

21B



**City Secretary**

1522 Texas Parkway  
Missouri City, Texas 77489

Phone: 281.403.8500  
www.missouricitytx.gov

September 9, 2015

Honorable Robert Hebert  
County Judge  
Fort Bend County  
401 Jackson Street, 1<sup>st</sup> floor  
Richmond, Texas 77469


RECEIVED  
SEP 14 2015

Judge Hebert,

On September 8, 2015, the City Council of Missouri City moved to approve the execution of an interlocal agreement between Fort Bend County and the City of Missouri City for transportation services for certain senior recreation programs.

The City is enclosing (2) original versions of the agreement. Upon obtaining the appropriate signatures, please return (1) fully executed original to us for our files in the enclosed envelope.

Sincerely,

  
Yomara Frias  
City Secretary Department

- c: City Attorney Iyamu
- Deputy City Secretary/Records Management Coordinator Berglund
- Assistant City Manager Elmer
- Purchasing and Risk Manager Phillips

RECEIVED  
SEP 14 2015  
COUNTY ATTORNEY

**CITY OF MISSOURI CITY**

**INTERLOCAL AGREEMENT BETWEEN FORT BEND COUNTY AND THE CITY OF  
MISSOURI CITY, TEXAS FOR CHARTER BUS SERVICE**

**STATE OF TEXAS §**

**COUNTY OF FORT BEND §**

THIS Interlocal Agreement (hereinafter referred to as "Agreement" is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between CITY OF MISSOURI CITY, TEXAS (hereinafter referred to as "City"), a home-rule municipality under the laws of the State of Texas, acting by and through the City Council of the City of Missouri City and FORT BEND COUNTY, TEXAS (hereinafter referred to as "County"), acting through its governing body, Fort Bend County Commissioners Court.

**RECITALS**

WHEREAS, the City and the County desire to provide transportation services to the City's residents through the Fort Bend County Charter Bus Service; and

WHEREAS, these transportation services will be within Fort Bend County; and

WHEREAS, the City seeks transit services for its residents;

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

**SECTION I  
SCOPE OF AGREEMENT**

The COUNTY agrees to provide the following services for the City of Missouri City, Missouri City, TX 77489.

When agreed upon by the County, County shall provide charter or public transit bus services for the City of Missouri City that includes:

- A minimum of one air-conditioned 32-Passenger bus and a driver;
- Pick-up of passengers at a mutually agreed upon time designated in writing and deliver to a mutually agreed upon location designated in writing;
- On the same day as the pick-up day described above, bus pick-up from a mutually agreed upon location and return of passengers to a mutually agreed upon location designated in writing;
- Provide bus service during existing service hours set by the County;
- Provide bus services at a rate of \$ 25.00 per hour; and
- Services must meet all requirements set out in existing Fort Bend County policies.

For having provided said services, the CITY agrees to pay the COUNTY compensation as stated in the sections to follow. The terms and conditions of this Agreement shall take precedence over all attachments. Any terms and conditions attached to or included in the Scope of Work by the COUNTY are intentionally excluded from this Agreement and will not be enforceable against the CITY.

**SECTION II  
CHARACTER AND EXTENT OF WORK**

The COUNTY shall provide the services as defined in Section I. The CITY shall be under no obligation to pay for any additional services rendered without prior written authorization.

**SECTION III  
TIME FOR PERFORMANCE**

The work under this Agreement shall be completed as detailed in Section I. This Agreement shall be effective as of the latest date of execution by the parties and shall continue through September 30, 2016. This Agreement shall automatically be renewed after the expiration of the initial term for successive one-year terms up to five (5) additional terms, unless terminated as provided for in this Agreement.

The CITY reserves the right to terminate this contract at any time during the term of the contract, without cause, with a written thirty (30) days' notice to terminate and pay the COUNTY for work performed to date.

**SECTION IV  
COMPLIANCE AND STANDARDS**

The COUNTY agrees to provide services hereunder in accordance with the generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the standards of the applicable trade or profession and to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the services provided hereunder and the COUNTY's performance.

*Force Majeure.* Neither the COUNTY, its suppliers nor the CITY will be liable for any failure or delay in this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of COUNTY), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If the COUNTY is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, the CITY may cancel the services order without penalty.

**SECTION V  
THE COUNTY'S COMPENSATION**

For and in consideration of the services rendered by the COUNTY pursuant to this Agreement, the CITY shall provide funds to the COUNTY the amount of \$25.00 per hour, which shall be considered as the total hourly fee. Both parties agree that such amount fairly compensates County for the functions or services to be performed pursuant to this Agreement.

**SECTION VI  
TIME OF PAYMENT**

Payment by the CITY to the COUNTY shall be made as follows:

The COUNTY shall be provided a purchase order number from the CITY and such number shall be referenced on all invoices submitted to the CITY.

On or about the first of the month following Services, the COUNTY shall submit, to the appropriate CITY staff member, an invoice in a form acceptable to the CITY, setting forth the charges for the service provided which were delivered during such billing period, and the compensation which is due for same. The CITY contract manager shall review the same and approve it with such modifications, as deemed appropriate. The CITY shall pay each invoice as approved by the CITY contract manager within thirty (30) days after receipt of a true and correct invoice by the CITY. The approval or payment of any such invoice shall not be considered to be evidence of performance by the COUNTY to the point indicated by such invoice or of the receipt of or acceptance by the CITY of the services covered by such invoice.

Invoices shall be submitted via electronic mail to the following address:

City of Missouri City  
Accounts Payable Office  
1522 Texas Parkway  
Missouri City, TX 77489  
[accountspayable@missouricitytx.gov](mailto:accountspayable@missouricitytx.gov)

Invoices submitted without a purchase order number will be returned unpaid. Failure to submit invoices to the above address will delay payment. DO NOT submit invoices to any other address for payment.

Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act, sets out the required deadlines for payment of the CITY'S obligations to its vendors, requirements for vendor's payments to their subcontractors, penalties for failure to comply with the Act and exceptions to the Act.

The Act requires political subdivisions to pay all payments owed not later than thirty (30) days after the goods and services are received, the performance of the service under the contract is completed, or the date the invoice is received, whichever is later. Interest automatically accrues at one percent (1%) per month plus the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. The Act also requires a vendor to pay subcontractors the appropriate share of the vendor's payments from the CITY not later than the 10th day after the date the vendor receives the payment. Subcontractors must pay their suppliers, materialmen and servicemen within ten (10) days of receipt of their payment.

When the CITY believes there is an error on the invoice received from a vendor, it has until the 21st day after receipt to notify the vendor of the dispute. If resolved in favor of the CITY, the vendor must submit a new invoice and the CITY has thirty (30) days to pay. If the dispute is resolved in favor of the vendor, interest is due from the original date on which the invoice would have become overdue.

## **SECTION VII TERMINATION**

The CITY may terminate this Agreement at any time by giving thirty (30) days written notice to the COUNTY. The COUNTY may terminate this agreement upon thirty (30) days written notice to the CITY in the event the CITY has failed to pay the COUNTY'S invoices. If the COUNTY has been providing services in accordance with this Agreement, the CITY shall pay the COUNTY all amounts due up to the time of termination.

**SECTION VIII**  
**ADDRESS AND NOTICES AND COMMUNICATIONS**

The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to the other party under this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, (iv) by sending the same by telefax with confirming copy sent by mail, or (v) by sending the same by electronic mail with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed by providing written notice in accordance hereunder, shall be as follows:

All notices and communications under this Agreement shall be mailed to the COUNTY at the following address:

Fort Bend County Transportation Department  
12550 Emily Court, Suite 400  
Sugar Land, TX 77478  
281-633-7433

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

All notices and communications under this Agreement shall be sent to the CITY at the following address:

City of Missouri City  
Attn: Alan A. Phillips, CPPB CTPM  
1522 Texas Parkway  
Missouri City, Texas 77489  
281-403-8626  
[alan.phillips@missouricitytx.gov](mailto:alan.phillips@missouricitytx.gov)

**SECTION IX**  
**LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, the COUNTY has been advised by the CITY and the COUNTY clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the CITY shall have available the amount budgeted by the CITY for Services to discharge any and all liabilities which may be incurred by the CITY pursuant to this Agreement and that the total maximum compensation that the COUNTY may become entitled to hereunder and the total maximum sum that the CITY shall become liable to pay to the COUNTY hereunder shall not under any conditions, circumstances, or interpretations, hereof, exceed the said total maximum sum provided for in this section without prior written permission from the CITY.

**SECTION X  
SUCCESSORS AND ASSIGNS**

The CITY and the COUNTY 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 such other party, in respect to all covenants of this Agreement. Neither the CITY nor the COUNTY shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

**SECTION XI  
MEDIA**

CITY and COUNTY expressly acknowledge that City and County are 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, City and 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 a 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. No fees will be charged by either Party for the dissemination of information required by the Texas Public Information Act.

**SECTION XII  
AUTHORITY OF CITY PROJECT MANAGER**

All work to be performed by the COUNTY hereunder shall be performed to the satisfaction of the CITY'S project manager. The CITY'S project manager shall decide any and all questions, which may arise as to the quality, or acceptability of the work performed by the COUNTY and the decisions of the CITY'S project manager in such cases shall be final and binding on both parties. However, nothing contained herein shall be construed to authorize the CITY'S project manager to alter, vary or amend this Agreement.

**SECTION XIII  
MODIFICATIONS**

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

**SECTION XIV  
FISCAL FUNDING**

The CITY'S fiscal year is July 1 through June 30.

If this contract extends beyond June 30<sup>th</sup>, there shall be a fiscal funding out. If, for any reason, funds are not appropriated to continue the contract in the new fiscal year, said contract shall

become null and void on the last day of the current appropriation of funds. Contract will then be terminated without penalty of any kind or form to the CITY.

#### **SECTION XV LIMITATION OF LIABILITY**

- 15.1** CITY is a governmental entity under the Texas Tort Claims Act.
- 15.2** COUNTY is a governmental entity under the Texas Tort Claims Act.
- 15.3** CITY acknowledges that it is not an agent, servant, nor employee of COUNTY.
- 15.4** COUNTY acknowledges that it is not an agent, servant, nor employee of CITY.
- 15.5** The parties expressly agree that the disbursement of funds under this initiative is not a joint venture or enterprise. It is not the intent of the parties that a joint enterprise relationship is being entered into and the parties specifically disclaim such relationship. This Agreement does not constitute a joint enterprise.
- 15.6** CITY and COUNTY are entitled to the immunities and defenses of the Texas Tort Claims Act.

#### **SECTION XVI INSURANCE REQUIREMENTS**

##### **INSURANCE AND HOLD HARMLESS AGREEMENT**

The COUNTY shall indemnify and hold the CITY harmless from all claims for personal injury, death and/or property damage arising out of or resulting from, directly or indirectly, the COUNTY'S negligent performance of services under this Agreement or by reason of any act or omission on the part of the COUNTY, its officers, directors, servants, agents, employees, representatives, contractors, subcontractors, licensees, successors, or permitted assigns. If any action or proceeding shall be brought by or against the CITY in connection with any such liability or claim, the COUNTY, on notice from the CITY, shall defend such action or proceedings at COUNTY'S expense, by or through attorneys reasonably satisfactory to the CITY. The COUNTY'S obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by the COUNTY under this Agreement. The COUNTY shall procure and maintain, with respect to the subject matter of this Agreement, appropriate insurance coverage with limits to cover the COUNTY'S liability as may arise or cause, directly or indirectly, from work performed under terms of this Agreement.

A current certificate of liability insurance is required to be submitted to the Purchasing Office before the CITY will enter into a contract with the COUNTY. The certificate of insurance shall be an attachment to the contract document. In addition, the CITY will not enter into any separate indemnification or hold harmless agreements with the COUNTY.

##### **POLICY REQUIREMENTS**

The COUNTY and all subcontractors performing work for the COUNTY under this Agreement shall furnish a completed insurance certificate to the CITY prior to the event, which shall be completed by an agent authorized to bind the named underwriter(s) for coverage, limits, and termination provisions shown thereon, and which shall contain the following:

- (a) Worker's Compensation: Workers' Compensation Insurance with statutory limits as required by the State of Texas and Employer's Liability with minimum limits of \$1,000,000 each accident and each employee;

(b) Commercial General Liability: General Liability Coverage with minimum limits of \$1,000,000 each occurrence, \$2,000,000 in aggregate;

(c) Automobile Liability: Automobile Liability Insurance that provides coverage for owned, hired, and non-owned automobiles. Liability limits shall be \$1,000,000 combined single limit each accident for bodily injury and property damage; and

(d) Professional Liability (Errors and Omissions): Coverage Amount \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

The CITY shall be entitled, upon request and without expense, to receive copies of the certificate of insurance and the required policies and endorsements.

The COUNTY agrees, with respect to the above required insurance, that all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

(a) The COUNTY shall notify the CITY of any change in the required coverage or cancellation, and shall give such notices not less than 30 days prior to the change or cancellation. The COUNTY shall provide a replacement CERTIFICATE OF INSURANCE prior to such change or cancellation;

(b) Provide for an endorsement that the "other insurance" clause or provision shall not apply to the CITY where the CITY is shown as an additional insured on the policy;

(c) Provide for notice to the CITY at the address shown in this Agreement;

(d) The COUNTY agrees to waive all the COUNTY'S, its officers, employees, agents, assigns, and successors' rights of subrogation against the CITY, its officers, employees, and elected representatives for injuries, death, property damage, or other loss covered by insurance and the COUNTY will provide a waiver of subrogation endorsement against the CITY. The CITY must be named or listed on the endorsement; and

(e) The CITY, its elected and appointed officials, employees and agents shall be listed as additional insured to the required coverage. All coverage specified shall remain in effect during the term of this Agreement. No cancellation of or changes to the certificates, the policies or endorsements may be made without thirty (30) days prior written notification to the CITY. Any termination of coverage without replacement shall result in immediate termination of this Agreement.

**COVERAGES SHALL BE WITH A COMPANY (WITH AT LEAST AN A- BEST RATING) ACCEPTABLE TO THE CITY PURCHASING AND RISK MANAGEMENT DEPARTMENT AND A COPY OF THE CERTIFICATE OF COVERAGE SHALL BE DELIVERED TO THE CITY ON OR BEFORE THE DATE OF THIS AGREEMENT.**

#### NOTICES

All notices shall be given to the CITY at the following address:

City of Missouri City  
Purchasing and Risk Management  
Attn: Alan A. Phillips  
1522 Texas Parkway  
Missouri City, Texas 77489

**SECTION XVII  
APPROVAL**

Approval, disapproval, or failure to act by the CITY regarding any insurance supplied by the COUNTY shall not relieve the COUNTY of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the COUNTY from liability.

**SECTION XVIII  
CHOICE OF LAW**

This Agreement shall be governed by the laws of the State of Texas, except for the conflict of law provisions, with venue in Fort Bend County, Texas and the COUNTY hereby consents to such jurisdiction and venue.

**SECTION XIX  
SEVERABILITY**

In the event that any provision(s) of this Agreement shall for any reason be held invalid, illegal, or unenforceable, the invalidity, illegality or unenforceability of that provision(s) shall not affect any other provision(s) of this Agreement, and it shall further be construed as if the invalid, illegal, or unenforceable provision(s) had never been a part of this Agreement.

**SECTION XX  
INDEPENDENT ENTITY**

The execution of this Agreement and the distribution of funds do not change the independent status of the City of Missouri City or Fort Bend County. No provision of this Agreement or act of CITY in performance of the Agreement shall be construed as making COUNTY the agent, servant or employee of the CITY, the State of Texas or the United States Government. CITY shall notify COUNTY of the threat of lawsuit or of any actual suit filed against CITY pertaining to this Agreement or which would adversely affect COUNTY's responsibilities under this Agreement.

**SECTION XXI  
CURRENT REVENUE**

Each party understands and agrees that each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to that party.

**SECTION XXII  
CONTRACT SIGNATURE SHEET**

This document and the included exhibit, except for any terms and conditions attached to or included in the Scope of Work by the COUNTY, is the entire Agreement and recites the full consideration between the parties, there being no other written or parole agreement.

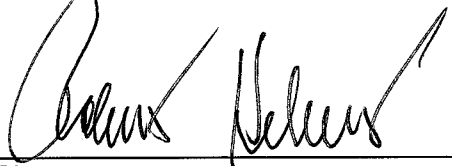
***Signature Page Follows***

IN WITNESS WHEREOF, the said CITY has lawfully caused these presents to be executed by the City Manager of said CITY, and the said COUNTY, acting by its thereunto duly authorized representative, does now sign, execute and deliver this instrument.

Authorized by the City of Missouri City, Texas on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Reviewed by: \_\_\_\_\_  
Alan A. Phillips, Purchasing Manager

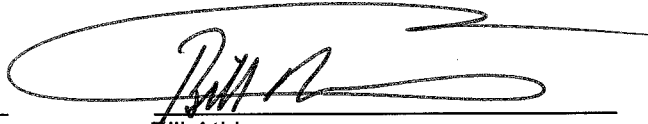
**Fort Bend County**



Signature  
Robert Hebert, County Judge

9-15-15  
Date

**City of Missouri City**



Bill Atkinson  
Interim City Manager

9/9/15  
Date

Reviewed by:



Paulette Shelton, Director  
Fort Bend County Public Transportation

Approved as to form:



Humna Ahmed, Assistant City Attorney  
Fort Bend County