
COUNTY OF FORT BEND

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§
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KNOW ALL MEN BY THESE PRESENTS:

**AGREEMENT FOR ADDITIONAL LAW ENFORCEMENT SERVICES
BETWEEN FORT BEND COUNTY AND
NEW TERRITORY RESIDENTIAL COMMUNITY ASSOCIATION**

On this day, the Commissioners Court, sitting as the governing body of Fort Bend County, Texas, at a regular meeting, upon motion of Commissioner meyers, seconded by Commissioner Patterson, duly put and carried,

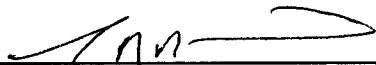
The County Judge is authorized to execute an Agreement for Additional Law Enforcement Services between Fort Bend County and New Territory Residential Community Association for **four (4) Contract Deputy(ies)** from the Fort Bend County Constable Precinct 4 Office for a period of twelve (12) months, beginning **October 1, 2009**.

It is understood and agreed that, pursuant to TEX. LOC. GOV'T CODE ANN. § 351.067, in the event that the Area lies within the corporate limits of an incorporated city, this Agreement is subject to the approval (or the failure to disapprove) of the governing body of said incorporated City within which corporate limits the Area lies. Such approval (or failure to disapprove) must occur by the 30th day after the date this Agreement is received by the City. It is further understood and agreed that, upon thirty (30) days written notice from the City to the County, this approval may be withdrawn and, thereby, this Agreement terminated.

Fort Bend County
New Territory Residential Community Association
Constable Precinct # 4

For the Period of October 1, 2009 through September 30, 2010

Description	10/1/2009 thru 9/30/2010
Salary (4) 40/80 Hour Deputy	190,843.20
2.35% Cost of Living	4,484.82
Certification	6,300.26
Holiday	8,808.15
Leave	3,670.06
Overtime	2,702.23
Longevity	1,336.20
FICA/Medicare	16,688.09
Retirement	23,625.09
Group Insurance	42,240.00
Workers' Comp./Unemployment	1,963.30
Total Salary & Fringe Benefits	302,661.40
Fees	1,100.00
Travel	200.00
Officer Training	
Other Rentals/Leases	
Office Supplies	300.00
Operating Supplies	
Automobile Parts/Maintenance & Repair	11,705.80
Materials & Supplies	
Officer Training Supplies	600.00
Uniforms	1,900.00
Property & Equipment	
Communications Equipment	
Fuel	21,610.72
Automobile Capital Mileage	31,695.72
Total Cost	371,773.64
Monthly Payment	30,981.14



Authorized Signature of Approval

10/28/2009

Date Signed

mp
8/12/2009 0:00

Attachment A