

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AGREEMENT FOR TRANSPORTATION SERVICE**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and the Rosenberg Development Corporation (hereinafter "Corporation"), an economic development corporation authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County operates a transit service to serve the needs of the citizens of Fort Bend County; and

WHEREAS, the target geographic area of such service are frequently residents of Fort Bend County who regularly travel within the Cities of Richmond and Rosenberg in Fort Bend County; and

WHEREAS, Corporation recognizes the economic benefit of continued and expanded transit services to areas served by the Corporation; and

WHEREAS, County and Corporation believe it is in the mutual best interests to participate in a point deviation transit service within the cities of Richmond and Rosenberg ("Service"); and

WHEREAS, the Corporation desires to financially support the Service, including participating in the local match support in part, for operating costs in connection with the Service; and

WHEREAS, the Commissioners Court of Fort Bend County finds that the Services contemplated in this Agreement serve a County purpose;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Incorporation of Preamble**

The parties agree that the representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

**Section 2. Purpose**

2.1 The purpose of this Agreement is to provide for the financial assistance for point deviation transportation services provided by the County within the Cities of Richmond and Rosenberg to meet the needs of residents of Fort Bend County who regularly travel within the Cities of Richmond and Rosenberg.

2.2 County will operate point deviation services within the Cities of Richmond and Rosenberg for a minimum of two hundred fifty-two (252) services days per year (excluding County holidays and emergency closures).

**Section 3. Term and Termination**

3.1 This Agreement shall be effective on the date the last party executes this Agreement ("Effective Date") and will remain in effect for an initial term of three (3) years after the Effective Date ("Initial Term").

3.2 Unless terminated sooner, this Agreement shall automatically renew for successive one (1) year terms (collectively referred to as "Renewal Terms"), subject to termination rights provided herein.

3.3 Either party may terminate this Agreement by serving a ninety (90) day advance written notice of termination on the other party. In the event of termination by either party without cause, County shall pay to the Corporation a pro rata share of the initial amount paid by the Corporation under Article V, Section A. If the Agreement is terminated by either party without cause during any of the Renewal Terms, County shall pay to the Corporation the monthly pro rata share remaining in the Renewal Term.

3.4 County reserves the right to discontinue the Service at any time. In the event Service is discontinued during the Initial Term for any reason, County shall pay to the Corporation a pro rata share of the initial annual amount paid by the Corporation under Article V, Section A for the year in question. For example, if County discontinues Service after thirty (30) months, and Corporation has paid the annual initial amount for the third year, County shall pay to the Corporation six (6) months of the fee paid by the Corporation for the Initial Term. If Service is discontinued by the County during any of the Renewal Terms, County shall pay to the Corporation the monthly pro rata share remaining in the Renewal Term.

3.5 Notwithstanding any other provisions of this Agreement, if this Agreement provides for Corporation to make payments to County in any fiscal year following Corporation's fiscal year in which this Agreement begins and Corporation fails to appropriate funds to make the payments

3.5.1 Corporation agrees to provide notice of failure to appropriate funds within ten (10) days of appropriation decision,

3.5.2 This Agreement shall automatically terminate at the beginning of the first day of the successive fiscal year for which funds were not appropriated, and

3.5.3 Corporation shall not be obligated to make or have any liability to County for the payments.

#### **Section 4. County's Obligations**

4.1 County will operate point deviation services within the Cities of Richmond and Rosenberg for a minimum of two hundred fifty-two (252) service days per year (excluding County holidays and emergency closures).

4.1.1 Operation days, hours, stops and schedule will be agreed to in writing by Corporation and County at least ninety (90) days prior to commencement of Service.

4.1.2 Days, hours, stops and schedule changes will be limited to no more than three (3) adjustments per year. Schedule changes must be agreed to in writing by Corporation and County with a minimum of ninety (90) days allowed for start of the service change.

4.1.3 During the term of this Agreement, County may increase or decrease service hours, days, and stops to provide the Service based on utilization, funding, need or request of the Corporation.

4.2 County will operate the service utilizing a minimum of three (3) 20-passenger capacity mini-buses with capacity for 2 wheelchair tie-downs. However, during the term of this Agreement, County may increase or decrease the number of buses and/or the bus sizes to provide the Service based on utilization, need or request of Corporation.

4.3 County and/or its agent will be responsible for management and supervision of all aspects of the service and any sub-contractors. Management and supervision of the service shall include, but not be limited to sub-contractor management, marketing and support services.

4.4 County will continue the service on an annual term, based on the availability of funding.

4.5 Whether during the Initial Term of this Agreement or any renewal term, County shall notify Corporation of any funding partner that enters into or cancels support of the Services herein. County and Corporation may renegotiate Corporation's proportionate share as applicable or Corporation can elect to maintain this Agreement as set out herein or as amended. Any changes to payments to be made under this Agreement shall be made by Amendment, in writing and incorporated herein, by mutual agreement of the parties.

#### **Section 5. Corporation's Obligations**

5.1 Corporation shall pay County seventy-five thousand dollars and 00/NO (\$75,000.00) annually for the Initial Term of this Agreement. County shall submit an invoice to

Corporation by November 30<sup>th</sup> each year. Payment shall be due within thirty (30) days of receipt of invoice.

5.2 During any renewal term of this Agreement, Corporation shall pay County its proportionate share for all hours of Service based on the current rates paid by County to County bus service contractor. County shall provide Corporation notice of any rate increases within thirty (30) days of approval of such rate increases.

## **Section 6. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon thirty (30) days written notice.

### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Corporation fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Corporation materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Corporation was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Corporation in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Corporation's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Corporation.

### **Section 8. Insurance**

8.1 County is governed by the Texas Tort Claims Act, Chapter 101.001 et seq., as amended, Texas Civil Practice and Remedies Code Ann., which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of County. County warrants and represents that it is insured under a commercial insurance policy or self-insured for all claims falling within the Texas Tort Claims Act.

8.2 Each party to this Agreement agrees that it shall have no liability whatsoever for the actions or omissions of an individual employed by another party, regardless of where the individual's actions occurred. Each party is solely responsible for the actions and/or omissions of its employees and officers.

### **Section 9. Indemnity**

**CORPORATION SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CORPORATION, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CORPORATION OR ANY OF CORPORATION'S AGENTS, SERVANTS OR EMPLOYEES.**

### **Section 10. Confidential and Proprietary Information**

Corporation expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the

owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

**Section 11. Notices**

11.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

11.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Public Transportation Attn: Paulette Shelton, Director 12550 Emily Court, Suite 400 Sugar Land, Texas 77478
With a copy to:	Fort Bend County Attn: Robert E. Hebert, County Judge 401 Jackson Street Richmond, Texas 77469
Corporation:	Rosenberg Development Corporation Attn: Randall Malik, Executive Director 2110 4 <sup>th</sup> Street Rosenberg, Texas 77471

11.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 11.1 and 11.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

11.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

11.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 12. Assignment and Delegation**

12.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

12.2 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 13. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section 14. Successors and Assigns**

County and Corporation bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 15. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 16. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.


IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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FORT BEND COUNTY

ROSENBERG DEVELOPMENT CORPORATION

\_\_\_\_\_  
Robert E. Hebert, County Judge

  
\_\_\_\_\_  
Bill Knesek, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

\_\_\_\_\_  
Linda Cernosek, City Secretary

APPROVED:

\_\_\_\_\_  
Paulette Shelton, Director