

ARF-1750

REGULAR SESSION AGENDA

Date: 10/12/2010

EDC Contract

Item #: ~~9, 0.~~ ⁷

County Judge

Submitted By: Ann Werlein, County Judge

Department: County Judge

Type of Item: Consent

Renewal Agreement/ Yes

Appointment:

Reviewed by County Yes

Attorney's Office:

Multiple Originals n

Y/N?:

Information

SUMMARY OF ITEM

Approve renewal of the Agreement between Fort Bend County and the Greater Fort Bend Economic Development Council in the amount of \$300,000 for FY11. (Fund: Non-Departmental, Fees)

SPECIAL HANDLING

Attachments

Link: contract

10-14-10 orig. ret. to Ann at Co. Judge

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT BETWEEN FORT BEND COUNTY AND THE GREATER FORT BEND
ECONOMIC DEVELOPMENT COUNCIL
RENEWAL**

THIS AGREEMENT is made and entered into by and between **Fort Bend County**, hereinafter referred to as the “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**, hereinafter referred to as the “**GFBEDC**.”

R E C I T A L S

WHEREAS, pursuant to LOCAL GOVERNMENT CODE §381.004, as amended, the Commissioners Court of the County desires to stimulate business and commercial activity in the County by contracting with **GFBEDC** to provide or cause to be provided, certain economic development services in furtherance of the County’s statutory goals pursuant to LOCAL GOVERNMENT CODE §381.004, as amended, and to develop and administer the County’s program for local economic development; and,

WHEREAS, the County desires to diversify its economy, increase and broaden its tax base, provide more and better employment opportunities for its citizens, market and promote quality of life and a positive economic climate and promote the general public welfare; and,

WHEREAS, it is important to the County to attract and expand business, commercial and industrial enterprise in order to accomplish this purpose; and,

WHEREAS, it is desirable, productive, and economical to work towards this goal through a unified county effort and through an agency with specific expertise in this field; and,

WHEREAS, the County desires to contract with **GFBEDC** for such business and industrial development services; and,

WHEREAS, **GFBEDC** is a county-wide non-profit corporation whose purpose is to accomplish all the above stated objectives; and,

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

WHEREAS, the County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE.

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

AGREEMENT

ARTICLE I

Qualifications of the **GFBEDC**

Representations and Warranties of **GFBEDC**. The **GFBEDC** represents that it:

- (a) Is a non-profit entity that is authorized to promote economic development in all or a portion of the County;
- (b) Is engaged in an on-going effort to attract new businesses to the County, to encourage the expansion of existing businesses in the County, and to retain existing businesses in the County.

ARTICLE II

Scope of Services

Section 2.01: The **GFBEDC** shall develop a comprehensive program for 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 and analysis services for new 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; developing and implementing a marketing plan to market and brand the county and make recommendations for Fort Bend County to compete more successfully for new business and industry.

Section 2.02: Reports. **GFBEDC** agrees to submit to the County Judge a written report describing in detail the collaborative efforts performed during the preceding fiscal year prior to this Agreement being executed by County.

ARTICLE III

Term

The term of this Agreement is from **October 1, 2010** through **September 30, 2011**. This agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) days written notice.

ARTICLE IV

Payment, Termination, Financial Statement, and Limitation of Appropriation

Section 4.01: Payment. As compensation for all services provided hereunder, the County shall pay the **GFBEDC** an amount not to exceed **\$300,000.00** for the term of this agreement.

Section 4.02 Termination. In the event of termination mid-term, the County shall compensate the **GFBEDC** for all services actually provided hereunder on a pro rata basis according to the ratio of the amount of time elapsed during the contract term bears to the total amount of money agreed upon herein as compensation for such term. Upon termination for cause, the **GFBEDC**

shall promptly reimburse the County on a pro rata basis according to the ratio of the amount of time elapsed during the contract term bears to the total amount of money agreed upon herein as compensation for such term.

Section 4.03: Time of Payment. Payment shall be made in one lump sum during the first quarter of county's fiscal year.

Section 4.04: Financial Statements. The **GFBEDC** must provide, within 90 days after the close of the **GFBEDC**'s fiscal year, its compiled annual financial statements to the County Judge at 301 Jackson, Suite 719, Richmond, Texas 77469. The financial statements must be reviewed by an independent accounting firm.

Section 4.05: Allocated Funds: Limitation of County's Duties. Prior to the execution of this Agreement, the **GFBEDC** has been advised by the County and the **GFBEDC** clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that there is available the total maximum sum of Three Hundred Thousand Dollars and No/Cents (**\$300,000.00**) which is specifically allocated to fully discharge all liabilities which may be incurred by the County under the provisions of this Agreement, including the costs, things, or purposes contained in or inferred from the provisions of this Agreement which might in any light by any person be interpreted to the contrary. Once this sum is expended, the County has no further obligation hereunder.

ARTICLE V Board of Directors

The County shall be given the right to appoint five (5) directors, with voting rights, to the **GFBEDC**, who shall serve for as long as this Agreement is in effect.

ARTICLE VI Indemnification

It is understood and agreed between the parties that the **GFBEDC**, in performing its obligations hereunder, is acting independently, and the County assumes no responsibilities or liabilities in connection therewith to third parties. **THE GREATER FORT BEND EDC AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF THIS AGREEMENT. GREATER FORT BEND EDC'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEY'S FEES AND EXPENSES INCURRED BY THE COUNTY IN CONNECTION WITH THESE CLAIMS, SUITS, AND CAUSES OF ACTION.**

ARTICLE VII Miscellaneous Provisions

Section 7.01: Independent Contractor. The relationship of the **GFBEDC** to the County is that of an independent contractor. The County has no authority to direct the day-to-day activities of any of the **GFBEDC**'s employees, nor does the County have any authority over the **GFBEDC**'s personnel decisions.

Section 7.02: Parties in Interest. This Agreement shall bind and benefit the County and the **GFBEDC** and shall not bestow any rights upon any third parties.

Section 7.03: Non-waiver. Failure of either party to insist on the strict performance of any of the terms herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance is not a waiver of the right to insist on and to enforce by an appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

Section 7.04: Applicable Laws: This Agreement is subject to and is to be construed in accordance with the laws of the State of Texas. This Agreement is performable in Fort Bend County, Texas. The **GFBEDC** agrees to perform the services hereunder in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

Section 7.05: 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:

FOR THE COUNTY:

Fort Bend County Judge
301 Jackson, Suite 719
Richmond, Texas 77469

FOR THE GREATER FORT BEND EDC: Greater Fort Bend Economic Development Council
One Fluor Daniel Drive
Sugar Land, Texas 77478
Attention: Jeff Wiley

Section 7.06: Ambiguities. In the event of any ambiguity in any of the terms of this Agreement, it is not to be construed for or against any party hereto on the basis that such party did or did not author the same.

Section 7.07: Captions: The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles, and therefore, will be given no effect in construing this Agreement and will not be restrictive of the subject matter of any Article, Section, or part of this Agreement.

Section 7.08: Merger: This Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

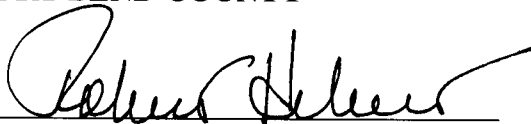
Section 7.09: Execution: The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners Court of Fort Bend County, Texas, so authorizing. This Agreement shall not become effective until executed by all parties hereto.

ARTICLE VIII
Execution

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the dates written below.

FORT BEND COUNTY


By:


Robert E. Hebert, County Judge

Date:

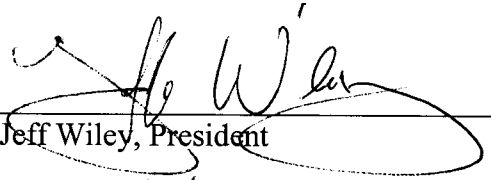
10-12-2010

ATTEST:


Dianne Wilson, County Clerk

**GREATER FORT BEND ECONOMIC
DEVELOPMENT COUNCIL**

By:


Jeff Wiley, President

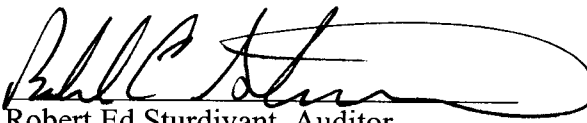
Date:

10/4/10

AUDITOR'S CERTIFICATE

I hereby certify that funds are available to pay the obligation of Fort Bend County under and within the foregoing Agreement.

\$300,000 RA


Robert Ed Sturdivant, Auditor