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THE STATE OF TEXAS §

COUNTY OF FORT BEND §

**AGREEMENT BETWEEN FORT BEND COUNTY AND THE KATY AREA ECONOMIC DEVELOPMENT COUNCIL**

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, acting herein by and through its Purchasing Agent, according to TEXAS LOCAL GOVERNMENT CODE §262.011(d), hereinafter "County," and, and the **Katy Area Economic Development Council**, hereinafter referred to as the "Katy Area EDC."

**RECITALS:**

**WHEREAS**, pursuant to TEX. LOC. GOV'T CODE ANN. §381.004, as amended, the Commissioners Court of the County desires to stimulate business and commercial activity in the County by contracting with Katy Area EDC to provide or cause to be provided, certain economic development services in furtherance of the County's statutory goals pursuant to TEX. LOC. GOV'T CODE ANN. §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 and promote the general public welfare; and,

**WHEREAS**, the County finds this agreement serves a public purpose; 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 Katy Area EDC for such business and industrial development services; and,

**WHEREAS**, Katy Area EDC is a non-profit corporation whose purpose is to accomplish all the above stated objectives; 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 Katy Area EDC agree as follows:

10-3-11 copy received

**AGREEMENT:**

**ARTICLE I**  
**Qualifications of the Katy Area EDC**

Section 1.01: Representations and Warranties of Katy Area EDC. Katy Area EDC represents that:

- (a) The Katy Area EDC is a non-profit entity that is authorized to promote economic development in a substantial portion of the County;
- (b) The Katy Area EDC is engaged in an on-going effort to attract new businesses to the County, to encourage the expansion of existing businesses in the County, or to retain existing businesses in the County;
- (c) The Katy Area EDC must cooperate with and use the services of the Texas Department of Economic Development and Tourism.

**ARTICLE II**  
**Scope of Services**

Services to be Provided: The Katy Area EDC must provide the services described in the following paragraphs:

Section 2.01: Program Development: The Katy Area EDC shall develop a comprehensive program for the solicitation of industrial, business, and commercial prospects for location in North 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 North Fort Bend County; dissemination of the demographic information about North Fort Bend County to prospective new business and industry; and make recommendations for North Fort Bend County to compete more successfully for new business and industry.

Section 2.02: Katy Area EDC Reports: On or before six months within the current fiscal year, the Katy Area EDC must submit to the County Judge a written report describing in detail the collaborative efforts performed during the preceding fiscal year.

**ARTICLE III**  
**Term**

The term of this Agreement is from **October 1, 2011** through **September 30, 2012**. This agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) days written notice. This agreement shall not automatically renew.

**ARTICLE IV**  
**Payment, Financial Statement, and Limitation of Appropriation**

Section 4.01: Payment. As compensation for all services provided hereunder, the County shall pay Katy Area EDC an amount not to exceed **\$15,000.00** for the term of this agreement. In the event of early termination as provided for by Article III, the Katy EDC shall promptly refund to the County on a pro rata basis according to the ratio 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 4.02: Time of Payment. Payment shall be made in an annual lump sum payment of \$15,000.00. County will remit payment by the end of the first quarter of the County's fiscal year.

Section 4.03: Financial Statements. The Katy Area EDC must provide, within 90 days after the close of the Katy Area EDC's fiscal year, its compiled annual financial statements to the County Judge at 301 Jackson, Suite 719, Richmond, Texas 77469. The financial statements will be prepared by a licensed CPA and will be reviewed by an independent accounting firm every three years should this Agreement be renewed.

Section 4.04: Allocated Funds: Limitation of County's Duties. Prior to the execution of this Agreement, the Katy Area EDC has been advised by the County and the Katy Area EDC 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 Fifteen Thousand Dollars and No/Cents (**\$15,000.00**) 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, expenses 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 Termination

Either party may terminate this Agreement upon default by the other party. Default by a party occurs if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should a default occur, the party against whom the default has occurred has the right to terminate all or part of its duties under this Agreement as of the 30th day following the receipt by the defaulting party of a notice describing the default and intended termination, provided: (i) the termination is ineffective if within the 30-day period the defaulting party cures the default or (ii) the termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default. In the event that the County or the Katy Area EDC terminates this Agreement, the Katy Area EDC must furnish the County, within 30 days from the date of the termination, with a final report from the period beginning on the day following the last day of the period covered in the last report and ending with the last day of the termination. In no event is the County obligated to pay for any services performed after the date of termination but rather is obligated to pay only for those services actually rendered prior to the date of termination. The Katy EDC shall refund the County as described in Section 4.01. This Article does not relieve either party of the ability to terminate this agreement, as provided in Article III.

#### ARTICLE VI Board of Directors

The County shall be given the right to appoint one (1) director with voting rights to the Katy Area EDC's Board of Governors, who shall serve for as long as this Agreement is in effect.

ARTICLE VII  
Miscellaneous Provisions

Section 7.01: Independent Contractor: The relationship of the Katy Area EDC 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 Katy Area EDC's employees nor does the County have any authority over the Katy Area EDC's personnel decisions.

Section 7.02: Parties in Interest: This Agreement shall bind and benefit the County and the Katy Area EDC 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 Katy Area EDC agrees to perform the services hereunder in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Venue for any action regarding this agreement shall lie in Fort Bend County, Texas.

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 KATY EDC: Lance LaCour, President/CEO  
Katy Area Economic Development Council, Inc.  
P.O. Box 970  
Katy, TX 77492

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.

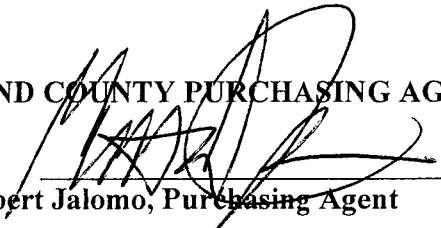
Section 7.07: Captions: The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles, and therefore, will be given no effect in construing this Agreement and will not be restrictive of the subject matter of any Article, Section,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

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

**FORT BEND COUNTY PURCHASING AGENT**

By:   
Gilbert Jalomo, Purchasing Agent

Date: 9.29.11

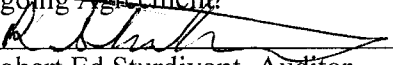
**KATY ECONOMIC DEVELOPMENT COUNCIL,  
INC.**

By:   
Lance LaCour, President/CEO

Date: 9/20/2011

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$15,000.00 to pay the obligation of Fort Bend County under and within the foregoing Agreement.

  
Robert Ed Sturdivant, Auditor