

STATE OF TEXAS

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COUNTY OF HARRIS

**INTERLOCAL OPERATING ASSISTANCE CAP ALLOCATION AGREEMENT BETWEEN
METRO, HARRIS COUNTY, AND FORT BEND COUNTY**

WITNESSETH

This Interlocal Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE by and amongst the Metropolitan Transit Authority of Harris County, (“METRO”), a local transit authority acting by and through its Board; Harris County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, (sometimes referred to as “Party” and collectively referred to as the “Parties”).

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments to contract with each other and a state agency to provide governmental functions or services; and

WHEREAS, Congress passed the Fixing America’s Surface Transportation Act (the “FAST Act”) in 2015 which provides long-term funding for surface transportation infrastructure planning and investment; and

WHEREAS, 49 USC § 5307 of the FAST Act authorizes the Federal Transit Administration (FTA) to administer the 5307 Urbanized Area (“UZA”) Formula Program, which provides grants for public transportation capital and planning, as well as operating expenses; and

WHEREAS, through the Special Rule (49 USC §5307 (a)(2)), the FTA may make grants under this Section to finance the operating cost of equipment and facilities for use in public transportation, excluding rail fixed guideway, in an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census; and

WHEREAS, these grants constitute a core investment in the enhancement and revitalization of public transportation systems in the nation’s urbanized areas, which depend on public transportation to improve mobility and reduce congestion; and

WHEREAS, the FAST Act allows for transit systems within the UZA to combine their individual operating assistance caps and allocate the combined operating caps using a method that is agreed upon by all of the transit systems, and

WHEREAS, in determining the amount of operating assistance available for specific systems in urbanized areas (UZA’s) under the Special Rule, public transportation systems may allocate operating caps by a method other than by measuring vehicle revenue hours; and

WHEREAS, the FAST Act requires that these public transportation systems must document any alternative method used for distribution and allocation of operating caps amongst these public transportation systems within the UZA through the execution of a written agreement signed by all parties, and transmitted to FTA to accompany the “Section 5307 Split Letter”; and

WHEREAS, the Metropolitan Transit Authority of Harris County (METRO) is the Designated Recipient for these funds in the Houston Urbanized Area ("HUZA") and designates and distributes the allocation of operating caps to both Fort Bend County's public transit system and Harris County's public transit system, both of which are within the (HUZA); and

WHEREAS, METRO which has received seventy four million six hundred and fifty-one thousand and twenty-nine dollars and no/100 (\$ 74,651,029.00) from the FTA; and

WHEREAS, Fort Bend County's FY 2016 Section 5307 Operating Assistance Special Rule Operator Caps is eight hundred seventy eight thousand one hundred eighty seven dollars and no/100 (\$878,187.00); and

WHEREAS, Harris County's FY 2016 Section 5307 Operating Assistance Special Rule Operator Caps is one million fifty six thousand nine hundred twenty four dollars and no/100 (\$1,056,924.00); and

WHEREAS, the Parties agree that this Agreement serves to enhance public transportation services in the HUZA and therefore serves a public purpose;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

AGREEMENT

I. PARTIES' OBLIGATIONS

The Parties agree that:

- 1.1 Harris County will transfer to Fort Bend County seven hundred and twenty-three thousand six hundred and ninety-one dollars and no/100 (\$723,691.00) of Harris County's Operating Assistance Special Rule Operator Cap to Fort Bend County's Federal Fiscal Year 2016 Section 5307 Operating Assistance Special Rule Operator Caps.
- 1.2 The Parties have agreed to reach this amount through negotiation according to the operational needs for each system.
- 1.3 The additional operating cap will be used by Fort Bend County towards the County's operating cap for County transit services within the Houston UZA.
- 1.4 The use of the operating cap will be subject to all federal requirements.

II. TERM OF AGREEMENT

The term of this Agreement begins on the date of the last Party's signature of execution and terminates upon completion of the transfer of the operating cap.

III. TERMINATION

Either party may terminate this Agreement by providing 30 days prior written notice to the other party.

IV. NOTICE.

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

If to METRO:

METRO
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429
ATTENTION: Mary Fay

If to Harris County:

Harris County
1001 Preston, Suite 911
Houston, Texas 77002
ATTENTION: County Judge

If to Fort Bend County:

Fort Bend County
County Judge
401 Jackson St., 1st Floor
Richmond, Texas 77469
ATTENTION: County Judge

and

Paulette Shelton
Director of Public Transportation
Fort Bend County
12550 Emily Ct #400
Sugar Land, TX 77478

and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. All Parties hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

V. MISCELLANEOUS PROVISIONS

- 5.1. No Third Party Beneficiaries. The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.
- 5.2. Invalid Provision. If any of the provisions contained in this Agreement are deemed invalid, such invalidity will not affect the other provisions and the Agreement will be construed as if the invalid provision had never been contained in this Agreement.
- 5.3. Governing Law. This Agreement is governed by the laws of the state of Texas. The exclusive forum and venue shall be a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- 5.4. No Assumption of Liability. No Party assumes the liability for the system(s) under the control of any other Party or for the actions of employees of any other Party.
- 5.5. Immunity as a Defense. No signatory hereto or participating agency has agreed to waive any defense, right, immunity, or other protection under law, including any statutory provision, by entering into this Agreement.
- 5.6. Audit and Inspection of Records. Fort Bend County shall permit the authorized representatives of METRO, Harris County, Fort Bend County, and the federal government to inspect and audit all data and records relating to its performance under this Agreement. Each Party shall keep its books and records available for this purpose for at least three (3) years after this Agreement terminates. In the event any record is needed to support any dispute or legal action, such records shall be

maintained for a period of not less than three (3) years following the settlement of any such dispute or legal action.

- 5.7. Assignment. Any assignment or other transfer of this Agreement or any part hereof without the express consent in writing of the other Parties shall be void and of no effect.
- 5.8. Entire Agreement. The entire Agreement between the Parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by all Parties.
- 5.9. Execution. Multiple Counterparts: This Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Agreement.

This Agreement has been executed by all Parties upon and by the authority of their respective governing bodies. This Agreement is not effective until executed by all parties.

{Execution Page Follows}
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METRO



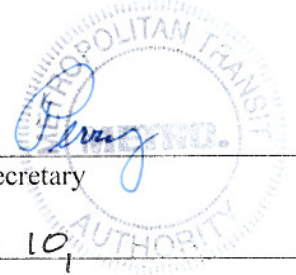
Thomas C. Lambert,
President & Chief Executive Officer

October 10, _____, 2016

ATTEST:




Assistant Secretary



October 10, _____, 2016

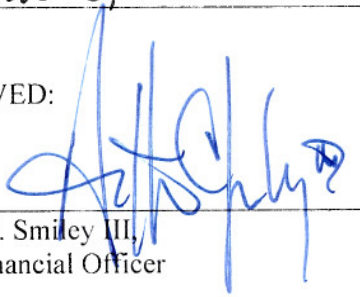
APPROVED AS TO FORM:



Alva I. Treviño
General Counsel

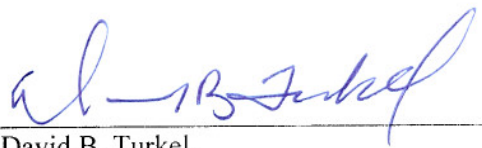
October 5, _____, 2016

APPROVED:



Arthur C. Smiley III,
Chief Financial Officer

HARRIS COUNTY, TEXAS



David B. Turkel,
Executive Director, Harris County
Community Services Department

_____, 2016

APPROVED AS TO FORM:

VINCE RYAN

COUNTY ATTORNEY

By: Amy Samples
Amy Samples
Assistant County Attorney
C.A. File 16GEN1031

FORT BEND COUNTY, TEXAS

Robert E. Hebert, Fort Bend County Judge
_____, 2016

ATTEST:

Laura Richard, Fort Bend County Clerk
_____, 2016

Reviewed by:

Paulette Shelton
Paulette Shelton
Fort Bend County,
Director of Public Transportation

APPROVED AS TO FORM:
ROY CORDES
COUNTY ATTORNEY

By:

Huma Ahmed
Assistant County Attorney

ORDER OF COMMISSIONERS COURT
Authorizing execution of an Interlocal Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the SEP 27 2016 day of SEP 27 2016, 2016 with all members present except none.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF INTERLOCAL AGREEMENT BETWEEN
HARRIS COUNTY AND METRO AND FORT BEND COUNTY**

Commissioner Cagle introduced an order and made a motion that the same be adopted. Commissioner Locke seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Emmett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Locke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Morman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that the Director of the Community Services Department be, and he is hereby authorized to execute, for and on behalf of Harris County, the Interlocal Agreement between Harris County and Metro and Fort Bend County for Harris County to transfer \$723,691.00 of its operating cap to Fort Bend County. The Interlocal Agreement is incorporated herein as though fully set forth word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

Presented to Commissioners' Court

SEP 27 2016
APPROVE C/L
Recorded Vol. _____ Page _____