

STATE OF TEXAS

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COUNTY OF FORT BEND

**INTERLOCAL AGREEMENT BETWEEN  
TEXANA  
AND FORT BEND COUNTY**

This Interlocal Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code by and between Texana Center (herein referred to as "Texana"), a community center and an agency of the State of Texas under the provisions of Chapter 534 of the Texas Health & Safety Code Ann. (Vernon 2000), as amended, and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court ("County"), (each a "Party" and collectively known as "the Parties").

**WITNESSETH:**

THAT WHEREAS, Texana Center is a community center and an agency of the State of Texas that provides behavioral healthcare and developmental services to residents of a six county area that includes Fort Bend County; and is designated by the Texas Health and Human Services Commission as the Local Intellectual and Developmental Disabilities Authority, and the Local Mental Health Authority; and

WHEREAS, Texana has established programs and services that serve those groups of persons with mental illness or intellectual and developmental disabilities in Fort Bend County that are most in need of such services; and

WHEREAS, the County's Department of Public Transportation is committed to providing all County residents with safe and efficient public transportation services; and

WHEREAS, the County desires to coordinate with Texana in providing public transportation services to individuals with physical and/or intellectual disabilities located in Fort Bend County's urban service area and improve this special needs population with transit accessibility; and

WHEREAS, the County is seeking funds from the Federal Transit Administration (FTA's) Section 5310 Enhanced Mobility of Seniors and Individuals for the purchase of transportation vehicles; and

WHEREAS, it is the intent of the County and Texana to utilize those funds to obtain vehicles to be used for the services described in this Agreement; and

WHEREAS, the governing body of the County has duly authorized this Agreement; and

WHEREAS, the governing body of Texana has duly authorized this Agreement; and

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;

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

## **ARTICLE I FUNDING**

### A. County

1. Both parties understand and agree that this Agreement is contingent upon an award to the County by the Federal Transit Administration (FTA) for Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program funds for the purchase of up to five (5) vehicles.
2. Should the County be awarded this money, the County will utilize the award to provide for 85% of the cost of purchased vehicle(s).

### B. Texana

1. Local Match. Texana will provide the County with the total local match for the Federal Transit Administration (FTA) Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities program funds received. The total local match shall be equivalent to 15% of the cost of the purchased vehicle(s).

### C. Compensation

1. Neither Party will receive compensation for Services provided under this Agreement.

## **ARTICLE II OWNERSHIP**

### A. County

Vehicle(s) Title will remain with County.

### B. Texana

Texana's use of the vehicle(s) or local match will not entitle Texana to acquire any right, title, or interest to any vehicle(s) under this Agreement other than that as expressly stated herein.

**ARTICLE III  
PERMITTED USE**

A. Permitted Use

1. Texana will be permitted to utilize this vehicle(s) for providing public transportation to individuals with physical and/or intellectual disabilities located in Fort Bend County's urban service area in order to improve their accessibility to services such as health care, shopping, education, public services, and employment.
2. Texana will provide public transportation services to the general public on a space available basis.
3. Texana will determine eligibility of all passengers in accordance with Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities.

B. Use and Maintenance of Vehicle(s).

1. Texana agrees it will not use or permit the use of vehicle(s) purchased under this Agreement in a negligent or improper manner; in violation of any law; so as to void any insurance covering the vehicle(s); as a public or private livery; or to become subject to any lien, charge, or encumbrance.
2. Texana agrees to use the vehicle(s) to provide elderly and disabled transportation services and will not use or permit the use of vehicle(s) for personal reasons.
3. Annual transit service mileage must at a minimum be 10,000 miles per vehicle in direct transportation related service provided through this Agreement.
4. FBC Transportation Personnel will complete a visual inspection of the vehicle(s) and check the maintenance records no less than twice annually.
5. In addition, Texana agrees that FBC Transportation Personnel may conduct random maintenance inspections of vehicle(s).
6. Texana, at its sole expense, shall be responsible for the maintenance, condition and upkeep of the vehicle(s) and for ensuring the vehicle(s) is in safe operating condition at all times. The vehicle must be kept free of damage to the exterior and interior of the vehicle and should be kept in like "new" condition.
7. Texana, at its sole expense, agrees to perform preventative maintenance at intervals recommended in the manual provided by the manufacturer of the vehicle.
8. Texana, at its sole expense, shall be responsible for all service, materials, and repairs in connection with the use and operation of the vehicle(s) during the Agreement term including but not limited to gasoline, oil, batteries, repairs, maintenance, tires, tubes, and towing necessary for the proper use and operation of each vehicle.
9. **The County shall not be liable for any service, materials, and repairs in connection with the use and operation of the vehicle(s) during the Agreement term including but not limited to gasoline, oil, batteries, repairs, maintenance, tires, tubes, and towing necessary for the proper use and operation of each vehicle.**
10. Texana shall take the vehicle(s) to the appropriate factory authorized dealer for all service and repairs under manufacturer's warranty.

11. Texana will not make any changes or adaptations to any vehicle component without prior written approval of the County.
12. Texana must obtain prior approval from the County for all maintenance and or repair work exceeding \$800.00. Texana will designate an individual(s) to coordinate maintenance/ arrangements for repairs exceeding \$800.00 with the County Public Transportation Operations Manager. **The County shall not be liable for repairs, nor shall any such repairs be charged to the County.**
13. Texana may not return any repaired vehicle into service without prior inspection by FBC Transportation personnel.
14. Texana is responsible for the annual State of Texas inspection of the vehicle(s) and any costs associated with conducting or obtaining the State of Texas inspection.
15. All vehicle(s) subject to this Agreement shall bear license plates and the titles to these vehicle(s) shall be registered in the name of the County. The annual registration or license fees shall be paid by Texana. Unless otherwise specified, Texana shall, where required, register each vehicle to conform to the laws of the State of Texas. Local registration shall be at Texana's sole expense.
16. Texana agrees to pay all storage charges, parking charges, toll charges, camera traffic light tickets, and any other fines associated with the vehicle(s).
17. Texana will pay any and all other fees or taxes which may be imposed with respect to said vehicle(s) by any duly constituted governmental authority as the result of Texana's use or intended use of the vehicle(s).

#### C. Operators/Drivers

1. Texana will provide all drivers and operators for vehicle(s). County will not provide drivers and is not responsible in any way for drivers.
2. Texana will ensure Operators/Drivers meet the requirements according to the Federal Motor Carrier Safety Administration (FMCSA) and the Transportation Security Administration (TSA).
3. The County will have authority to prohibit any person from driving vehicle(s).

#### D. Reports

1. Copies of the following reports are to be sent to the County within ten (10) business days after the last day of each month. The forms for each shall be provided by the County.
  - a. Contractor Performance Report. Texana shall provide a complete monthly performance report completed for each vehicle acquired under this Agreement. Monthly performance reports shall include: current vehicle odometer, total miles, total trips, days of service, breakdowns, costs, passenger count and such other items as determined by County. Texana shall maintain daily manifests for each Vehicle which shall be available for County review, subject to request.
  - b. Preventative Maintenance Log. Records must be kept and provided to the County that document all maintenance performed and all repairs that have been made.

2. Copies of the following report are to be sent to the County as specified below. The forms shall be provided by the County.
  - a. Accident/ Incident Report.
    - i. Initial Report. Texana must notify the County by phone or email within twenty-four (24) hours of any accident or incident which results in vehicle damage, property damage or personal injury to any of the acquired Vehicle(s) during the course of this Agreement.
    - ii. In addition, a completed written Accident or Incident Report must be submitted to the County within forty-eight (48) hours unless otherwise instructed.

#### **ARTICLE IV DISPOSITION OF PROPERTY**

All vehicle(s) will be released by Texana to the County at the termination of this Agreement, unless otherwise agreed upon, or in the event of early termination. Texana will return the vehicle(s) in good repair and condition, reasonable wear and tear expected, and shall deliver to County all keys to the vehicle(s).

#### **ARTICLE V TERM**

This agreement shall be for a period of five (5) years beginning on the date of execution by both Parties, and may renew annually for successive one year periods thereafter when agreed to in writing by both Parties.

#### **ARTICLE VI TERMINATION**

- A. If Texana violates any of the covenants or duties imposed upon it by this Agreement, such violation shall entitle the County to terminate this Agreement in accordance with the following procedure: The non-defaulting party shall give the offending party thirty (30) days' written notice of default and the opportunity to remedy the violation. If at the end of such 30-day default notice period, the party notified has not remedied the purported violation, the non-defaulting party may terminate this Agreement as follows: on the first business day following the last day of the 30-day default notice period, the non-defaulting party shall give the defaulting party 90 days' notice of termination. If the non-defaulting party does not provide this 90-day notice of termination, the default notice shall be deemed rescinded.
- B. **MUTUAL TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement for convenience upon ninety (90) days written notice to the other party.

**ARTICLE VII  
NOTICES**

- A. 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).
- B. 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:

If to County:           Fort Bend County Public Transportation  
                                  Attn: Paulette Shelton, Director of Public Transportation  
                                  12550 Emily Ct., Suite 400  
                                  Sugar Land, TX 77478

With a copy to:       Fort Bend County  
                                  Attn: Robert E. Hebert, County Judge  
                                  401 Jackson St.  
                                  Richmond, Texas 77469

If to Texana:           Texana Center  
                                  Attn: George Patterson, Chief Executive Officer  
                                  4910 Airport, Building B  
                                  Rosenberg, Texas 77471

- C. A Notice is effective only if the Party giving or making the Notice has complied with subsections A. and B. above and if the addressee has received the Notice. A Notice is deemed received as follows:
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.
  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.

**ARTICLE VIII  
RISK OF LOSS**

Texana shall bear all risks of damage or loss of vehicle(s) or any portions of damage or loss not covered by insurance. All replacements, repairs, or substitution of parts or equipment of vehicle(s) shall be at the sole cost and expense of Texana and shall be accessions to said vehicle. Texana shall at all times, and at Texana's sole expense, keep the vehicle(s) in good working order, condition, and repair with only reasonable wear and tear.

**ARTICLE IX  
WARRANTIES**

IT IS UNDERSTOOD AND AGREED THAT COUNTY HAS NOT MADE AND IS NOT NOW MAKING, AND COUNTY SPECIFICALLY AND EXPRESSLY DISCLAIMS AND TEXANA VOLUNTARILY AND WITH KNOWLEDGE WAIVES, ANY WARRANTIES, REPRESENTATIONS, OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, WITH RESPECT TO THE CONDITION OF THE VEHICLE(S). COUNTY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO TEXANA NOR TO ANYONE ELSE OF ANY KIND AND HOWSOEVER CAUSED, WHETHER CAUSED BY ANY VEHICLE(S); THE REPAIR, MAINTENANCE, OR EQUIPMENT OF ANY VEHICLE(S); THE FAILURE OF ANY VEHICLE(S); OR THE INTERRUPTION OF SERVICE OR USE OF ANY VEHICLE(S) UNDER THIS AGREEMENT.

**ARTICLE X  
INSURANCE**

- A. Prior to commencement of this Agreement, Texana shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Texana shall provide certified copies of insurance endorsements and/or policies if requested by County. Texana shall maintain such insurance coverage from the time this Agreement commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Texana shall obtain such insurance written on an Occurrence form from such companies having Bests rating of ANII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
1. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1 ,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1 ,000,000 per bodily injury by disease.

2. Commercial General Liability Insurance with limits of not less than \$400,000 per occurrence, and \$400,000 in aggregate.
  3. Business Automobile Liability insurance, including comprehensive, collision, liability, uninsured driver and personal injury protection/insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicle(s) by policyholder throughout the term of this Agreement and any extension thereof.
- B. Texana shall ensure County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Texana shall contain a waiver of subrogation in favor of County and members of Commissioners Court to the extent that covered claims or damages are related to Texana operations under this Agreement. Texana shall maintain such policy of liability insurance throughout the term of this Agreement and any extension thereof, and must provide the County a copy of the certificate of insurance on an annual basis.
- C. Texana will immediately notify the County by phone of any accident or incident involving the acquired vehicle(s) under this Agreement in accordance with Article III. D. "Reports".
- D. If required coverage is written on a claims-made basis, Texana warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

**ARTICLE XI  
INDEMNITY AND HOLD HARMLESS**

**INDEMNIFICATION: TO THE EXTENT ALLOWED BY LAW, TEXANA AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS AND DEFEND THE COUNTY, ITS OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES (WHETHER 1ST PARTY OR 3RD PARTY) AND RELATED COSTS, FOR PERSONAL INJURY DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE PERFORMANCE OF TEXANA'S USE OR RESPONSIBILITIES UNDER THIS AGREEMENT, WHERE SUCH PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS IS CAUSED BY TEXANA'S SOLE NEGLIGENCE OR ITS SOLE INTENTIONAL ACT OR OMISSION OR WHERE SUCH PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, DESTRUCTION, OR LOSS IS CAUSED BY THE JOINT NEGLIGENCE OF TEXANA AND ANY OTHER PERSON (OTHER THAN THE COUNTY OR ITS AGENTS OR EMPLOYEES), OR ENTITY; OR THE JOINT INTENTIONAL ACT OR OMISSION OF TEXANA AND OTHER PERSON OR ENTITY (OTHER THAN THE COUNTY OR ITS AGENTS OR EMPLOYEES).**

**ARTICLE XII  
CONSIDERATION**

Other good and valuable consideration has been provided for this Agreement. The consideration for this Agreement fairly compensates the County for the services and functions performed under this Agreement.

**ARTICLE XIII  
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.

**ARTICLE XIV  
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.

**ARTICLE XV  
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.

**ARTICLE XVI  
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.

**ARTICLE XVII  
GOVERNING 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.

**ARTICLE XVIII  
AUDIT AND INSPECTION OF RECORDS**

Texana shall permit the authorized representatives of METRO, 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.

**ARTICLE IX  
ASSIGNMENT**

Texana may not assign its rights nor delegate its duties under this Agreement without the prior written consent of the County, the State granting agency, and the Federal granting agency.

This Agreement being based upon the special qualifications of each Party, any assignment or other transfer of this Agreement or any part hereof without the express consent in writing of the other Party shall be void and of no effect.

**ARTICLE XX  
INDEPENDENT CONTRACTOR/NO CO-PARTNERSHIP**

In the performance of work or services hereunder, all personnel and/or agents employed by Texana for services under this agreement are deemed to be employees of Texana or independent contractors and shall not be deemed to be employees, agents or servants of the County and shall not be entitled to any privileges or benefits of County employment.

It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Parties, or as in constituting Texana (including its officers, employees, and agents), representatives or employees of the County for any purpose or in any manner whatsoever.

**ARTICLE XXI  
COMPLIANCE WITH LAWS**

Texana shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Texana shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**ARTICLE XXII  
SEVERABILITY**

- A. 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.
- B. The waiver by either Party of a breach of any provision of this agreement shall not operate as

or be construed as a waiver of any subsequent breach.

Any amendments of this agreement shall be of no effect unless in writing and signed by both Parties hereto.

- C. This agreement is non-assignable.

### **ARTICLE XIII FEDERAL CLAUSES**

- A. No Government Obligation to Third Parties. Fort Bend County and Texana acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Fort Bend County, Texana, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Texana agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- B. Program Fraud and False or Fraudulent Statement and Related Acts. Texana acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Texana certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Texana further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Texana to the extent the Federal Government deems appropriate.

Texana also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Texana, to the extent the Federal Government deems appropriate.

Texana agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

C. Access to Records and Reports. Texana agrees to provide Fort Bend County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Texana which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Texana also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Texana's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Texana agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Texana agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Texana agrees to maintain same until Fort Bend County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

D. Federal Changes. Texana shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Fort Bend County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Texana's failure to so comply shall constitute a material breach of this contract.

E. Civil Rights Requirements. The following requirements apply to the underlying contract:

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Texana agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Texana agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Texana agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract

Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Texana agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Texana agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Texana agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Texana agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Texana agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Texana agrees to comply with any implementing requirements FTA may issue.

Texana also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- F. Disadvantaged Business Enterprise (DBE). This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

Texana shall not discriminate on the basis of race, color, national origin, or gender in the performance of this contract. Texana shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Texana to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Fort Bend County deems appropriate. Each subcontract Texana signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Texana is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Texana's receipt of payment for that work from Fort Bend County. In addition, Texana is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.

Texana must promptly notify Fort Bend County whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Texana may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of Fort Bend County.

G. Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Texana shall not perform any act, fail to perform any act, or refuse to comply with any Fort Bend County requests which would cause Fort Bend County to be in violation of the FTA terms and conditions.

H. Government-Wide Debarment and Suspension (Non-Procurement). This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Texana is required to verify that none of Texana, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Texana is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Fort Bend County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Fort Bend County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- I. Lobbying. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.
- J. Clean Air. Texana agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . Texana agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Texana also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

- K. Clean Water. Texana agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Texana agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Texana also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

- L. Contract Work Hours and Safety Standards.

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section Texana and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and

guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages – Fort Bend County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Texana or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - Texana or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

M. Energy Conservation Requirements. Texana agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

N. Transit Employee Protective Arrangements. Texana agrees to comply with applicable transit employee protective requirements as follows:

General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, Texana agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. Texana agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Texana agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Texana agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Texana agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

Texana also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

O. Charter Service Operations. Texana agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

P. Drug and Alcohol Testing.

Texana agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Texas, or County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. Texana agrees further to certify annually its compliance with Parts 655 and to submit the Management Information System (MIS) reports before March 15 to the FTA's Office of Safety and Security or its designated agent. To certify compliance Texana shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for

Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Texana agrees to comply with the Federal Motor Carrier Safety Administration (FMSCA) rule for all employees who hold commercial driver's licenses (49 CFR Part 382) .

Texana agrees to comply with Drug-Free Workplace requirements under 2 C.F.R. Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq., including any amendments to these U.S. DOT regulations when they are promulgated. [U.S. OMB published final Drug-Free Workplace guidance in 74 Fed. Reg. 28149 et seq. on June 15, 2009.] b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

Q. Energy Conservation Requirements. Texana agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

R. Recycled Products. Texana agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

S. Access for Individuals with Disabilities.

Texana agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Texana also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, Texana agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

T. Limited English Proficiency (LEP) Certification

Texana will adopt and utilize Fort Bend County's LEP Plan, a copy of which is attached here as Attachment A, which has been approved by Fort Bend County Commissioner's Court.

Executive Order 13166, titled "Improving Access to Services for Persons with Limited English Proficiency", indicates that differing treatment based upon a person's inability to speak, read, write or understand English is a type of national origin discrimination. It directs each federal agency to publish guidance for its' respective recipients clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including transit providers and Lead Agencies which receive federal assistance through the Texas Department of Transportation (TxDOT).

The Limited English Proficiency Plan prepared by Fort Bend County addresses responsibilities as they relate to the needs of individuals with limited English language skills.

The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et se, and its' implementing regulations, which state that no person shall be subjected to discrimination on the basis of race, color or national origin.

The undersigned, known as Texana, hereby certifies that it has adopted Fort Bend County's LEP Plan and will take responsible steps to carry out said Plan to all counties served by entity, ensure meaningful access to the benefits, services, information and activities for individuals who are Limited English Proficient (LEP). The undersigned has agreed to work together formally with Fort Bend County to coordinate activities and prevent violations of the law, including regulations applicable to this entity or its' officers or employees and that the LEP program satisfies the requirements of Executive Order 13166.

**ARTICLE XXIV  
ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless it is made in writing and is approved and executed by the authorized representatives of the Parties. This Agreement represents the entire agreement between the Parties.

*{Execution Page Follows}  
{Remainder Left Intentionally Blank}*

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the dates written below:

**FORT BEND COUNTY**

**TEXANA CENTER**

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

  
\_\_\_\_\_  
George Patterson, Chief Executive Officer


\_\_\_\_\_, 2018  
Date

February 27, 2018  
Date

ATTEST:

ATTEST:

\_\_\_\_\_  
Laura Richard, Fort Bend County Clerk

 , Exec. Asst.  
\_\_\_\_\_  
Name, Title

Reviewed by:

\_\_\_\_\_  
Paulette Shelton  
Director of Public Transportation

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ \_\_\_\_\_ to pay the County's obligation in the aforementioned Agreement.

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

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