

STATE OF TEXAS

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§

KNOW ALL PRESENTS:

COUNTY OF FORT BEND

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AGREEMENT FOR TRANSPORTATION SERVICES WITH FORT BEND SENIORS

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 Fort Bend Seniors Meals on Wheels & Much, Much, More (hereinafter "FBS").

WITNESSETH

WHEREAS, FBS has agreed to provide transportation services to seniors in Fort Bend County for the Houston Galveston Area Agency on Aging; and

WHEREAS, FBS desires to subcontract these transportation services from the County; and

WHEREAS, the County has identified the need to provide public transportation services to seniors serves a public purpose;

NOW, THEREFORE, the County and FBS, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

AGREEMENT

Section 1. Scope of Services

County shall render Services to FBS as defined in the Scope of Services (attached hereto as Exhibit A).

Section 2. Compensation and Payment

2.1 County's fees shall be calculated at the rates set forth in the attached Exhibit A.

2.2 All performance of the Scope of Services by County including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when mutually approved in writing.

2.3 FBS will pay County based on the following procedures: Upon completion of the tasks identified in the Scope of Services, County shall submit to FBS a monthly invoice showing the amounts due for services performed, and as described in more detail in Exhibit A. FBS shall pay each invoice within thirty (30) calendar days of receipt. County reserves the right to withhold Services pending verification of payment.

Section 3. Non-Appropriations

It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County for these Services, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.

Section 4. Time of Performance

The time for performance of the Scope of Services shall begin with receipt of the Notice to Proceed from FBS and end no later than September 30, 2019. This Agreement shall thereafter auto-renew for a period of five years ending on September 30, 2024.

Section 5. Modifications and Waivers

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

5.2 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.

5.3 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 6. Termination

6.1 Termination for Convenience

6.1.1 Either party may terminate this Agreement at any time upon thirty (30) days written notice.

6.2 Termination for Default

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

6.2.1.1 If FBS fails to provide payment for services within the time specified in this Agreement or any extension thereof granted by the County in writing;

6.2.1.2 If FBS 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.

6.2.2 If, after termination, it is determined for any reason whatsoever that either party 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 6.1 above.

6.3 Upon termination of this Agreement, FBS shall compensate County in accordance with Section 2, above, for those services which were provided under this Agreement prior to its termination.

Section 7. Inspection of Books and Records

FBS will permit County, or any duly authorized agent of County, to inspect and examine the books and records of FBS for audit purposes. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 8. Indemnity

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

Section 9. Confidential and Proprietary Information

9.1 FBS acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by FBS or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by FBS shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by FBS) publicly known or is contained in a publicly available document; (b) is rightfully in FBS's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of FBS who can be shown to have had no access to the Confidential Information.

9.2 FBS agrees to hold Confidential Information in strict confidence, using at least the same degree of care that FBS uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise

dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. FBS shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, FBS shall advise County immediately in the event FBS learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and FBS will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or FBS against any such person. FBS agrees that, except as directed by County, FBS will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, FBS will promptly turn over to County all documents, papers, and other matter in FBS's possession which embody Confidential Information.

9.3 FBS acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. FBS acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate interest of County and are reasonable in scope and content.

9.4 FBS hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

9.5 FBS 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 FBS 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 10. Notices

10.1 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).

10.2 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 Department
Attn: Director
12550 Emily Court, Suite 400
Sugar Land, Texas 77478

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

If to FBS: Fort Bend Seniors Meals on Wheels and Much,
Much, More
Manuela H. Arroyos
P.O. Box 1488
Rosenberg, Texas 77471

10.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

10.3.1 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.

10.3.2 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 11. Compliance with Laws

FBS 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. When required by County, FBS shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 12. 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 13. Successors and Assigns

County and FBS 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 14. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

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. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall FBS release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 17. 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.

Section 18. Conflict If there is a conflict between this Agreement and any attached item, the provisions of this Agreement shall prevail.

Section 19. Certain State Law Requirements for Contracts:
The contents of this Section are required by Texas Law and are included by County regardless of content.

19.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, FBS verifies FBS does not boycott Israel and will not boycott Israel during the term of this Agreement.

19.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, FBS represents pursuant to Section 2252.152 of the Texas Government Code, that FBS is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153

Section 20. Entire Agreement

This instrument contains the entire Agreement between the parties hereto relating to the rights herein granted and the obligation herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

IN TESTIMONY OF WHICH, THIS AGREEMENT shall be effective upon execution of all parties.

FORT BEND COUNTY

FORT BEND SENIORS AND MUCH, MUCH, MORE

KP George, County Judge

Authorized Agent- Signature

Date

Authorized Agent- Printed Name

ATTEST:

Title

Laura Richard, County Clerk

Date

Reviewed by:

Paulette Shelton
Fort Bend County Public Transportation Director

EXHIBIT A
SCOPE OF WORK

SCOPE OF WORK

FBS agrees to:

1. Determine eligibility of all clients in accordance with Houston Galveston Area Agency on Aging requirements.
2. Determine eligibility of all FBS clients for transportation services funded by sources other than the Houston Galveston Area Agency on Aging.
3. Refer only eligible approved FBS clients to the County for transportation.
4. Submit requests for new clients at least two weeks in advance of adding the client for services. FBS will coordinate with County the senior center location that the new client will attend.
5. When previously scheduled rides are no longer required, FBS will provide the County with a list of cancellations including client names at least one week in advance of scheduled pick up dates.
6. Provide a list of terminated clients at least one week in advance of the terminated start date.
7. FBS will provide notification for special event transportation needs at least (3) weeks in advance of the need for a special event. A special event is defined as providing ride service for clients from each of the five FBS Centers to one (1) location. Any last minute additions or cancellations must be sent to the County at least one (1) week in advance. Any requests made for special events that are outside the normal FBS Meals on Wheels hours (9:45 center drop-off/12:30 center pick-up for all centers except Fulshear/10:15 center drop-off/1:00 center pick-up for Fulshear) must be made at least three (3) weeks in advance. For example -- A pick up request at 12:45pm at the Rosenberg FBS Center and a return trip request at 4:00 pm.
8. Provide notification for field trips, which are defined as ride service for clients from one (1) FBS Center to one pre-determined and approved destination) at least two (2) weeks in advance of the need for the field trip. Any last minute adds or cancels must be sent at least one (1) week in advance. Any requests made for field trips that are outside the normal FBS Meals on Wheels hours (9:45 center drop-off/12:30 center pick-up for all centers except Fulshear/10:15 center drop-off/1:00 center pick-up for Fulshear) must be made at least three (3) weeks in advance. Example: A pick up request at 12:45pm at the Rosenberg FBS Center and a return trip at 4:00 pm.
9. Review and approve proposed schedules and schedule changes and respond to requests for schedule approvals within two (2) business days of receipt of schedules.
10. Identify FBS Administration authorized to provide daily and weekly lists and to approve schedules.

11. Notify eligible approved clients of approved schedules, schedule changes and any transportation service suspension mandated by the County or by FBS.
12. Assist County in identifying appropriate routes for placement of Ambassadors.
13. Provide timely technical assistance to the County.

COUNTY agrees to:

1. Provide transportation services to eligible approved clients referred by FBS.
2. Provide services in accordance with all applicable federal and state laws, rules, and regulations.
3. Prepare and submit schedules for approval by FBS staff within three (3) business days of a request for schedule creation or change.
4. Notify FBS regarding any changes in client scheduled pick-up times.
5. Notify FBS if the County is unable to provide the agreed upon services within three (3) business days except in the case of inclement weather and/or other emergencies. Notification for inclement weather, emergency or other service interruptions will be provided as soon as possible after service closure decisions are made.
6. Provide Ambassadors on selected FBS routes to provide assistance to riders. Ambassadors are to assist with taking attendance on vehicles, monitoring seat belt and wheelchair tie-down safety, assistance with boarding and alighting vehicles, assistance with boarding and alighting vehicles in an orderly fashion, assistance with packages and/or other mobility devices, and door to door assistance. Ambassador services provided by County are subject to continued grant funding.
7. Upon request by FBS, provide periodic reports detailing passenger trip history including no-show and late cancel trips, within five (5) business days of request.

RATES

1. For and in consideration of the services rendered by the County, FBS shall pay to the County

\$54.35 per hour for services provided in vehicles owned by the County and

\$65.86 per hour for services provided in vehicles owned by the County's Contractor.

2. Fort Bend County will notify Fort Bend Seniors of any rate increases within five (5) business days of receiving notice from County's bus contractor.