

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: December 14, 2009	Submitted By: D'Neal Krisch
Court Agenda Date: December 22, 2009	Department: County Judge
	Phone Number: 281-341-8606

SUMMARY OF ITEM: Take all appropriate action to approve the agreement for development of Public Parks and Recreational Lands by and between Fort Bend County and Fort Bend Green, a 501(c)(3) non-profit corporation.

RENEWAL AGREEMENT/APPOINTMENT YES NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

FINANCIAL SUMMARY:

BUDGETED ITEM: YES NO

FUNDNG SOURCE: Accounting Unit: _____ Account Number: _____
 Activity (If Applicable): _____

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:

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

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

1-410 2 orig. ret. to D'Neal at Co. Judge

STATE OF TEXAS
COUNTY OF FORT BEND

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KNOW ALL MEN BY THESE PRESENTS:

**AGREEMENT FOR DEVELOPMENT OF PUBLIC PARKS
AND RECREATIONAL LANDS**

THIS AGREEMENT is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, by and through the Fort Bend County Commissioners Court, hereinafter referred to as the "County," and FORT BEND GREEN, hereinafter referred to as "FB Green," a 501(c)(3) non-profit corporation authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County desires FB Green to find ways to facilitate additional dedicated green-space throughout Fort Bend County by working with citizens, municipalities, special districts, the private sector, foundations, state and federal agencies, as necessary, to accomplish this task, hereinafter referred to as "the Project," as authorized by Chapter 26 of the Texas Parks and Wildlife Code; and,

WHEREAS, FB Green is in need of funding in order to engage the services of a qualified individual or entity to investigate each potential project in detail prior to advocating any particular action and for reimbursement of expenses related to such projects; and.,

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, Local Government Code; and,

NOW, THEREFORE, County and FB Green, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
CHARACTER AND EXTENT OF SERVICES**

- 1.01 For purposes of this Agreement, "Facilitate" shall mean working to bring together appropriate public and private partners for the purpose of executing a desirable green space project. Facilitation may include identifying appropriate projects, recruiting and matching appropriate partners; assisting in project development including development of contractual agreements for ownership, maintenance and/or operation of selected green space projects, plus fundraising and public awareness campaigns, but facilitation does not include ownership, maintenance and/or operation of projects by FB Green.
- 1.02 FB Green shall facilitate the development of various canoe launch sites along the Brazos River to help execute the Sam Houston Trail and Wilderness Preserve plan developed by Houston Wilderness and the Brazos River Paddling Trail designation by Texas Parks & Wildlife.

- 1.03 FB Green shall identify and facilitate the acquisition and development of natural areas and open spaces for recreational and conservation purposes throughout Fort Bend County.
- 1.04 FB Green shall collaboratively work with private citizens and businesses, municipal, state and federal governments and other non-profit partners that have similar interests in preserving open space to create partnerships for qualified projects that effectively leverage available resources.
- 1.05 FB Green shall identify and pursue donations and grants and state or federal funding, as appropriate, to reduce the local cost of green space development.
- 1.06 FB Green will not own or operate any park, open space, or natural area.
- 1.07 FB Green will submit a written report to Fort Bend Commissioners Court describing its activities during the past six months and stating its plan for the next six months. The report will be submitted within 30 days of the end of each six-month period, which first six-month period begins January 1, 2010.
- 1.08 The individual or entity retained under this Agreement shall not have any conflicts of interest resulting from work done or contracts with other regional entities that perform work substantially similar to FB Green.

SECTION II COMPENSATION

- 2.01 For and in consideration of the services rendered by FB Green, and subject to the limit of appropriation under Section VI, County shall pay to FB Green an amount not to exceed \$75,000, including all expenses, if any, payable in two (2) installments of \$37,500 each. The first installment shall be paid to FB Green within thirty (30) days of execution of this Agreement and the second installment shall be paid on or about June 1, 2010.
- 2.02 FB Green shall provide County an annual report itemizing all activities, expenses, and any other documentation necessary to enumerate the expenditure of funds under this Agreement no later than January 30, 2011.

SECTION III TERM AND TERMINATION

- 3.01 This Agreement shall commence upon approval by County and shall terminate on September 30, 2010. This agreement may be renewed by written agreement of the parties.
- 3.02 County may terminate this Agreement at any time by providing thirty (30) days written notice to FB Green.
- 3.03 Upon receipt of such notice, FB Green shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 3.04 Within thirty (30) days after receipt of notice of termination, FB Green shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 3.05 Copies of all completed or partially completed designs, drawings, electronic data files, reports, documents and specifications prepared under this Agreement shall be delivered

to County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION IV LIABILITY INSURANCE

FB Green shall, prior to performing services and for the duration of term of this Agreement, keep in full force and effect a policy of general liability insurance of not less than \$100,000 for each claim aggregate, which shall be approved by the Fort Bend County Risk Management Department prior to purchase. The policy shall contain a clause that the insurer will not cancel or reduce the insurance without first giving County ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certification of insurance shall be delivered to the Fort Bend County Risk Management Department as soon as available.

SECTION V NOTICE

- 5.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or FB Green at the addresses set forth below.
- 5.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:
- A. If to FB Green:
- Fort Bend Green
c/o Greater Fort Bend Economic Development Council
Attn: John Van de Wiele, President, Board of Directors
One Fluor Daniel Drive
Sugar Land, Texas 77479
- B. If to County:
- Honorable Robert E. Hebert
County Judge
301 Jackson, Suite 719
Richmond, Texas 77469
- 5.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VI
LIMIT OF APPROPRIATION

- 6.01 Prior to the execution of this Agreement, FB Green has been advised by County, and FB Green clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that County shall have available the total maximum sum of \$75,000, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 6.02 FB Green does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that FB Green may become entitled to hereunder and the total maximum sum that County shall become liable to pay to FB Green hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$75,000.

SECTION VII
SUCCESSORS AND ASSIGNS

- 7.01 County and FB Green 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 such other party, in respect to all covenants of this Agreement.
- 7.02 Neither County nor FB Green shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION VIII
PUBLIC CONTACT

Under no circumstances, whatsoever, shall FB Green release any material or information developed or received in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION IX
INDEMNIFICATION

- 9.01 **FB GREEN SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF FB GREEN OR ANY OF FB GREEN'S AGENTS, SERVANTS OR EMPLOYEES.**
- 9.02 **FB GREEN SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH ACTIVITIES BY FB GREEN, ITS AGENTS, CONTRACTORS OR EMPLOYEES.**

SECTION X
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XI
MISCELLANEOUS

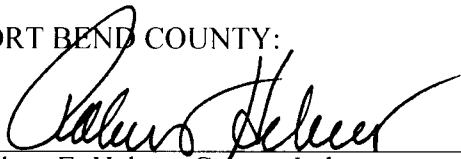
- 11.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 11.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 11.03 FB Green agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; FB Green and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SECTION XII
EXECUTION

IN TESTIMONY AND WITNESS OF WHICH this Agreement has been executed in duplicate originals as follows:

FORT BEND COUNTY:



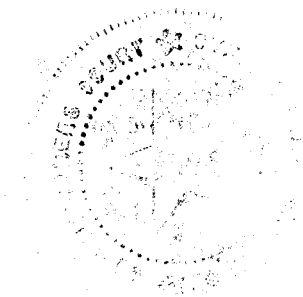
Robert E. Hebert, County Judge

12/22/09
Date


Attest:



Dianne Wilson, County Clerk



FORT BEND GREEN



John Van de Wiele, President
Board of Directors

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$75,000 to pay the obligation of Fort Bend County under this Agreement.



Ed Sturdivant, County Auditor