

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF HIDALGO, TEXAS AND
LOWER RIO GRANDE VALLEY DEVELOPMENT COUNCIL**

This Memorandum of Understanding, hereinafter, “Agreement” is made on this ____ day of September, 2020 by and between **THE COUNTY OF HIDALGO, TEXAS** (“COUNTY”), and the **Lower Rio Grande Valley Development Council** (“LRGVDC”), by and through Valley Metro, collectively referred to herein as the “Parties”, and as follows:

I. PURPOSE

1.01. LRGVDC is a voluntary association of local governments in Cameron, Hidalgo, and Willacy Counties; that was awarded a Federal Transit Administration (“FTA”) Grant — for the purpose of funding public transportation initiatives in member Counties to provide access and mobility for County constituents who require public transit to reach their destinations — and the COUNTY has collaborated with the LRGVDC to further facilitate the funding of a public bus transportation route in the Downtown Edinburg Square Courthouse area.

1.02. This Agreement is entered into to further establish the rights and responsibilities of each party in a public bus transportation project operated under the “Valley Metro” banner that will serve the citizens of Hidalgo County. Through this Agreement, the Parties aim to memorialize a system by which the Parties might further facilitate the funding of a public bus transportation route in the Downtown Edinburg Square Courthouse area for the purpose of providing access and mobility for County constituents who require public transit to reach their destinations.

II. STATEMENT OF SERVICE TO BE PERFORMED

2.01. LRGVDC will operate a shuttle bus route — Downtown Square Parking Shuttle in the City of Edinburg, Hidalgo County, Texas. The route, designated by mutual agreement between LRGVDC and COUNTY, shall

operate shuttle bus #1 weekday – from 7:00 a.m. to 6:00 p.m.; shuttle bus #2 – from 7:00 a.m. till 6:00 p.m.; for a total of twenty-two (22) service/vehicle hours per day with six (6) minutes frequencies.

2.02. LRGVDC will perform all administrative activities for this project, up to and including: adhering to State and Federal regulations; submitting any required reports; operating the service in an effective and efficient manner; publicizing and marketing the service; maintaining vehicles in working order; optional vehicle advertisement “wrapping,” by mutual agreement between LRGVDC and COUNTY; and any and all other activities related to operating the service.

2.03. COUNTY shall designate a secured area on County premises, where vehicles shall be stationed overnight between shuttle bus route operations.

2.04. COUNTY shall provide for bus shelters, and/or high capacity bus shelters at shuttle bus route stops, designated by mutual agreement between LRGVDC and COUNTY.

III. COST FOR SERVICES

3.01. **Local Match.** COUNTY shall provide a local match for Shuttle Service up to an amount of Eighty Five Thousand Six Hundred and Ninety Three Dollars and Forty Cents¹; COUNTY shall provide a local match for Shuttle Optional Cost up to an amount of Eighty Eight Thousand Dollars and No Cents, as outlined in the budget (“Budget”) attached herein as Exhibit “A”. Any Circulator Optional Costs budgeted but not expended may be reallocated and expended to cover any unanticipated Circulator Service Cost.

3.02. **Consideration.** As consideration for rendering the Services provided in the Agreement, the COUNTY agrees to pay the LRGVDC the amounts outlined in the Budget, payable against sequentially numbered detailed invoices submitted for services and/or options rendered by the LRGVDC, in accordance with the Texas Prompt Payment Act.

IV. GENERAL TERMS AND CONDITIONS

¹ Reimbursements are subject to total hours and total miles including deadhead hours and deadhead miles.

- 4.01. **Insurance.** LRGVDC shall carry liability insurance, in amounts that correspond with the limits of liability of County pursuant to the Texas Tort Claims Act, covering all persons and property which will be utilized in performing the services herein described. LRGVDC shall indemnify and hold County harmless from any and all liability that may arise and that may result from LRGVDC performance of the services herein described. The current ACCORD Certificate of Liability Insurance is attached herein as Exhibit "C".
- 4.02. **Term.** LRGVDC agrees to perform services outlined above and continue such services commencing on September 22, 2020 and continuing such services through August 30, 2021. The parties may agree in writing to extend the Agreement beyond the term period identified in this paragraph.
- 4.03. **Notice of Termination.** Either party may terminate this Agreement at any time upon sixty (60) days written notice of the termination to the other party.
- 4.04. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Contract, County may terminate this Contract upon ninety (90) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Contract. The parties intend this provision to be a continuing right to terminate this Contract at the expiration of each budget period of County.
- 4.05. **Representations and Warranties.** In performing all services under this Agreement, LRGVDC represents and warrants that it will comply with all applicable laws, licenses, rules, regulations and ordinances relating to the performance of the services described in this Agreement. LRGVDC represents and warrants to the County that it possesses any and all the necessary licenses and/or permits required by state, federal or local authorities and that it possesses or can obtain the necessary skills and expertise to perform the services provided hereunder. LRGVDC further represents and warrants that there are no current pending legal or administrative proceedings relating to the conduct of its business. LRGVDC understands that COUNTY has relied and is relying on LRGVDC representations and warranties as a material element of this Agreement.

4.06. **Non Discrimination.** LRGVDC, including sub-contractors of the LRGVDC, assignees and successors in interest, along with COUNTY do not discriminate on the basis of race, color, religion, sex, age, national origin, disability, veteran status or political affiliation, and ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, disability, or any other protected class under the law, be denied the benefits of, or otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this Agreement. Parties also agree to abide by the requirements of Title VI of the Civil Rights Act of 1964 as amended.

4.07. **Independent Contractor.** LRGVDC, at all times, will act as an independent contractor and will not act or hold itself out to third parties as an employee or agent of County in the provision of services under the terms of this Agreement.

4.08. **Nature of Relationship.** Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or that of partnership or joint venture or any association between the Parties, and any intention to create a joint venture or partnership relationship between the Parties hereto is hereby expressly disclaimed. The Parties shall maintain exclusive control, direction and management of their own employees, and the other shall have no rights with respect thereto.

V. MISCELLANEOUS

5.01. **Legal Construction.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5.02. **Texas Law to Apply.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and, obligations and undertakings of each of the parties to this Agreement shall be performable in Hidalgo County, Texas. The Parties consent to personal jurisdiction in Hidalgo County, Texas.

5.03. **Waiver.** No waiver by any party hereto of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

5.04. **Supersedes Prior Agreements.** This Agreement amends and supersedes all prior and/or contemporaneous negotiations, commitments, agreements and writings between the Parties hereto with the effect that this Agreement shall control. All such other negotiations, commitments, agreements and writings will have no further force or effect.

5.05. **Modification by Written Agreement.** Each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. In order to effectuate and carry out the terms of this Agreement, this Agreement may be modified or amended only by written agreement, executed by County and LRGVDC, and not otherwise.

5.06. **Notices.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted here shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: Hidalgo County, Texas
Executive Office
112 E. Cano
Edinburg, Texas 78539
ATTN: Valde Guerra, Executive Officer
PH: 956-292-7655
EMAIL: valde.guerra@co.hidalgo.tx.us

If to LRGVDC: Lower Rio Grande Valley Development Council (Valley Metro)
510 S. Pleasantview Dr.
Weslaco, Texas 78596
ATTN: Tom Logan, Director
PH: 956-969-5761
EMAIL: tlogan@lrgvdctransit.org

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

5.07. INDEMNIFICATION. LRGVDC WILL INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY, AND EXPENSES (INCLUDING COSTS OF JUDGEMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEYS' FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSE BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKING OR ANY COVENANT IN THIS AGREEMENT, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS THE LRGVDC'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE LRGVDC. UPON WRITTEN NOTICE FROM THE COUNTY, THE LRGVDC WILL RESIST AND DEFEND AT ITS OWN EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO COUNTY, ANY SUCH CLAIM OR ACTION.

5.08. Liabilities. This Agreement is not intended to extend the liability of the COUNTY beyond that provided by law. The COUNTY does not waive, nor shall be deemed to have hereby waived, any immunity or defenses that are available to it against claims arising from third parties.

5.09. Authority to Execute. The execution and performance of this Agreement by the Parties has been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the participating Parties in accordance with its terms.

5.010. Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

5.011. Contracts Subject to Federal Award. Pursuant to 2 CFR 200.326, a non-Federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal

Entity Contracts under Federal Awards. Applicable clauses are attached as "Exhibit B" and incorporated by reference in this agreement should it be subject to Federal award.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

COUNTY OF HIDALGO, TEXAS

Richard F. Cortez, County Judge

Lower Rio Grande Valley Development Council

Tom Logan, LRGVDC- Director

ATTEST:

Arturo Guajardo, Jr. County Clerk

Approved by Commissioners Court on: _____

APPROVED AS TO FORM:

HIDALGO COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE
Ricardo Rodriguez, Jr.

By: _____
Amanda D. Austin, Assistant District Attorney

EXHIBIT "A"
Budget

EXHIBIT "B"
2 CFR 200.326

EXHIBIT "C"
ACCORD Certificate of Liability

EXHIBIT "D"
CERTIFICATE OF INTERESTED PARTIES FORM 1295