

THE STATE OF TEXAS
 COUNTY OF FORT BEND

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**INTERLOCAL AGREEMENT FOR THE
 CONSTRUCTION AND USE OF A FIRE STATION IN
FORT BEND COUNTY EMERGENCY SERVICES DISTRICT NO. 5**

This Interlocal Agreement (the "Agreement") is made and entered into by **Fort Bend County**, a body corporate and politic, acting by and through its Commissioners Court ("County"); **Fort Bend County Emergency Services District No. 5**, a political subdivision of the State of Texas ("ESD 5"), and **Fort Bend County Assistance District No. 2**, a political subdivision of the State of Texas, acting by and through its Board of Directors ("CAD" 2) (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the construction of a fire station at the intersection of Clodine Road and Denver Miller Road (the "Project") would be beneficial to all Parties and would promote health and safety;

WHEREAS, CAD 2 was created to fund, among other things, the provision of services that benefit the public health or welfare;

WHEREAS, CAD 2 levies a one percent (1%) sales tax and has determined that the expenditure of sales tax funds for the Project serves a public purpose; and

WHEREAS, the Commissioners' Court of Fort Bend County, serving as the governing body of the County and CAD, finds that by entering into this Agreement with ESD 5, both entities will be promoting public safety and furthering its interest in providing services to the residents of Fort Bend County within the boundaries of CAD 2.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and benefits to the parties hereto, the Parties agree as follows:

AGREEMENT

1. **PURPOSE.** The purpose of this project is to promote fire health and safety in Fort Bend County generally and within the boundaries of CAD 2 specifically.
2. **TERM.** This Agreement shall be effective upon formal approval by County and shall terminate on September 30, 2016, or completion of the Project, whichever is sooner. CAD 2's obligations to County shall survive termination of this Agreement in accordance with Section 5 of this Agreement.
3. **ESD 5 RESPONSIBILITIES**
 - A. ESD 5 shall ensure that a fire station is built at the intersection of Clodine Road and Denver Miller Road in Sugar Land, Texas, Fort Bend County Precinct Four, with construction to be completed no later than September 30, 2016.
 - B. The Construction Contract for the Project shall be administered by ESD 5, and ESD 5 shall be the owner of the construction work for the Project for all purposes.
 - C. ESD 5 shall keep accurate accounting of all funds it spends related to the costs and will provide such accounting to County monthly, or upon written request.

- D. ESD 5 is solely responsible for obtaining any required permits, approvals and any other permissions required for the construction of the fire station.
- E. Upon completion of construction:
 - i. ESD 5 shall operate and maintain the fire station including all utilities;
 - ii. ESD 5 shall provide space for Fort Bend County Emergency Services vehicle(s) and equipment at the Fire Station; and
 - iii. ESD 5 shall provide space for housing Fort Bend County Emergency Medical Service Division Personnel to be stationed at the Fire Station.
- F. In the event ESD 5 ultimately does not complete construction of the fire station, ESD 5 will return any payments made hereunder, this Agreement shall terminate, and the Parties will not be obligated to fund or construct the Project.

4. COUNTY RESPONSIBILITIES

- A. County agrees to provide funding to ESD 5 for 15% of the estimated \$2,500,000.00 "design build cost" up to, but not to exceed, \$375,000.00. County will not provide any labor, equipment or materials for construction.
- B. County shall remit payment to ESD 5 within sixty (60) days of the execution of this Agreement.

5. REIMBURSEMENT BY CAD 2

- A. CAD 2 agrees to reimburse County for the funding County provided to ESD 5 from the 1% sales tax levied on businesses within its boundaries and as made available by the State Comptroller.
- B. CAD 2 will reimburse County as funds are available.
- C. CAD 2 shall have the right to retain, at its sole option, up to fifty (50) % of sales tax revenue received from the State Comptroller for its use. However the portion of the sales tax revenue not retained by CAD 2 shall be remitted to County.

6. **LIABILITY.** No party to this Agreement waives or relinquishes any immunity from liability, limitation of liability, or defense on behalf of itself, its officers, employees, and agents provided by the Constitution and laws of the State of Texas as a result of its execution of this Agreement and the performance of the covenants contained herein.

7. **PAYMENTS FROM CURRENT REVENUES.** All payments by a party for the performance of governmental functions or services must be made from current revenues available to such party.

8. **FAIR COMPENSATION.** All payments pursuant to this Agreement for the performance of governmental functions or services is in an amount that fairly compensates the performing party for the services or functions performed under this Agreement.

9. **SEVERABILITY.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be invalid or contrary to the law by a court of competent jurisdiction or contrary to any rule or regulation in the remaining portions of the Agreement, it will not affect, impair, or invalidate this Agreement as a whole or any provision hereof not declared to be invalid or contrary to law. However, upon the occurrence of such event, either party may terminate this Agreement forthwith upon the delivery of written notice of termination to the other party.

10. ENTIRE AGREEMENT; REQUIREMENT OF A WRITING

- A. It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral Agreements and negotiations between the parties

relating to the subject matter hereof as well as any previous Agreement presently in effect between the parties relating to the subject matter hereof.

- B. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties.
- C. No party hereto may make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party hereto.

11. APPLICABLE LAW. It is understood that the terms and conditions of this Agreement are governed by the laws of the State of Texas. Venue for the litigation of any dispute arising out of this Agreement shall be in Fort Bend County, Texas, and in no other location.

12. COMPLIANCE WITH LAWS AND REGULATIONS. All parties will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the respective obligations of each party herein, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations constitutes a material breach of this contract, and entitles either party to terminate this contract immediately upon delivery of written notice to the other party.

13. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be given by electronic mail and either (i) overnight courier; (ii) facsimile; or (iii) hand delivery addressed as follows:

If to the ESD 5: Fort Bend County ESD No. 5
 c/o Ms. Sara J. Anderson
 Smith, Murdaugh, Little & Bonham, L.L.P.
 2727 Allen Parkway, Suite 1100
 Houston, Texas 77019

If to the County: Fort Bend County
 Attn: County Judge
 401 Jackson Street
 Richmond, Texas 77469
 Attn: County Judge

If to CAD 2: Fort Bend County Assistance District No. 2
 Attn: Board of Directors Chair
 401 Jackson Street
 Richmond, Texas 77469

14. EXECUTION The undersigned officers are properly authorized to execute this Agreement on behalf of the parties hereto, and each hereby certifies to the other that any necessary actions extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original.

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FORT BEND COUNTY

By: *Robert E. Hebert*
Robert E. Hebert, County Judge

Date: May 12, 2015

ATTEST:

Laura Richard
Laura Richard, Fort Bend County Clerk



(SEAL)

FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2

By: *Robert E. Hebert*
Robert E. Hebert, Chairman, Board of Directors

Date: May 12, 2015

ATTEST:

Laura Richard
Laura Richard, Fort Bend County Clerk



(SEAL)

AUDITOR'S CERTIFICATE

I hereby certify that funds are available from current revenues legally available in the amount of **\$375,000.00** to accomplish and pay the obligation of Fort Bend County and Fort Bend County Assistance District No. 2 under this Agreement.

Robert Edward Sturdivant
Robert Edward Sturdivant, Fort Bend County Auditor

FORT BEND COUNTY EMERGENCY SERVICES DISTRICT NO. 5

By: *[Signature]*
Ernie Carter, President, Board of Directors

Date: April 14, 2015

ATTEST: *[Signature]*
Secretary, Board of Directors

(SEAL)

