

INTERLOCAL AGREEMENT FOR CITY MANAGED PROJECT

(Microtransit Pilot Program – Project No. 23005)

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Interlocal Agreement (“Agreement”) is made and entered into by and between FORT BEND COUNTY, TEXAS (the “County”), a political subdivision of the state of Texas, and the CITY OF SUGAR LAND, TEXAS (the “City”), a home-rule municipality. County and City may be collectively referred to as the “Parties” and each individually a “Party.”

WHEREAS, this Agreement is entered into pursuant to Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act (the “Act”), which authorizes local governments to contract with one another to provide governmental functions, mutual aid, and services under the terms of the Act; and

WHEREAS, the Parties are each a local governmental entity and are authorized under the Act to provide certain governmental functions, including, but not limited to the provision of road and drainage improvements; and

WHEREAS, in order to improve mobility, County and City desire to implement a microtransit pilot program to supplement the current Park & Ride and demand response services utilizing funds from the Fort Bend County Mobility Bond Project No. 23005, which funds may only be expended on city streets that are an integral part of or connecting link with county roads or state highways pursuant to Article III, Section 52 (b) and (c) of the Texas Constitution and Section 251.012 of the Texas Transportation Code; and

WHEREAS, the Parties assert that the microtransit pilot program will improve mobility on city streets that are an integral part of or a connecting link with a County road or state highway; and

WHEREAS, County and City have determined it would be in the best interest of County and City, and to the inhabitants thereof, that provisions be made for the microtransit pilot program in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and mutual benefits, the Parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to outline the funding and project management obligations for the Project.

2. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

3. **Definitions.**

(a) “Effective Date” means the date this Agreement is executed by the last signing Party hereto.

(b) “Eligible Project Costs” means the costs, as determined by County in its sole discretion, for the Project including but not limited to: vehicles, engineering design and services related to the completion of any Plans, Specifications, and Estimates (“PS&E”) for the Project; Project related drainage facilities; utility and pipeline conflicts; approved traffic control devices; sidewalks up to five feet (5’) wide consistent with current City Infrastructure Standards; and construction related services for such roadway improvements. Eligible Project Costs shall further include resolution of utility conflicts created by construction of Project elements and similar facilities proposed to be part of the Project.

(c) “Non-Eligible Project Costs” shall mean any design and construction costs related to Project enhancements, all upgrades to the Project requested by City, and all other items that do not fall within the definition of Eligible Project Costs (as determined by County) including, but not limited to: landscaping; irrigation; lighting; hike and bike trails; reconstruction of utilities (except utility conflicts created by the construction of Project elements); and oversizing of water, sewer, and drainage facilities.

(d) “Project” means the improvements that are the subject of this Agreement provided in Section 4 below.

4. **Project/ Scope of Work.**

(a) The Parties acknowledge and agree that this Scope of Work represents the general requirements for the Project to facilitate the microtransit pilot program as referenced herein. The Project will serve to supplement the current Park & Ride and Demand Response services provided by County by providing a 10-15 minute on-demand ride service along with first and last mile connections to destinations for residents and visitors of the City.

(b) The Project shall be facilitated, managed, and administered by City. City shall take all reasonable actions to ensure that the Project is administered in a good and workmanlike manner with all reasonable diligence.

5. **Allocation of Project Costs.**

- (a) County Project Costs: County shall contribute funds for the Eligible Project Costs which costs are estimated at One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00). The Parties understand and agree that the Eligible Project Costs may be higher or lower than the estimate costs of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00).
- (1) Payment: Upon City entering into a Contract with a qualified bidder as provided in this Agreement, City shall forward to County a request for payment that includes sufficient detail for County to review and approve. Within thirty (30) days of County's receipt of City's request for payment, County shall remit payment to City in the amount of \$1,500,000.00.
- (2) Excess Funds: Within thirty (30) days of Completion of the Project, City shall furnish County with an invoice showing a full accounting of the funds expended on the Project. If, after the course of full accounting of the Project referenced above, it is discovered that excess funds were received by City from County for the Project, City shall remit such excess funds that have not been used for County's portion of the Project to County within thirty (30) days of City's full accounting of the Project. County shall place or shift such excess funds as provided in Section 5(b).
- (b) City understands and agrees that any funds expended by County for the Project shall be limited to either 100 percent (100%) of the Eligible Project Costs or \$1,500,000.00 of the Eligible Project Costs – **whichever is less**. In the event the County's portion of the Eligible Project Costs is under \$1,500,000.00, County will place the remainder of such proceeds into a reserve to fund other City Mobility Bond projects or shift the excess proceeds from the Project to another City project that may be experiencing cost overruns.
- (c) City further understands and agrees that it shall be responsible for the funding of any and all Non-Eligible Project Costs, including the incremental cost of extending or upsizing any water, wastewater, and drainage facilities, if any. Such incremental costs, if any, shall be determined by an alternate bid based on different sizes of said water, wastewater, and drainage facilities. County shall notify City in writing as to which enhancements and improvements for the Project constitute Non-Eligible Project Costs. Upon receipt of County's notification, City shall provide written confirmation to County as to the scope of enhancements and improvements determined to be Non-Eligible Project Costs, and shall be responsible for the funding of the same upon receipt of invoice by County.

6. **Design and Specifications.** The City, as applicable, shall select the design engineer and design all aspects of the Project in accordance with City standards and regulations.

County, upon reasonable notice to City, shall have the right and opportunity to inspect and review all plans and documents pertaining to the design, administration, and construction of the Project, including any purchase orders, maps, plats, records, photographs, reports, and drawing affecting the construction, implementation, and administration of the Project. County shall provide any comments or feedback regarding the design and administration of the Project to the City no later than thirty (30) days after its review.

7. **Competitive Bid and Award.** Upon completion of final plans and specifications, City will advertise for competitive bids for the construction, implementation, and/or administration of the Project (together or in separate contracts) in accordance with requirements applicable to City. Upon receipt of bids for the Project, City will notify the County of the amount of the recommended bid (“Notice of Bid”). If the County desires to object to the award of the contract, it must provide written notice to City within fifteen (15) days of County’s receipt of the Notice of Bid. Otherwise, the County will be deemed to have approved the award of the contract to the lowest responsible bidder, in City’s judgment, who would be most advantageous to the Parties and would result in the best and most economical completion of the Project. City will enter into a contract with the qualified bidder (“Contract”), which may be subject to change orders that increase, decrease, or otherwise alter the Eligible Project Costs under such contract. If City constructs the Project in multiple contracts, the provisions of this Agreement shall apply to each Contract.

8. **Insurance Requirements.** City will require its Contractor’s insurance policies to name County, in addition to City, as additional insured on all policies except for Worker’s Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:
 - (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers’ Compensation Insurance will not be allowed.

 - (b) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

 - (c) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

 - (d) City may require insurance in excess of the amount of coverage set out above, as it deems necessary. In such cases, County shall remain an additional insured.

- (e) City shall provide County with proof of insurance required under this section within thirty (30) days of City's award of the Contract(s) for the Project.
9. **Administration of the Project.** After awarding the Contract, City shall administer the Contract for the benefit of the Parties. City shall provide, as applicable, on-site inspection of the construction, implementation, and administration of the Project in accordance with the terms of the Contract(s). City shall approve or deny all applications for payment and requests for extensions of time and shall pay all valid pay applications issued under the Contract(s). City shall approve or deny all change orders submitted under the Contract(s). City shall have the right to terminate the Contract(s) and to enforce its remedies thereunder, as determined by City to be necessary. In the event of any such termination, City shall have the right to complete and/or cause the completion of the Project itself and/or through such other contractor(s) as City determines to be appropriate; provided that all work done in connection with such completion shall be in compliance with City standards for road work. The costs of any necessary and approved completion work shall be considered part of the Project.
10. **Administration of County Funds and Limit of Appropriation.**
- (a) The County's sole financial obligation under this Agreement is to provide the funding for the Eligible Project Costs as specified in Section 5 above. The funds provided by the County are from a Mobility Road Bond initiative and no other funds will be available, regardless and irrespective of any cost overruns or unanticipated expenditures.
- (b) City has been advised by County, and by execution of this Agreement, City understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available for the Project the total maximum sum of \$1,500,000.00 for Eligible Project Costs only. City does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that County shall contribute to the Project and the total maximum amount that City and the maximum amount that County will reimburse City hereunder, will not under any condition, circumstance, or interpretation hereof exceed \$1,500,000.00 of the Eligible Project Costs.
11. **Appropriation of Funds.** Each Party represents and warrants to the other that, as of the Effective Date of this Agreement, the governing body of each Party hereto has identified, appropriated, and set aside sufficient monies to fund the costs of the Project pursuant to the terms of this Agreement.
12. **Completion of the Project and Ownership/Maintenance of Project Improvements.** Completion of the Project shall occur upon the Parties' final inspection of the Project and certified as complete by, as applicable, City's Engineers or qualified

Administrator. Upon completion of the Project, City, at its sole cost and expense, will be responsible for the perpetual maintenance and repairs relating to all improvements constructed for the Project under this Agreement.

13. **Inspection and Deficiencies.** County shall have the right to enter the Project Site at any time and inspect the work performed by City for the Project, including any work in progress or during the final inspection. Within ten (10) business days of inspection, County shall notify City in writing of any complaints regarding any deficiencies and the quality of workmanship by City for the Project. City shall address and correct such deficiencies within a reasonable time, if City determines that such deficiencies are actionable under the terms of City's Contract(s). County understands and agrees that City is the contracted Party and County shall not provide any direction to City's consultants or contractors, except upon City's written consent. All final decisions regarding the correction of any deficiencies shall be at City's sole discretion.

14. **Inspection of Books and Records.** City shall permit County, or any duly authorized agent of County, to inspect and examine the books and records of City for the purpose of verifying the work performed for the Project. County's right to inspect such books and records shall survive the termination of this Agreement for a period of four years. Notwithstanding the foregoing, City shall bear no liability or responsibility for deliverables that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.

15. **Time for Performance and Termination.**
 - (a) Time for performance of the obligations of City hereunder shall commence as follows:
 - (1) City shall initiate the design of the Project no later than sixty (60) days after the Effective Date of this Agreement, or within such time as may be extended by written amendment of the Parties.
 - (2) City shall initiate, as applicable, the construction and implementation of the Project no later than sixty (60) days after bid opening, or within such time as may be extended by written amendment of the Parties.

 - (b) In the event City determines the Project lacks feasibility or for any other reason elects to forego the construction of the Project, then City shall provide written notice to County of such determination or decision and the Agreement shall automatically terminate.

 - (c) In the event City fails to initiate the design, implementation, or construction of the Project within the timeframes provided above, then City shall provide written

notice to County of such failure. County, in its sole discretion, may elect to either proceed with its obligations under this Agreement, notwithstanding such delay, or terminate this Agreement and re-allocate its contributions to other County projects.

- (d) Upon termination of this Agreement for any reason, City shall refund all amounts provided by County, if any, within thirty (30) days of said termination.

- 16. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

- 17. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be properly addressed and sent via personal delivery, US first class postage prepaid, registered or certified mail, return receipt requested, Federal Express, Express Mail, or other overnight delivery service as follows:

If to County: Fort Bend County Engineering Department
Attn: County Engineer
301 Jackson St., 4th Floor
Richmond, Texas 77469

And Fort Bend County, Texas
Attn: County Judge
401 Jackson St, 1st Floor
Richmond, Texas 77469

If to City: City of Sugar Land
Attn: City Manager
2700 Town Center Blvd. N.
Sugar Land, Texas 77479

18. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any and all previous agreements, written or oral, pertaining to the subject matter of this Agreement. This Agreement may only be amended or modified by written agreement executed by both Parties.
19. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party to this Agreement shall be considered a waiver or surrender of its governmental powers or immunity under the Texas Constitution or the laws of the State of Texas.
20. **Benefit.** This Agreement shall be for the sole and exclusive benefit of County and City and shall not be construed to confer any benefit or right upon any other party.
21. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
22. **Assignment.** Neither Party may assign its rights, duties, or obligations hereunder, without the prior written consent of the other, which consent shall not be unreasonably withheld.
23. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
24. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
25. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
26. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
27. **Human Trafficking. BY ACCEPTANCE OF THIS AGREEMENT, CITY ACKNOWLEDGES THAT FORT BEND COUNTY, TEXAS IS OPPOSED TO HUMAN TRAFFICKING AND THAT**

NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

28. **Authorization.** This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each Party, as evidenced by the signature of the appropriate authority. Each Party further represents that, by execution of this Agreement, it has been duly authorized by its governing body or other appropriate authority from whom such Party is legally bound to obtain authorization.

{Execution Page Follows}

FORT BEND COUNTY, TEXAS

SUGAR LAND, TEXAS

KP George, County Judge

Michael W. Goodrum, City Manager

Date

Date

ATTEST:

ATTEST:

Laura Richard, County Clerk

Linda Mendenhall, City Secretary

APPROVED:

J. Stacy Slawinski, P.E.,
County Engineer

AUDITOR'S CERTIFICATE

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

Robert E. Sturdivant,
County Auditor