

**INTERLOCAL AGREEMENT FOR
FORT BEND COUNTY MOBILITY ENHANCEMENT**

STATE OF TEXAS §
COUNTY OF FORT BEND §

THIS AGREEMENT is made and entered into by and between **FORT BEND COUNTY, TEXAS ("County")**, a body politic of the State of Texas, and **HARRIS-FORT BEND EMERGENCY SERVICES DISTRICT NO. 100 ("ESD 100")**, a political subdivision of the State of Texas.

PRELIMINARY MATTERS

1. The County has been created, established, organized and exists as a county government and body politic under the laws of the State of Texas;
2. ESD 100 has been created, established, organized and exists under the authority of Article III, Section 48-e of the Texas Constitution and Chapter 775, Texas Health & Safety Code;
3. The County has, among its powers, the power to seek voter approval for the establishment of agencies and political subdivisions, including county assistance districts, and the power of imposing - directly or through such political subdivisions, including county assistance districts - of a local sales and use tax within its jurisdiction, subject to all applicable provisions of the Texas Tax Code and other applicable laws, including Section 387.001, et seq., Local Government Code, as amended;
4. ESD 100 has, among its powers, the power of imposing a local sales and use tax within its jurisdiction, subject to all applicable provisions of the Texas Tax Code, Chapter 775, Texas Health and Safety Code and other applicable laws;
5. The County, both directly or through county created/controlled political subdivisions, including county assistance districts, has the power to undertake improvement and maintenance projects separately or jointly with other persons or entities, including county toll road improvements and frontage or access roads for the Westpark Tollway and the Grand Parkway and connecting roadways, and to pay all or part of the costs of such projects;

6. The County and ESD 100 have partly overlapping boundaries and jurisdictions and ESD 100 is located partly within the boundary of the County;

7. ESD 100 currently imposes a 1% local sales and use tax in parts of the area of its jurisdiction in Fort Bend County under authority granted following a public election on November 6, 2007;

8. The local sales and use tax within the Fort Bend County portion of the jurisdiction of ESD 100 is either 1% or 2%.

(1) Where the 2% local sales and use tax is imposed, it consists of the 1% ESD 100 local sales and use tax plus the 1% City of Houston local sales and use tax imposed under various Strategic Partnership Agreements between the City of Houston and certain municipal utility districts, improvement districts or water conservation improvement districts.

(2) Where a 1% local sales and use tax is imposed within the jurisdiction of ESD 100 located within Fort Bend County, it consists of the 1% ESD 100 local sales and use tax.

9. Pursuant to Chapter 323 of the Texas Tax Code (Sec. 323.101), when a 2% maximum rate for local sales and use tax exists in a locale, no further local sales and use tax may be imposed by a county or otherwise.

10. Subsequent to the adoption of the ESD 100 local sales and use tax at an election held on November 6, 2007, the County received voter approval for the creation of Fort Bend County Assistance District No. 1 ("CAD No. 1") in the vicinity of the boundaries of ESD 100 which will assist the County in the undertaking and funding of improvement projects separately or jointly with other persons or entities, including design, construction, maintenance, and financing of frontage roads or access roads for the Westpark Tollway and the Grand Parkway and connecting roadways thereto (the "Projects"). Part of the County funding mechanism for said Projects is intended to be local sales and use tax revenue, estimated to be a 1% rate. Due to the provisions of Section 387.001, et seq., Local Government Code and the terms of the City of Houston consent to the creation of CAD No. 1, in the vicinity of the boundaries of ESD 100, a county local sales and use tax cannot be implemented in the area of the boundaries of ESD 100.

FINDINGS

1. The Parties find that the County requires sales tax revenue from the ESD 100 area to provide for the design, construction, maintenance, and financing of the Projects.
2. The Parties find that the development of the Projects will be of benefit to ESD 100, in terms of (a) providing additional revenue with anticipated business development fostered by the County's Projects, and (b) enhancing the capability of delivering emergency services by ESD 100 to the ESD 100 area by virtue of the construction of the Projects, which may be situated within or in the vicinity of the ESD 100 area.
- * 3. The parties find that due to the provisions of the Texas Tax Code, Section 387.001, et seq., Local Government Code, and/or the terms of the City of Houston consent to the creation of CAD No. 1, the County and CAD No. 1 will not have authority to impose its local sales and use tax or to receive any sales tax revenue from any such areas contained within ESD 100.
4. The parties find that it is in the best interests and for the benefit of the County and ESD 100 if the County and ESD 100 enter into this Agreement to allocate, as provided herein, an amount equal to 25% of the ESD 100 local sales and use tax revenue generated in the area described as that portion of ESD 100 being located in Fort Bend County and west of FM 1464 (the "Contribution Area").
- * 5. The Contribution Area shall be automatically adjusted as needed in accordance with any changes to ESD 100's boundaries. It is further provided that the Contribution Area shall not include or shall hereafter exclude any area within ESD 100 where a local sales and use tax is imposed by the County and/or any other special purpose county instrumentality, including CAD No. 1.
6. The parties find that the Interlocal Cooperation Act, codified as V.T.C.A., Government Code, Chapter 791 (the "Interlocal Act"), provides authorization for any local government to contract with one or more other local governments to perform governmental functions and services under the terms of the Interlocal Act and funding thereunder.
7. The County and ESD 100 jointly find that each are local governments as provided under the Interlocal Act and the agreements and provisions herein relate to the respective government functions of each,

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and conditions hereinafter set forth, the County and ESD 100 agree as follows:

I.

1. (a) ESD 100 agrees to allocate on a quarterly basis to the County for the design, construction maintenance and financing of the Projects an amount equal to Twenty-five per cent (25%) of the local sales and use tax revenue received in hand by ESD 100 from the State Comptroller and derived from the Contribution Area.

(b) The payment under 1(a), above, shall be paid to the County quarterly, to wit, on each May 31 (for January - March), August 31 (for April - June), November 30 (for July - September), February 28/29 (for October - December). The payments by ESD 100 may be made via a wire or ACH transfer of funds or by ESD 100 bank draft or check. These allocation dates and payment provisions are applicable for those quarter-annual periods subsequent to the below described "Catch-Up" payment period.

(c) ESD 100 shall make a "Catch-Up" Payment to the County by December 31, 2011, in an amount equal to 25% of the ESD 100 sales tax revenue collected in the Contribution Area during: (i) calendar year 2010; and (ii) the calendar months of 2011 preceding the effective date of this Agreement (the "2011 Catch-Up Payment").

(d) Station 3 access road credit: Notwithstanding the above provisions, ESD 100 shall be entitled to a credit ("Catch-Up Credit") against the 2010 and 2011 Catch-Up Payment of the actual costs (estimated to be \$373,000.00) for the Station 3 access road (the "Access Road Construction") multiplied by the Fort Bend County Percentage (defined below) applicable for 2011. The Fort Bend County Percentage is defined as the percentage of the sales tax revenue from the Contribution Area compared to the total ESD 100 sales tax revenue for the applicable period or calculation. The Catch-Up Credit shall first be applied to the Catch-Up Payment and any remaining Catch-Up Credit amount against the Catch-Up Payment shall be applied to the future payments due under this Agreement.

2. ESD 100 shall instruct its sales tax consultant (currently being Tax Revenue Consultants, Austin, Texas) to create an annual report detailing the ESD 100 sales tax revenue from the Contribution Area and the total ESD 100 area. The form of the report is attached as Exhibit "A" to this Agreement. The first reports shall be for the 2010 calendar year and the 2011 year to date period. The Fort Bend County Percentage of

the cost of such report preparations shall be a charge against the ESD 100 sales tax revenue to be allocated to the County.

3. In the event the State Comptroller shall determine errors in payments or allocations made to ESD 100 that result in "charge-backs" against the ESD 100 revenue, such charge-backs shall be calculated and applied against the next-occurring quarterly payments to be made to the County under this Agreement. Likewise, any errors adding accounts to the ESD 100 sales tax accounts by the State Comptroller, such new revenue shall be added to the next-occurring regular quarterly payments when received.

4. The term of this Agreement shall be for Fifteen (15) years from the effective date hereof, and, except as specifically provided herein, neither of the parties shall have any further obligation or liability to the other party herein. The County and ESD 100 may, by addendum hereto, agree to extend the term of this Agreement.

5. This Agreement is intended for the benefit of the named Parties only, and is in no way intended to benefit any other person, either directly or indirectly, including members of the public. Nothing in the Agreement shall or shall be construed to create a partnership or other type of joint enterprise, the sole intent being to create a contractual relationship between the Parties.

6. Nothing in this Agreement is intended to expand any liability that any Party to this Agreement may have to any other person other than a named Party to this Agreement.

7. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas.

8. Any suit brought to enforce, interpret, or receive damages under any provision of this Agreement shall be brought in Fort Bend County, Texas, where venue for all matters hereunder is stipulated. Any prevailing party in any lawsuit shall be entitled to its reasonable attorney's fees and court costs.

9. Neither this Agreement nor any term or provision of it, may be changed, waived, discharged, amended, or modified orally, or in any other manner than by an instrument in writing signed by all the Parties.

10. This Agreement is not assignable by any Party without the written consent of the other Party.

(a) The Parties recognize that the County is acting in its own behalf and on the behalf of CAD No. 1.

11. Notwithstanding the provisions of the Texas Government Code or the Texas Local Government Code, and unless prohibited by Texas law, each Party shall defend, indemnify, and hold harmless the other Parties and its officers, agents, employees and representatives from any and all losses, liability, damages, claims, suits, actions and administrative proceedings, and demands and all expenditures and cost relating to acts or omissions of the indemnitor, its officers, agents or employees arising out of or incidental to the performance of any of the provisions of this Agreement. No Party assumes liability for the acts or omissions of persons other than each Party's respective officers, agents or employees. This indemnification clause shall survive this Agreement.

12. By entering into this Agreement, neither Party waives any of the immunities provided by the Texas Government Code or the Texas Local Government Code or other applicable provisions of law. This Agreement is not intended to confer any legal rights or benefits on any person or entity other than the Parties of this Agreement.

13. All notices hereunder shall be sent certified mail, return receipt requested to the addresses set forth below the signatures of the Parties to the Agreement. Notices are deemed given and completed upon deposit in the United States Mail. Either Party may change its address by providing ten (10) days written notice of such change to the other Party in the manner provided for above.

EXECUTED in duplicate originals for and on behalf of the Parties on December 13, 2011, and effective on the date executed by all entities.

APPROVED:

ATTEST:

By: Mary Kay Blondell
Name: Mary Kay Blondell
Title: Secretary

COUNTERSIGNED:

By: Howard L. Katz
Name: Howard L. Katz
Title: District Counsel

HARRIS-FORT BEND EMERGENCY SERVICES DISTRICT NO. 100

By: Dale Terry
Name: Dale Terry
Title: President
Address: c/o 820 Gessner, Ste 1710
Houston, Texas 77024

FORT BEND COUNTY, TEXAS

ATTEST:
By: *[Signature]*
Name: DIANNE WILSON
Title: COUNTY CLERK

By: *[Signature]*
Name: Robert Hebert
Title: County Judge
Address: 301 Jackson St., Suite 719
Richmond TX 77469
12-13-2011

COUNTERSIGNED:
By: *[Signature]*
Name: Marcus A. Spencer
Title: County Attorney, Assistant

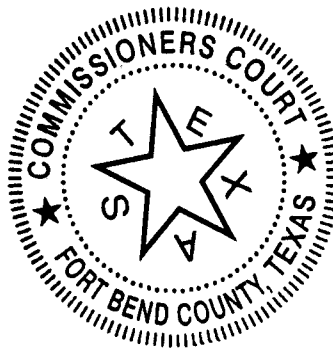


Exhibit "A" (Sample Only)

**INTERLOCAL AGREEMENT
FOR FORT BEND COUNTY MOBILITY ENHANCEMENT**

SALES TAX SHARING REPORT

**HARRIS-FORT BEND EMERGENCY SERVICES DISTRICT NO. 100 and
FORT BEND COUNTY/FORT BEND COUNTY ASSISTANCE DISTRICT NO. 1**

Prepared by Tax Revenue Consultants, LLC ("TRC")

DATE: _____

REPORT PERIOD: _____

NUMBER OF BUSINESSES IN CONTRIBUTION AREA FOR PERIOD: ____ (A)

FORT BEND COUNTY PERCENTAGE*: _____ %

SALE TAX COLLECTIONS FROM REPORTING BUSINESS IN CONTRIBUTION AREA**:

<u>PERIOD</u>	<u>LIST FILERS</u>	<u>OUTLET FILERS</u>	<u>TOTAL</u>
	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____
Qtr 4'11	\$ _____	\$ _____	\$ _____ (B)

FBC/CAD SHARE OF SALES TAX COLLECTED (@25%): \$ _____

LESS (based on Fort Bend County Percentage):

TEXAS COMPTROLLER ADMINISTRATION FEE: @ 2.0% \$ _____

TRC RESEARCH, ANALYSIS AND
REPORT ADMINISTRATION FEE: @ 1.5% \$ _____

OTHER FEES \$ _____

NET PAYMENT DUE FBC/CAD FOR PERIOD: \$ _____

(A) see list of businesses in ESD 100 files. This is updated regularly as new data is available.

(B) See special reports from the Texas Comptroller of Public Accounts in ESD 100 files.

*Fort Bend County Percentage: As defined in Interlocal Agreement, Paragraph 1(d).

**Contribution Area: As defined in Interlocal Agreement, Paragraph Finding, No. 4.