

INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF AUSTIN, TEXAS AND THE LONE STAR RAIL DISTRICT

THIS INTERLOCAL AGREEMENT is entered into between the City of Austin, Texas, a Texas home rule city (“City”) and the Lone Star Rail District, a Texas local government entity created pursuant to Article 6550c-1, revised statutes, as amended (“District”).

WHEREAS, the City is contemplating the development of an urban rail circulator; and

WHEREAS, the District intends to provide a passenger rail system for a longer distance and higher speed transportation of passengers and the City intends to provide internal circulation for passengers to connect with other forms of transportation, including the passenger service to be provided by the District; and

WHEREAS, it would be beneficial to the two governmental entities and the Central Texas Corridor to have cooperation between the two governmental entities in planning for rail passenger service;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. AUTHORITY.

This Agreement is entered into between the parties hereto pursuant to the authority contained in the Interlocal Cooperation Act, Government Code Section 791 et seq. The provisions of Chapter 791 of the Government Code are incorporated in this Agreement and this Agreement shall be interpreted in accordance with this Act.

2. SERVICES

The scope of services are set out in Exhibit A. Each party agrees to provide the other with such assistance and information as may be requested in writing by the other party with the cost of such assistance to be reimbursed by the requesting party.

3. CHARGES FOR SERVICES

3.1 Provider shall provide the services on Exhibit A in the amount set according to Exhibit B.

3.2 For services provided under this Agreement, the entity providing the service shall invoice the other entity monthly or as agreed between the parties. The

amount contracted for has been determined to fairly compensate the Parties for the services to be performed under this Agreement.

3.3 The fees set according to Exhibit B must be budgeted amounts.

3.4 The Parties will not commence the project until there is assurance the funds are available for payment for the services.

4. INITIAL TERM; RENEWAL; TERMINATION

4.1 This Agreement will remain in full force and effect until December 31, 2012, subject to extension by the parties. The parties may agree to extend the term of this Agreement for successive periods.

4.2 The charges made to a Party for a subsequent term shall be the same as made during the initial term unless the other Party shall notify the Party of any changes in the charges at least seventy-five (75) days prior to any renewal date.

4.3 Any Party shall have the right to terminate this Agreement during its term due to the other Party's failure to make payments, provided it gives a fifteen (15) day written notice of termination. In the event of termination as herein provided, all accrued and unpaid charges shall be due and payable.

5. ASSIGNMENT; SUBCONTRACT; NO THIRD-PARTY BENEFICIARIES

This Agreement is a privilege for the benefit of the Parties and may not be assigned in whole or in part by either Party to any other person or entity unless the Party enters into a new written agreement with that person or entity. This Agreement is entered into for the sole benefit of the Parties. Nothing in this Agreement shall be construed as conferring any rights, benefits, remedies or claim upon any persons, firm, corporation or other entity. The Parties agree that services to be provided under this Agreement may be provided by employees of the entity providing services or contractors and consultants retained by an entity to provide other services related to development of the project referred to herein.

6. DEFAULT AND REMEDIES

6.1 If a Party obligated to make a payment fails to make any payment of any sum due or fails to perform as required by any other provision hereunder, and continues in such failure for fifteen (15) days after written notice has been sent by the Party performing services to the Party obligated to pay for the services, the non-paying Party shall be deemed in default under this Agreement.

6.2 In the event of default, the non-defaulting Party has the right to immediately terminate the service under this Agreement, retain all payments made

hereunder and retain all information in the Party's possession. Each and all of the rights and remedies of such Party hereunder are cumulative to and not in lieu of each and every other such right and remedy and every other right and remedy afforded by law and equity.

6.3 In the event a Party shall at any time not have in effect a budget which contains funds to pay the charges provided for in this Agreement, the Party shall be deemed to have non-appropriated funds on the last effective date of a legally adopted budget containing funds to pay charges provided for hereunder. Upon the expiration of such a budget, the other Party shall have no further liability under this Agreement and shall be deemed to be in default as provided in this section of the Agreement. All payments made pursuant to this Agreement shall be made from current revenues available to the paying Party.

7. DISCLAIMERS OF WARRANTIES; LIMITATION OF REMEDIES

7.1 Provider herein disclaims all representations and warranties, direct or indirect, express or implied, written or oral, in connection with the services including but not limited to any and all express and implied warranties of suitability, durability, merchantability, and fitness for a particular purpose.

7.2 Each Party acknowledges and agrees that its sole and exclusive remedy in connection with any failure to perform by the other Party shall be the return of any amounts paid by the non-defaulting Party to the other Party. Without limiting the above, such non-defaulting Party shall have no liability or obligation to the other Party, in either contract or tort, for special, incidental, or consequential damages of any kind incurred by the other Party, such as, but not limited to, claims or damages for personal injury, wrongful death, loss of use, loss of anticipated profits, or other incidental or consequential damages or economic losses of any kind incurred by the other Party directly or indirectly resulting from or related to any service provided by the other Party, whether or not caused by the Party's negligence, to the full extent same may be disclaimed by law.

8. MAINTENANCE OF INFORMATION PROVIDED; CONFIDENTIALITY

Each Party shall maintain any information provided to the Party by the other Party and use the information only for the purposes set out in this Agreement. Upon completion of the services contemplated by this Agreement, all such information shall be returned to the respective Party or otherwise disposed of as directed by the Party. All information provided by any Party shall be maintained as confidential information provided that receiving Party shall comply with applicable open records or freedom of information laws and shall comply with any opinion of the Attorney General for the State of Texas or the order of any court having jurisdiction. In the event of a request made to a Party for information provided by the other Party, the Party receiving such request shall immediately notify a Party and the other Party shall be responsible for determining whether the information is confidential, where the information should be supplied

pursuant to the request or whether other governmental or judicial action, such as making a request to the Attorney General that the information be held confidential, should be undertaken.

9. NOTICES

Any notice or demand required or permitted to be made hereunder shall be made by certified or registered mail to the addresses set out herein and shall be deemed received on the second business day after deposit in the U.S. mail. In addition to the formal notice provided herein, each Party shall also attempt to give notice by email. Either party may from time to time designate any other address for this purpose by written notice to the other party.

10. AMENDMENT; NO WAIVER; SEPARABILITY

Amendments to or modification of this Agreement, if any, shall be in writing and signed by authorized representatives of the Parties. The City Manager for the City, or his designee, and the Executive Director of the District are authorized to make changes in Exhibits A and B to reflect changes in the services and fees agreed upon between the Parties. Lack of enforcement of any right under this Agreement by either Party shall not constitute a waiver of that right or any other in the future. The terms and conditions of this Agreement supersede other agreements, written or oral, between the Parties regarding the subject of this Agreement. Should a court of competent jurisdiction find any part of this Agreement invalid or unlawful, the remainder of this Agreement shall remain in full force and effect, consistent with the original intent of the Parties. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

11. NO ORAL AGREEMENTS.

The parties agree that this Agreement and the attachments and exhibits contains all representations, understandings, contracts and agreements between the Parties regarding the subject matter of this Agreement and any other writings, understandings, oral representations or contracts shall be deemed to be terminated, void and ineffective.

Executed to be effective the _____ day of _____, 2010.

LONE STAR RAIL DISTRICT

CITY OF AUSTIN

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address:

Contact Person: _____

Contact Person: _____

EXHIBIT A

SCOPE OF SERVICES AND DESCRIPTION OF WORK

INTRODUCTION

The City of Austin (COA) is currently contemplating the development of an urban rail line to provide local fixed rail transit service within the city between the Mueller Development, the University of Texas, the Texas State Capital, the Central Business District and Austin-Bergstrom International Airport. Simultaneously the Lone Star Rail District (LSRD) is working to develop the LSTAR Passenger Rail service that will provide regional connectivity to the cities along the corridor from the City of Georgetown to the City of San Antonio, including four stations in the City of Austin. The potential development of both these rail services creates the opportunity to provide two important pieces in the establishment of a *passenger rail system* within the City of Austin and Travis County. The cooperative development of both projects is important to assure their ability to jointly provide the citizens of Austin and Travis County with the benefits of local and regional passenger rail connectivity that is safe, efficient and user friendly. To this end the COA and LSRD should work cooperatively to enable the timely development of necessary planning and funding information related to both projects. This cooperation will, in turn, assure that both projects are based on the most reliable information and are coordinated in their development toward creating a first class *passenger rail system* for the citizens of the City of Austin and Central Texas.

ASSISTANCE

COA & LSRD will provide such assistance as is requested in writing by the other entity with the cost of such assistance to be reimbursed by the requesting entity. Requested assistance may include, but will not be limited to the following service items; such assistance may be provided by the responding entities staff or consultants as is appropriate:

- A. **Funding Sources Identification** – Identifying and assessing alternative funding sources that may be implemented by the COA or LSRD toward financing the development or operation of urban or commuter rail service. Evaluated sources may include property and sales tax increment alternatives (Tax Increment Financing or TIF); value capture from existing assets; user or impact fees and surcharges; public-private partnerships; marketing income; fare box revenues; other special district financing mechanisms; and State of Texas or Federal Government sources.
- B. **Liaison/Coordination/Outreach** – Providing liaison and coordination assistance to COA or LSRD operations or departments and among the various local, state and federal entities and, community stakeholders involved in the planning, funding and development of the respective rail services. This effort may also include assistance in the preparation and distribution of public information efforts.
- C. **Tax Increment Financing (TIF) Station District and Transit Oriented Development (TOD) Planning** – Assisting in planning and establishing

station and transit corridor TIF districts or TOD. Services may include alternative TIF district land planning, parcel identification, GIS services or assistance, and potential TIF district, TOD and rail line graphic representations/presentations.

- D. **Engineering and Environmental Services** – Providing for necessary rail service connectivity or coordination with engineering and environmental analysis or assistance.

EXHIBIT B

FEES

Reimbursement for provided assistance shall be at the actual cost of the assistance provided per the then current staff and/or resource costs or consultant contract fee levels of the assisting party, as approved by the requesting party. Requests for assistance shall be in writing and shall stipulate the expected timeframe for which assistance is sought and a not to exceed dollar amount for the assistance request. Total annual assistance requested by the COA shall not exceed \$75,000 per year and total assistance requested by LSRD shall not exceed \$75,000 per year.