

**INTERLOCAL AGREEMENT
BY AND BETWEEN
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AND
THE CITY OF PFLUGERVILLE
FOR A PICKUP SERVICE PILOT PROJECT**

This Interlocal Agreement (this “**Agreement**”) is entered into by and between Capital Metropolitan Transportation Authority (“**Capital Metro**”), a transportation authority and political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code and the City of Pflugerville (“**City**”), a Texas municipal corporation and political subdivision of the State of Texas. Capital Metro and the City are referred to in this Agreement collectively as the “**Parties**” and individually as a “**Party**”. The Parties' execution of this Agreement is authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

RECITALS

WHEREAS, the Parties recognize the importance of a regional mobility system and would like to provide access to public transportation within the City; and

WHEREAS, the City is not within the Capital Metro service area; and

WHEREAS, Section 451.056 of the Texas Transportation Code grants Capital Metro the authority to contract with a municipality, county, or other political subdivision to provide public transportation services outside of its service area; and

WHEREAS, A Service Expansion Policy, approved by Capital Metro’s Board of Directors in June 2008, amended in April 2014, and endorsed by the Capital Area Metropolitan Planning Organization (“**CAMPO**”) in June 2014, allows Capital Metro to partner with cities and counties that are not currently a part of Capital Metro’s service area; and

WHEREAS, City intends to utilize Federal Transit Administration (“**FTA**”) funding under 49 U.S.C. 5307 to partly fund the cost of the Pickup Service; and

WHEREAS, In order to access funding for transit services through the Federal Transit Administration’s Urbanized Area Formula Funding program established under 49 U.S.C. 5307 (“**Section 5307 Funds**”) and be included in Capital Metro’s regional Service Expansion Program, the City, in cooperation with Capital Metro, prepared a Transit Development Plan (as amended, the “**TDP**”), which was adopted by the City on August 14, 2018; and

WHEREAS, the Parties now desire to enter into a one-year pilot project in which Capital Metro provides City with Pickup on-demand transit services (“**Pickup Service**”).

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, Capital Metro and the City agree as follows:

I. Contracting Parties:

The Receiving Agency: City of Pflugerville
100 E. Main Street, Suite 300
Pflugerville, TX 78660

The Performing Agency: Capital Metropolitan Transportation Authority
2910 E. 5th Street
Austin, TX 78702

II. Services: The Parties will work together to perform the following services (collectively, the “**Services**”):

1. Capital Metro agrees to provide, as a pilot, a Pickup Service to serve a portion of the City, as shown in Exhibit B, for a one-year period beginning on October 6, 2020. As part of the Services, Capital Metro will provide customer service to address questions and issues of Pickup Services customers.
2. Vehicles and vehicle hours may be adjusted by written mutual agreement of the Parties based on customer demand. Such agreement may be made by electronic mail between representatives of the Parties, whose e-mail addresses will be exchanged by the Parties on or after the Effective Date.
3. Capital Metro may provide the Services through a third-party service provider in accordance with this Agreement and applicable Capital Metro policies and procedures.
4. All public relations related to the Services will be coordinated through the Capital Metro Communications Office. Except as otherwise provided in Section II(5) of this Agreement, publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Agreement which the City desires to make for the purposes of publication in whole or in part, shall be subject to approval by Capital Metro prior to release.
5. Capital Metro will provide the City a comprehensive Communications and Marketing Plan. The City will work with Capital Metro on marketing and communications efforts as part of delivery and refinement for the Pickup Service. The City will reimburse Capital Metro for the “hard” costs associated with the Communications and Marketing Plan, including, but not limited to, printing and mailing costs. The Parties will mutually agree to the expenditure of such “hard” costs prior to Capital Metro incurring the costs.

6. The Pickup Service will follow Capital Metro's Holiday Schedule.
7. As with any Capital Metro services, customers on the Pickup Service will be allowed access to Capital Metro's fixed route and rail services, provided that they pay the appropriate fares charged by Capital Metro.
8. Capital Metro will monitor ridership on the Pickup Services and e-mail ridership reports to City staff on a monthly basis.
9. Capital Metro and City staff will meet at least quarterly to review performance measures and coordinate on any modification to the Pickup Service.
10. Capital Metro shall provide the City with a point of contact(s) to ensure communication during Agreement performance and address customer service questions and resolutions. City shall designate a City representative as a point of contact(s) for the Agreement. A Party will notify the other Party in writing of its contact person and will subsequently provide written notification of any changes to its respective contact person, if necessary.

III. Financial Terms:

1. The total Section 5307 Fund expenditures utilized by the City under this Agreement shall not exceed \$200,157 per Federal Fiscal Year as set forth in Exhibit "A". As used in this Agreement, "**Federal Fiscal Year**" means the period that begins on October 1 of a calendar year and ends on September 30 of the following calendar year.
2. The total local fund expenditures made by the City under this Agreement shall not exceed \$310,235 per Federal Fiscal Year as set forth in Exhibit "A", unless approved by the City of Pflugerville City Council. The City will expend local fund expenditures as follows:
 - a. A local fund match equal to sixty percent (60%) of the 5307 Funds will be expended for Pickup Services.
 - b. Up to \$10,000 will be allocated for the reimbursement of "hard" costs related to the Communications and Marketing Plan in accordance with Section II(5) of this Agreement.
3. Costs for the Pickup Services are offset by fares collected from customers of the Pickup Services. Capital Metro will deduct from each monthly invoice for Pickup Services an amount equal to the product of (i) the total numbers of customers utilizing Pickup Service for the invoiced month multiplied by (ii) the revenue collected by Capital Metro for each such customer (as of the Effective Date of the Agreement, Capital Metro collects \$0.54 in revenue per customer, but such amount is subject to change based on various factors, including fare

adjustments. Capital Metro will provide written notification to the City of any such change).

4. Capital Metro will submit a “correct and complete” monthly invoice to the City for the Pickup Services performed in the previous month in an amount equal to any costs incurred by Capital Metro for the Pickup Services provided that exceed the eligible Section 5307 Funds available for those Pickup Services as well as any reimbursements costs associated with the Communications and Marketing Plan pursuant to Section II(5) of this Agreement. The City will make payments under this Agreement in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code).
5. In order to be considered “correct and complete,” an invoice must include at least the following information:
 - a. Name, address, and telephone number of Capital Metro and similar information in the event payment is to be made to a different address;
 - b. The name of this Agreement;
 - c. Identification of items or Services as outlined in the Agreement; and,
 - d. Any additional payment information which may be called for by this Agreement.
6. Each invoice must be submitted monthly to:

City of Pflugerville
Attention: Transit Program Invoice
planning@pflugervilletx.gov
7. No other charges, expenses, contributions, recoupments, or charge backs shall be due from or paid by the City in the performance of this Agreement. Notwithstanding any provision to the contrary, the City will not pay for any Services until after the Services have been satisfactorily provided and the City has received a correct and complete invoice. Invoices will be sent on a monthly basis.
8. The City is responsible for tracking invoices and the Section 5307 Funds expenditure balance. The City and Capital Metro will meet quarterly to review invoices and the Section 5307 Funds expenditure balance.
9. The Party or Parties paying for the performance or governmental functions or services shall make payments therefor from current revenues available to the paying Party.

IV. Term and Termination:

This Agreement shall begin on October 1, 2020 (“**Effective Date**”) and continue through September 30, 2021. Either Party may terminate this Agreement, in whole or part, without cause, upon thirty (30) days’ prior written notice.

V. Default:

A Party shall be in default under the Agreement if that Party fails to fully, timely and faithfully perform any of its material obligations under the Agreement.

VI. Miscellaneous:

- a. Cooperation. The Parties will reasonably cooperate with the other in furtherance of the objectives of this Agreement.
- b. Force Majeure. In the event that the performance by either Party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.
- c. Notice. Any notice given hereunder by either Party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses (which may be updated by the respective Party by written notice to other Party):

RECEIVING PARTY: City of Pflugerville
 P.O. Box 589
 Pflugerville, TX 78691-0589
 Attn: City Manager

WITH A COPY TO: City Attorney
 2500 W. William Cannon
 Suite 609
 Austin, TX 78745

PERFORMING PARTY: Randy Clarke (or his successor)
President & CEO
Capital Metropolitan Transportation Authority
700 Lavaca Street, Suite 1400
Austin, TX 78701

WITH A COPY TO: Chief Counsel
Capital Metropolitan Transportation Authority
700 Lavaca Street, Suite 1400
Austin, TX 78701

- d. Entire Agreement. This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the Parties respecting the subject of this Agreement.
- e. Amendment. This Agreement may be amended only in writing by an instrument signed by an authorized representative of each of the Parties. The City Manager and the Capital Metro President & CEO will have the authority to negotiate and execute amendments to this Agreement without further action from the City of Pflugerville City Council or action from the Capital Metro Board of Directors, but only to the extent necessary to implement and further the clear intent of the respective City of Pflugerville City Council and Capital Metro Board of Directors' approval, and not in such a way as would constitute a substantive modification of the terms and conditions hereof or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by the governing bodies of the Parties.
- f. Invalid Provision. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- g. Inspection of Books and Records.
 - (1) The Parties agree to maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and to make such materials available to each other, and their duly authorized representatives, for review and inspection at their respective office during the period that this Agreement is in effect and for four (4) years after the Agreement is terminated or until any impending litigation or claims are resolved, whichever is later.
 - (2) Capital Metro and the City and their duly authorized representatives shall have access to all the governmental records that are directly applicable to

this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions except that nothing in this Agreement requires Capital Metro or the City to waive any applicable exceptions to disclosure under the Texas Public Information Act.

- h. Venue. TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS.
- i. Interpretation. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either Party.
- j. Application of Law. This Agreement is governed by the laws of the State of Texas.
- k. Third Party Rights Not Created. This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a Party to this Agreement.
- l. Counterparts. This Agreement may be executed in separate counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
- m. Sovereign Immunity. By execution of this Agreement, neither Party waives or relinquishes any sovereign immunity rights available to it by law except as otherwise stipulated by applicable laws.
- n. Contract Authority. This Agreement is entered into between the Parties shown below pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

Signatures on Next Page

Each of the signatories to this Agreement represents and warrants that he or she is duly authorized to sign this in the capacity indicated to be effective as of the Effective Date.

PERFORMING AGENCY
Capital Metropolitan Transportation Authority

By: _____
Sharmila Mukherjee
Executive Vice President
Strategic Planning and Development

Date: _____

Approved as to Form:

By: _____
CMTA Legal Department

RECEIVING AGENCY
City of Pflugerville, Texas

By: _____
Sereniah Breland
City Manager

Date: _____

Approved as to Form:

By: _____
Charles E. Zech, City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, PC

Exhibit "A"

The City of Pflugerville Pickup Pilot Estimated Costs			
Fiscal Year	Project Cost Estimate	FTA Section 5307 Funds	City of Pflugerville Local Funds
2021	\$510,392	\$200,157	\$310,235

Exhibit "B" Service Area Map

