AMENDED BY
ORD. NO. 03-080

ORDINANCE NO. 99-040

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS *(METRO)*, ENTITLED *CONGESTION MITIGATION/TRAFFIC MANAGEMENT AGREEMENT,* FOR THE MUTUAL BENEFIT OF METRO AND THE CITY OF BELLAIRE, TEXAS, IN ORDER TO PRESERVE EACH PARTY'S COMMITMENT TO THE DEVELOPMENT OF REGIONAL TRANSPORTATION SYSTEMS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:

That the Mayor and the City Clerk of the City of Bellaire, Texas, are each hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, an Interlocal Agreement with the Metropolitan Transit Authority of Harris County, Texas *(METRO)*, entitled *Congestion Mitigation/Traffic Management Agreement*, in a form as attached hereto and marked "Exhibit A," for the mutual benefit of METRO and the City of Bellaire, Texas, in order to preserve each party's commitment to the development of regional transportation systems.

PASSED and **APPROVED** this, the 6th day of July, 1999.

Charles J. Jacobus, Mayor
City of Bellaire, Texas

ATTEST:

Tracy L. Petrie, City Clerk
City of Bellaire, Texas

EXHIBIT A

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

CONGESTION MITIGATION/TRAFFIC MANAGEMENT AGREEMENT

THIS CONGESTION MITIGATION/TRAFFIC MANAGEMENT AGREEMENT (this "Agreement"), effective as of the Effective Date (as defined herein) by and between the **METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS** ("METRO"), a body corporate and politic, existing and operating pursuant to Chapter 451, TEXAS TRANSPORTATION CODE, and the **CITY OF BELLAIRE, TEXAS** (the "CITY"), a home-rule municipal corporation under the laws of the State of Texas.

RECITALS

WHEREAS, the CITY is located within the METRO service area, and the CITY and its residents benefit from METRO's local bus service; and

WHEREAS, the CITY recognizes and appreciates its role as a participant in the greater Houston metropolitan area and the importance of developing regional solutions to the area's transportation needs, and in such regard the CITY supports and encourages the development of regional transportation systems; and

WHEREAS, METRO has provided certain transportation infrastructure improvements within the CITY, and the CITY lacks sufficient funds to adequately maintain such improvements or to identify, plan, design and construct additional transportation infrastructure and transportation services for the CITY; and

WHEREAS, in addition to developing and operating a public mass transportation system, METRO is authorized to undertake Eligible Transportation Projects (as defined herein) within its service area; and

WHEREAS, the CITY wishes to maintain its transportation improvements and address its mobility needs through the development and implementation of a local transportation infrastructure and management program that includes Eligible Transportation Projects; and

WHEREAS, Section 451.055(a), Texas Transportation Code, authorizes METRO to contract with any person and Section 451.065(c) and Section 472.001, Texas Transportation Code, authorize performance of the Eligible Transportation Projects through an agreement with another governmental entity; and

WHEREAS, while METRO has a policy to commit one-quarter (1/4) of its sales and use tax revenues to general mobility purposes within its service area, METRO desires to enter into this Agreement pursuant to the Texas Transportation Code to provide a base level of funds to the CITY, on behalf of METRO, to undertake Eligible Transportation Projects during the Term of this Agreement (as defined herein); and

WHEREAS, METRO and the CITY desire to enter into this Agreement for their mutual benefit and in order to preserve each party's commitment to the development of regional transportation systems; NOW, THEREFORE

AGREEMENT

For and in consideration of the foregoing recitals and of the mutual promises, obligations, covenants and benefits herein contained, the CITY and METRO contract and agree as follows:

1. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

2. Definitions and Terms.

(a) "City Revenue Allocation" shall have the meaning given to such term in Exhibit "A."

(b) "Commencement Date" shall mean July 1, 1999.

(c) "Effective Date" shall mean July 1, 1999.

(d) "Eligible Transportation Projects" shall mean one or more of the following: (i) any of the projects specifically described in Exhibit "B" attached hereto; (ii) all or part of the costs of addressing congestion mitigation and traffic management problems by constructing or maintaining streets, roads, bridges and grade separations, installing or operating traffic control signals and improvements, constructing or maintaining sidewalks, hiking and biking trails, streetlights and making drainage improvements as reasonable and necessary for effective use of related transportation facilities, all as authorized to be undertaken by METRO pursuant to Section 451.065(a) and (b), Texas Transportation Code; (iii) all or part of the costs of acquiring, designing, constructing, improving or beautifying a state or local highway, turnpike, road or street project, acquiring an interest in any real property required for or beneficial to a project and adjusting utilities for a project, all as authorized to be undertaken by METRO pursuant to Section 472.001, Texas Transportation Code; and (iv) all or part of the costs to provide other equipment, facilities and services to the extent permitted by applicable law, as it now exists or may hereafter be amended.

(e) "General Mobility Program" shall mean a program under which METRO intends to make available 25% of its available sales and use tax revenues per year for Eligible Transportation Projects within the METRO service area, subject to METRO's commitments for transit-related operational expenditures and capital project expenditures. Such term specifically does not include any projects or programs provided for by transit-related operational expenditures or capital projects expenditures.

(f) "Term of this Agreement" or "Term" shall mean the period of time beginning on the Commencement Date and ending on September 30, 2009, or an earlier date if this Agreement is terminated pursuant to the provisions hereof.

3. City Revenue Allocation; Budgetary Appropriation. Subject to the terms of this Agreement and except as provided in Section 7(b), METRO agrees to pay the City Revenue Allocation to the CITY. METRO's obligation to pay City Revenue Allocations hereunder shall survive the Term of this Agreement until such time as all City Revenue Allocations hereunder have been paid to the CITY. METRO's obligation to expend funds for City Revenue Allocations pursuant to this Agreement is subject to an annual budgetary appropriation by METRO's Board of Directors with respect to the General Mobility Program in its entirety.

4. Use of Funds. The CITY agrees to use the City Revenue Allocations, in its sole discretion, within the METRO service area to provide Eligible Transportation Projects, and for no other purpose. Such purpose may include the payment of debt service on obligations incurred by the CITY, its related entities or any other governmental unit to provide Eligible Transportation Projects.

5. Mutual Cooperation. The parties hereby affirm their mutual commitment to addressing transportation issues on a regional basis and pledge their mutual cooperation in meeting the region's needs for improved mobility. In this regard and as further consideration for METRO's agreement to pay City Revenue Allocations, the CITY agrees to act as METRO's ambassador with members of the public and the business community and with federal, state and local governmental entities, including the Texas Legislature and other cities in the METRO service area, to encourage and support regional solutions to transportation issues and to promote and encourage cordial relations and goodwill with respect to such issues with all such parties.

6. Timing of Payment. METRO agrees to pay each City Revenue Allocation in periodic installments in accordance with the schedule set forth on Exhibit "A".

7. Termination. (a) Subject to the notice and cure period contained in Section 9 and in addition to all other legal remedies in Section 9, METRO may terminate this Agreement by duly authorized action of its Board and written notice to the CITY if:

(i) the Texas Legislature approves any legislation that would result in the reduction in the rate of METRO's sales and use tax, or in the dedication of METRO's sales and use tax to any county, political subdivision, municipality or entity other than METRO, and in such event, termination shall be effective on the date of any such action by the Texas Legislature; or

(ii) the CITY should cease to be included within METRO's boundaries at any time during the Term of this Agreement, and in such event, termination shall be effective on the date the CITY is no longer included within METRO's boundaries.

(b) Upon termination of this Agreement pursuant to subsection (a) above, METRO's obligation to pay City Revenue Allocations to the CITY shall immediately cease, and METRO shall have no further obligation whatsoever to make any such payment to the CITY under this Agreement, except for payments that are delinquent on the date of termination.

(c) Subject to the notice and cure period contained in Section 9 and in addition to all other legal remedies in Section 9, the CITY may terminate this Agreement by duly authorized

action of its City Council and written notice to METRO if METRO fails for any reason to pay City Revenue Allocations.

8. Use of Remaining Sales and Use Tax Revenue. Notwithstanding METRO's agreement to pay City Revenue Allocations to the CITY as provided in this Agreement, the CITY shall continue to be eligible for additional funding for other general mobility transportation projects. In this regard, this Agreement shall in no way restrict METRO, in its discretion, from providing mass transit services, developing general mobility improvements or undertaking Eligible Transportation Projects within the CITY; provided, however, any such projects undertaken by METRO will not reduce the payment of City Revenue Allocations required by Section 3. The parties agree that all general mobility transportation projects funded by METRO and undertaken within the City shall be developed and implemented in coordination with Harris County.

9. Default. (a) If either party believes that a default has occurred under the terms of this Agreement, the non-defaulting party may send written notice detailing the nature of the default to the alleged defaulting party. The alleged defaulting party shall have a period of 30 days after receipt of such notice to cure such alleged default to the reasonable satisfaction of the non-defaulting party. Otherwise, this Agreement may terminate after the expiration of the 30 day cure period upon duly authorized action of the governing body of the non-defaulting party and written notice to the alleged defaulting party.

(b) In the event of default by either party (after the cure period has expired), in addition to all other legal remedies, the non-defaulting party shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the alleged defaulting party and the officials thereof to observe and perform the covenants, obligations and conditions prescribed in this Agreement.

10. Severability. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction for any reason, such provision shall be fully severable, and the remainder of this Agreement shall remain in full force and effect. This Agreement shall be construed and enforced as if such invalid or unenforceable provision had never comprised a part of this Agreement.

11. METRO Audit Rights. Within 150 days after the conclusion of each fiscal year of the CITY during the Term of this Agreement, the CITY shall prepare and submit to METRO a report detailing the activities funded under this Agreement, identifying the City Revenue Allocation applied to each Eligible Transportation Project and containing a certification from the City Administrator or City Manager of the CITY that all City Revenue Allocations were used solely for Eligible Transportation Projects. METRO at its sole cost and expense may cause an audit of such expenditures to be made at any time during the CITY's regular business hours by METRO's internal auditors or an independent auditing firm on 30 days written notice to the CITY specifying the grounds for such audit. For the purposes of any such audits, the CITY shall maintain and make available to METRO or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form maintained sufficient to reflect that all City Revenue Allocations have been used for Eligible Transportation Projects. This right of audit and the record retention required shall continue during the Term of this

Agreement and for four (4) years thereafter or for so long as there exists any dispute or litigation arising from the Agreement.

12. Construction Standards. It shall be the CITY's sole responsibility to perform or contract for the performance of the Eligible Transportation Projects; provided, however, that the CITY shall perform the activities undertaken pursuant to this Agreement in a manner in accordance with generally accepted standards and practices for the particular projects involved. All contracts entered into by the CITY funded in whole or part by City Revenue Allocations shall be performed in accordance with all applicable laws and regulations. METRO's sole responsibility shall be to pay City Revenue Allocations, as provided herein, and METRO hereby expressly disclaims any responsibility for the design, construction, operation or maintenance of the Eligible Transportation Projects undertaken by the CITY.

13. Notice. Any notice or other communication required or permitted to be given pursuant to this Agreement shall be given to the other party at the following address:

METRO: Metropolitan Transit Authority of Harris County, Texas
1201 Louisiana
P.O. Box 61429
Houston, Texas 77208
Attention: President & CEO

CITY: _____
_____
_____
Attention: City Administrator

Any such notice or communication shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of such change to the other party in the manner provided above. With the consent of the receiving party, notice may be given by facsimile transmission or electronic mail.

14. Benefit of Agreement; Assignment; Enforcement. This Agreement shall bind and shall be for the sole and exclusive benefit of the respective parties and their legal successors; provided, however, this Agreement is assignable in whole or part, by the City to an entity formed by the CITY or other governmental unit to undertake the Eligible Transportation Projects on behalf of the CITY. Any assignment by the CITY shall not release the CITY from any of its obligations under the terms of this Agreement, including the obligation to provide certifications pursuant to Section 11. Each party hereto agrees to defend against any third party challenges to the enforceability of this Agreement. Neither party hereto will oppose the intervention of the other party hereto in any legal proceeding regarding any third party challenges to the enforceability of this Agreement, and each party agrees to consult with the other in any such defense against third party challenges. Each party hereto shall be responsible for and shall bear its own legal costs in defending against any third party challenges.

15. Notice of Disputes. If one party wishes to commence litigation with respect to a dispute arising from this Agreement, such party hereby agrees to provide the other party with written notice detailing the alleged grounds for such litigation. The other party shall have a period of 30 days after receipt of such notice to cure such alleged grounds to the reasonable satisfaction of the party providing notice. Otherwise, the party providing notice may commence litigation after the expiration of the 30 day cure period upon duly authorized action of the governing body of such party. This Section 15 shall continue during the Term of this Agreement and for four (4) years thereafter or for so long as there exists any dispute or litigation arising from the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this 27 day of August, 1999.

[SIGNATURE PAGES FOLLOW]

::ODMA\PCDOCS\HOUSTON\653390\1

CITY OF BELLAIRE

By: _____
Mayor

Attest:
Tracy L Petrie
City Secretary

Date: July 7, 1999

Approved as to form:

_____
City Attorney

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

Executed for and on behalf of Metropolitan Transit Authority of Harris County, Texas, pursuant to Resolution No. 99-104 of the Board of Directors passed on the 26 day of August, 1999, and on file in the Office of the Assistant Secretary of METRO.

By: _____
Chairman of the Board

Attest:
_____
Assistant Secretary

Date: 8/27/99

METROPOLITAN TRANSIT AUTHORITY METRO.

Approved as to form:

_____
General Counsel

_____
Chief Financial Officer

Exhibit "A" – City Revenue Allocation
Exhibit "B" – Certain Eligible Transportation Projects

EXHIBIT A

CITY REVENUE ALLOCATIONS

(Bellaire)

1. Definitions. As used in this Agreement and this Exhibit "A" the following terms shall have the following meanings:

"City Revenue Allocations" shall mean the periodic payments of money to be made by METRO to the City pursuant to this Agreement and in accordance with the schedule set forth in Section 2 of this Exhibit "A."

"Funding Period" shall mean each of the following periods: (i) July 1, 1999 - September 30, 2000 (the "First Funding Period"); (ii) October 1, 2000 – September 30, 2001 (the "Second Funding Period"); (iii) October 1, 2001 – September 30, 2002 (the "Third Funding Period"); (iv) October 1, 2002 – September 30, 2003 (the "Fourth Funding Period"); (v) October 1, 2003 – September 30, 2004 (the "Fifth Funding Period"); (vi) October 1, 2004 – September 30, 2005 (the "Sixth Funding Period"); (vii) October 1, 2005 – September 30, 2006 (the "Seventh Funding Period"); (viii) October 1, 2006 – September 30, 2007 (the "Eighth Funding Period"); (ix) October 1, 2007 – September 30, 2008 (the "Ninth Funding Period"); and (x) October 1, 2008 – September 30, 2009 (the "Tenth Funding Period").

2. Schedule of Payments. METRO agrees to make the following payment of City Revenue Allocations during the Term of this Agreement, unless terminated sooner pursuant to Article 7:

In the First Funding Period, METRO shall pay the City the amount of $200,000 on or about July 1, 1999 and the amount of $801,000 on or about October 1, 1999. During each subsequent Funding Period during the Term of this Agreement, METRO shall pay the amount of $801,000 on or about October 1, which amount the parties hereto acknowledge and agree equals approximately one-half (1/2) of the sales and use tax revenues collected during Fiscal Year 1997 by or for METRO within the corporate limits of the City..

EXHIBIT B

CERTAIN ELIGIBLE TRANSPORTATION PROJECTS

None

CORRESPONDENCE

Metropolitan Transit Author
1201 Louisiana
P.O. Box 61429
Houston, Texas 77208-1429

(713) 739-4000
www.hou-metro.harris.tx.us

Shirley A. DeLibero
President & Chief Executive Officer

TWENTIETH ANNIVERSARY
METRO 20
1979-1999

October 1, 1999

The Honorable Chuck Jacobus
Mayor, City of Bellaire
c/o Mary A. Ross
Director of Finance
7008 S. Rice Avenue
Bellaire, Texas 77401

RE: Congestion Mitigation / Traffic Management Agreement

Dear Mayor Jacobus:

Enclosed herewith is the City's second installment pursuant to the above-referenced document, which is due today, October 1, 1999.

Treasury Services looks forward to serving your needs concerning these payments. If I can provide you with additional information or be of further service, please do not hesitate to call me at (713) 739-4973, or call Lisa Oliver, our Manager of Investments and Banking at (713) 739-4964.

Yours very truly,

Phil Nguyen
Director of Treasury Services

Enclosure

c: Paula Alexander, General Counsel

CITY OF BELLAIRE
OCT 04 1999
ACCOUNTING

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS - P.O. Box 61429, Houston, TX 77208-1429 **NO.** 644692

VENDOR NAME: CITY OF BELLAIRE **DATE:** 01-OCT-99 **VENDOR NO:** 601058

BATCH NAME	INVOICE NO.	INVOICE DATE	DESCRIPTION	P.O. NUMBER	NET AMOUNT
000030	07-01-99A	30-SEP-99	*RES NO 99-104		801,000.00

FEDERAL TAX EXEMPTION NUMBER 76 79 0020 K
STATE TAX EXEMPTION NUMBER 1-74-1998278-4

TOTAL AMOUNT 801,000.00

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT

ENDORSEMENT OF ACCOMPANYING CHECK IS CONSIDERED A RECEIPT IN FULL SETTLEMENT OF YOUR INVOICES AS LISTED ABOVE.

THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK ON BACK

METRO®
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

TEXAS COMMERCE BANK NA
SAN ANGELO, TEXAS

88-88
1113

NO. 644692

CHECK DATE	CHECK NUMBER	CHECK AMOUNT
01-OCT-99	644692	*$801,000.00

PAY *Eight hundred one thousand and 00/100 Dollars*

TO THE ORDER OF CITY OF BELLAIRE
7008 S RICE AVE
BELLAIRE, TX 77401

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS
VOID AFTER 90 DAYS

BY Shirley A. DeLibero

BY

CHECK IN EXCESS OF $5000 REQUIRES SECOND SIGNATURE

⑈644692⑈ ⑆111300880⑆ ⑈0630003186⑈

Metropolitan Transit Authority
of
Harris County, Texas
1201 Louisiana, 23rd floor
Houston, Texas 77002
713-739-4000
Writer's direct dial number 713-739-4839
713-739-9537 fax

Legal Department

P.O. Box 61429
Houston, Texas 77208-1429

September 29, 1999

The Honorable Chuck Jacobus
Mayor, City of Bellaire
c/o Mary A. Ross
Director of Finance
7008 S. Rice Avenue
Bellaire, Texas 77401

Hand Delivered

RE: Congestion Mitigation/Traffic Management Agreement

Dear Mayor Jacobus:

Enclosed herein is the City's first installment pursuant to the above-referenced document, which was due July 1, 1999. The next scheduled payment, due October 1, 1999 will be mailed to you by METRO's Department of Treasury Services within the next few days. Thereafter, subsequent checks will be forwarded from the Department of Treasury Services on or about October 1, for each year of the term of the agreement.

If I can provide you with additional information or be of further service, please do not hesitate to call me at (713) 739-4839, or call Lisa Oliver, METRO's Manager of Investments and Banking, Department of Treasury Services, at (713) 739-6040.

Yours very truly,

Paula J. Alexander
General Counsel

PJA/pb
Enclosure

c: Lisa Oliver
Treasury Services

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS - P.O. Box 61429, Houston, TX 77208-1429 **NO.** 643834

VENDOR NAME: CITY OF BELLAIRE **DATE:** 28-SEP-99 **VENDOR NO:** 601058

BATCH NAME	INVOICE NO.	INVOICE DATE	DESCRIPTION	P.O. NUMBER	NET AMOUNT
990816	07-01-99	24-SEP-99	*RES NO 99-104		200,000.00

FEDERAL TAX EXEMPTION NUMBER 76 79 0020 K
STATE TAX EXEMPTION NUMBER 1-74-1998278-4

TOTAL AMOUNT 200,000.00

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT

ENDORSEMENT OF ACCOMPANYING CHECK IS CONSIDERED A RECEIPT IN FULL SETTLEMENT OF YOUR INVOICES AS LISTED ABOVE.

THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK ON BACK

METRO
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

TEXAS COMMERCE BANK NA
SAN ANGELO, TEXAS

88-88
1113

NO. 643834

CHECK DATE	CHECK NUMBER	CHECK AMOUNT
28-SEP-99	643834	*$200,000.00

PAY *Two hundred thousand and 00/100 Dollars*

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS
VOID AFTER 90 DAYS

TO THE ORDER OF CITY OF BELLAIRE
7008 S RICE AVE
BELLAIRE, TX 77401

BY Shirley A. DeLibero

BY

CHECK IN EXCESS OF $5000 REQUIRES SECOND SIGNATURE

⑈643834⑈ ⑆111300880⑆ ⑈0630003186 4⑈

Metropolitan Transit Authority
of
Harris County, Texas
1201 Louisiana, 23rd floor
Houston, Texas 77002
713-739-4000
Writer's direct dial number 713-739-4839
713-739-9537 fax

Legal Department

P.O. Box 61429
Houston, Texas 77208-1429

August 30, 1999

The Honorable Charles Jacobus
Mayor, City of Bellaire
7008 S. Rive Avenue
Bellaire, Texas 77401

Hand Delivered

RE: Congestion Mitigation/Traffic Management Agreement

Dear Mayor Jacobus:

Enclosed herein is one fully executed original of the Congestion Mitigation/Traffic Management Agreement for your file.

Thank you for your attention to this matter.

Very truly yours,

Paula J. Alexander
General Counsel

PJA/pb

Enclosure

CITY OF
Bellaire

7008 South Rice Avenue • Bellaire, Texas 77401-4495 • (713) 662-8222 • Fax (713) 662-8212

July 8, 1999

Delivered by Messenger

Paula J. Alexander, Esq.
General Counsel
Metropolitan Transit Authority
of Harris County, Texas
1201 Louisiana Street, 23rd Floor
Houston, Texas 77002

Dear Ms. Alexander:

On Tuesday, July 6, 1999, the City Council of the City of Bellaire, Texas, unanimously adopted an ordinance authorizing Mayor Charles J. Jacobus to execute a *Congestion Mitigation/Traffic Management Agreement (Agreement)* with the Metropolitan Transit Authority of Harris County, Texas *(METRO)*. Enclosed herein is a "duplicate original" of Ordinance No. 99-040 authorizing Mayor Jacobus' execution of the Agreement and two executed original Agreements.

Upon approval by METRO's Board during its July 22, 1999, meeting, please return one executed original Agreement to my attention for the City of Bellaire's files as follows: Tracy L. Petrie, City Clerk, City of Bellaire, 7008 South Rice Avenue, Bellaire, Texas 77401-4495.

If I may be of further assistance to you, please do not hesitate to call me at (713) 662-8275.

Sincerely,

Tracy L. Petrie

Tracy L. Petrie
City Clerk
City of Bellaire, Texas

Enclosures

xc: Mayor Charles J. Jacobus
City Manager John L. Pape
City Attorney Alan P. Petrov
Interim Director of Finance Bill Gibson

DUPLICATE
ORIGINAL

ORDINANCE NO. 99-040

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS *(METRO)*, ENTITLED *CONGESTION MITIGATION/TRAFFIC MANAGEMENT AGREEMENT,* FOR THE MUTUAL BENEFIT OF METRO AND THE CITY OF BELLAIRE, TEXAS, IN ORDER TO PRESERVE EACH PARTY'S COMMITMENT TO THE DEVELOPMENT OF REGIONAL TRANSPORTATION SYSTEMS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:

That the Mayor and the City Clerk of the City of Bellaire, Texas, are each hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, an Interlocal Agreement with the Metropolitan Transit Authority of Harris County, Texas *(METRO)*, entitled *Congestion Mitigation/Traffic Management Agreement*, in a form as attached hereto and marked "Exhibit A," for the mutual benefit of METRO and the City of Bellaire, Texas, in order to preserve each party's commitment to the development of regional transportation systems.

PASSED and **APPROVED** this, the 6th day of July, 1999.

Charles J. Jacobus, Mayor
City of Bellaire, Texas

ATTEST:

Tracy L. Petrie, City Clerk
City of Bellaire, Texas

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

CONGESTION MITIGATION/TRAFFIC MANAGEMENT AGREEMENT

THIS CONGESTION MITIGATION/TRAFFIC MANAGEMENT AGREEMENT (this "Agreement"), effective as of the Effective Date (as defined herein) by and between the **METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS** ("METRO"), a body corporate and politic, existing and operating pursuant to Chapter 451, TEXAS TRANSPORTATION CODE, and the **CITY OF BELLAIRE, TEXAS** (the "CITY"), a home-rule municipal corporation under the laws of the State of Texas.

RECITALS

WHEREAS, the CITY is located within the METRO service area, and the CITY and its residents benefit from METRO's local bus service; and

WHEREAS, the CITY recognizes and appreciates its role as a participant in the greater Houston metropolitan area and the importance of developing regional solutions to the area's transportation needs, and in such regard the CITY supports and encourages the development of regional transportation systems; and

WHEREAS, METRO has provided certain transportation infrastructure improvements within the CITY, and the CITY lacks sufficient funds to adequately maintain such improvements or to identify, plan, design and construct additional transportation infrastructure and transportation services for the CITY; and

WHEREAS, in addition to developing and operating a public mass transportation system, METRO is authorized to undertake Eligible Transportation Projects (as defined herein) within its service area; and

WHEREAS, the CITY wishes to maintain its transportation improvements and address its mobility needs through the development and implementation of a local transportation infrastructure and management program that includes Eligible Transportation Projects; and

WHEREAS, Section 451.055(a), Texas Transportation Code, authorizes METRO to contract with any person and Section 451.065(c) and Section 472.001, Texas Transportation Code, authorize performance of the Eligible Transportation Projects through an agreement with another governmental entity; and

WHEREAS, while METRO has a policy to commit one-quarter (1/4) of its sales and use tax revenues to general mobility purposes within its service area, METRO desires to enter into this Agreement pursuant to the Texas Transportation Code to provide a base level of funds to the CITY, on behalf of METRO, to undertake Eligible Transportation Projects during the Term of this Agreement (as defined herein); and

WHEREAS, METRO and the CITY desire to enter into this Agreement for their mutual benefit and in order to preserve each party's commitment to the development of regional transportation systems; NOW, THEREFORE

AGREEMENT

For and in consideration of the foregoing recitals and of the mutual promises, obligations, covenants and benefits herein contained, the CITY and METRO contract and agree as follows:

1. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

2. Definitions and Terms.

(a) "City Revenue Allocation" shall have the meaning given to such term in Exhibit "A."

(b) "Commencement Date" shall mean July 1, 1999.

(c) "Effective Date" shall mean July 1, 1999.

(d) "Eligible Transportation Projects" shall mean one or more of the following: (i) any of the projects specifically described in Exhibit "B" attached hereto; (ii) all or part of the costs of addressing congestion mitigation and traffic management problems by constructing or maintaining streets, roads, bridges and grade separations, installing or operating traffic control signals and improvements, constructing or maintaining sidewalks, hiking and biking trails, streetlights and making drainage improvements as reasonable and necessary for effective use of related transportation facilities, all as authorized to be undertaken by METRO pursuant to Section 451.065(a) and (b), Texas Transportation Code; (iii) all or part of the costs of acquiring, designing, constructing, improving or beautifying a state or local highway, turnpike, road or street project, acquiring an interest in any real property required for or beneficial to a project and adjusting utilities for a project, all as authorized to be undertaken by METRO pursuant to Section 472.001, Texas Transportation Code; and (iv) all or part of the costs to provide other equipment, facilities and services to the extent permitted by applicable law, as it now exists or may hereafter be amended.

(e) "General Mobility Program" shall mean a program under which METRO intends to make available 25% of its available sales and use tax revenues per year for Eligible Transportation Projects within the METRO service area, subject to METRO's commitments for transit-related operational expenditures and capital project expenditures. Such term specifically does not include any projects or programs provided for by transit-related operational expenditures or capital projects expenditures.

(f) "Term of this Agreement" or "Term" shall mean the period of time beginning on the Commencement Date and ending on September 30, 2009, or an earlier date if this Agreement is terminated pursuant to the provisions hereof.

3. City Revenue Allocation; Budgetary Appropriation. Subject to the terms of this Agreement and except as provided in Section 7(b), METRO agrees to pay the City Revenue Allocation to the CITY. METRO's obligation to pay City Revenue Allocations hereunder shall survive the Term of this Agreement until such time as all City Revenue Allocations hereunder have been paid to the CITY. METRO's obligation to expend funds for City Revenue Allocations pursuant to this Agreement is subject to an annual budgetary appropriation by METRO's Board of Directors with respect to the General Mobility Program in its entirety.

4. Use of Funds. The CITY agrees to use the City Revenue Allocations, in its sole discretion, within the METRO service area to provide Eligible Transportation Projects, and for no other purpose. Such purpose may include the payment of debt service on obligations incurred by the CITY, its related entities or any other governmental unit to provide Eligible Transportation Projects.

5. Mutual Cooperation. The parties hereby affirm their mutual commitment to addressing transportation issues on a regional basis and pledge their mutual cooperation in meeting the region's needs for improved mobility. In this regard and as further consideration for METRO's agreement to pay City Revenue Allocations, the CITY agrees to act as METRO's ambassador with members of the public and the business community and with federal, state and local governmental entities, including the Texas Legislature and other cities in the METRO service area, to encourage and support regional solutions to transportation issues and to promote and encourage cordial relations and goodwill with respect to such issues with all such parties.

6. Timing of Payment. METRO agrees to pay each City Revenue Allocation in periodic installments in accordance with the schedule set forth on Exhibit "A".

7. Termination. (a) Subject to the notice and cure period contained in Section 9 and in addition to all other legal remedies in Section 9, METRO may terminate this Agreement by duly authorized action of its Board and written notice to the CITY if:

(i) the Texas Legislature approves any legislation that would result in the reduction in the rate of METRO's sales and use tax, or in the dedication of METRO's sales and use tax to any county, political subdivision, municipality or entity other than METRO, and in such event, termination shall be effective on the date of any such action by the Texas Legislature; or

(ii) the CITY should cease to be included within METRO's boundaries at any time during the Term of this Agreement, and in such event, termination shall be effective on the date the CITY is no longer included within METRO's boundaries.

(b) Upon termination of this Agreement pursuant to subsection (a) above, METRO's obligation to pay City Revenue Allocations to the CITY shall immediately cease, and METRO shall have no further obligation whatsoever to make any such payment to the CITY under this Agreement, except for payments that are delinquent on the date of termination.

(c) Subject to the notice and cure period contained in Section 9 and in addition to all other legal remedies in Section 9, the CITY may terminate this Agreement by duly authorized

action of its City Council and written notice to METRO if METRO fails for any reason to pay City Revenue Allocations.

8. Use of Remaining Sales and Use Tax Revenue. Notwithstanding METRO's agreement to pay City Revenue Allocations to the CITY as provided in this Agreement, the CITY shall continue to be eligible for additional funding for other general mobility transportation projects. In this regard, this Agreement shall in no way restrict METRO, in its discretion, from providing mass transit services, developing general mobility improvements or undertaking Eligible Transportation Projects within the CITY; provided, however, any such projects undertaken by METRO will not reduce the payment of City Revenue Allocations required by Section 3. The parties agree that all general mobility transportation projects funded by METRO and undertaken within the City shall be developed and implemented in coordination with Harris County.

9. Default. (a) If either party believes that a default has occurred under the terms of this Agreement, the non-defaulting party may send written notice detailing the nature of the default to the alleged defaulting party. The alleged defaulting party shall have a period of 30 days after receipt of such notice to cure such alleged default to the reasonable satisfaction of the non-defaulting party. Otherwise, this Agreement may terminate after the expiration of the 30 day cure period upon duly authorized action of the governing body of the non-defaulting party and written notice to the alleged defaulting party.

(b) In the event of default by either party (after the cure period has expired), in addition to all other legal remedies, the non-defaulting party shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the alleged defaulting party and the officials thereof to observe and perform the covenants, obligations and conditions prescribed in this Agreement.

10. Severability. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction for any reason, such provision shall be fully severable, and the remainder of this Agreement shall remain in full force and effect. This Agreement shall be construed and enforced as if such invalid or unenforceable provision had never comprised a part of this Agreement.

11. METRO Audit Rights. Within 150 days after the conclusion of each fiscal year of the CITY during the Term of this Agreement, the CITY shall prepare and submit to METRO a report detailing the activities funded under this Agreement, identifying the City Revenue Allocation applied to each Eligible Transportation Project and containing a certification from the City Administrator or City Manager of the CITY that all City Revenue Allocations were used solely for Eligible Transportation Projects. METRO at its sole cost and expense may cause an audit of such expenditures to be made at any time during the CITY's regular business hours by METRO's internal auditors or an independent auditing firm on 30 days written notice to the CITY specifying the grounds for such audit. For the purposes of any such audits, the CITY shall maintain and make available to METRO or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form maintained sufficient to reflect that all City Revenue Allocations have been used for Eligible Transportation Projects. This right of audit and the record retention required shall continue during the Term of this

Agreement and for four (4) years thereafter or for so long as there exists any dispute or litigation arising from the Agreement.

12. Construction Standards. It shall be the CITY's sole responsibility to perform or contract for the performance of the Eligible Transportation Projects; provided, however, that the CITY shall perform the activities undertaken pursuant to this Agreement in a manner in accordance with generally accepted standards and practices for the particular projects involved. All contracts entered into by the CITY funded in whole or part by City Revenue Allocations shall be performed in accordance with all applicable laws and regulations. METRO's sole responsibility shall be to pay City Revenue Allocations, as provided herein, and METRO hereby expressly disclaims any responsibility for the design, construction, operation or maintenance of the Eligible Transportation Projects undertaken by the CITY.

13. Notice. Any notice or other communication required or permitted to be given pursuant to this Agreement shall be given to the other party at the following address:

METRO: Metropolitan Transit Authority of Harris County, Texas
1201 Louisiana
P.O. Box 61429
Houston, Texas 77208
Attention: President & CEO

CITY: _____
_____
_____
Attention: City Administrator

Any such notice or communication shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of such change to the other party in the manner provided above. With the consent of the receiving party, notice may be given by facsimile transmission or electronic mail.

14. Benefit of Agreement; Assignment; Enforcement. This Agreement shall bind and shall be for the sole and exclusive benefit of the respective parties and their legal successors; provided, however, this Agreement is assignable in whole or part, by the City to an entity formed by the CITY or other governmental unit to undertake the Eligible Transportation Projects on behalf of the CITY. Any assignment by the CITY shall not release the CITY from any of its obligations under the terms of this Agreement, including the obligation to provide certifications pursuant to Section 11. Each party hereto agrees to defend against any third party challenges to the enforceability of this Agreement. Neither party hereto will oppose the intervention of the other party hereto in any legal proceeding regarding any third party challenges to the enforceability of this Agreement, and each party agrees to consult with the other in any such defense against third party challenges. Each party hereto shall be responsible for and shall bear its own legal costs in defending against any third party challenges.

15. Notice of Disputes. If one party wishes to commence litigation with respect to a dispute arising from this Agreement, such party hereby agrees to provide the other party with written notice detailing the alleged grounds for such litigation. The other party shall have a period of 30 days after receipt of such notice to cure such alleged grounds to the reasonable satisfaction of the party providing notice. Otherwise, the party providing notice may commence litigation after the expiration of the 30 day cure period upon duly authorized action of the governing body of such party. This Section 15 shall continue during the Term of this Agreement and for four (4) years thereafter or for so long as there exists any dispute or litigation arising from the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of _____, 1999.

[SIGNATURE PAGES FOLLOW]

::ODMA\PCDOCS\HOUSTON\653390\1

CITY OF BELLAIRE

By: _____
Mayor

Attest:

_____
City Secretary

Date: July 7, 1999

Approved as to form:

_____
City Attorney

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

Executed for and on behalf of Metropolitan Transit Authority of Harris County, Texas, pursuant to Resolution No. 99-___ of the Board of Directors passed on the ___ day of _____, 19___, and on file in the Office of the Assistant Secretary of METRO.

By: _____
Chairman of the Board

Attest:

_____
Assistant Secretary

Date: _____

Approved as to form:

_____
General Counsel

_____
Chief Financial Officer

Exhibit "A" – City Revenue Allocation
Exhibit "B" – Certain Eligible Transportation Projects

EXHIBIT A

CITY REVENUE ALLOCATIONS

(Bellaire)

1. Definitions. As used in this Agreement and this Exhibit "A" the following terms shall have the following meanings:

"City Revenue Allocations" shall mean the periodic payments of money to be made by METRO to the City pursuant to this Agreement and in accordance with the schedule set forth in Section 2 of this Exhibit "A."

"Funding Period" shall mean each of the following periods: (i) July 1, 1999 - September 30, 2000 (the "First Funding Period"); (ii) October 1, 2000 – September 30, 2001 (the "Second Funding Period"); (iii) October 1, 2001 – September 30, 2002 (the "Third Funding Period"); (iv) October 1, 2002 – September 30, 2003 (the "Fourth Funding Period"); (v) October 1, 2003 – September 30, 2004 (the "Fifth Funding Period"); (vi) October 1, 2004 – September 30, 2005 (the "Sixth Funding Period"); (vii) October 1, 2005 – September 30, 2006 (the "Seventh Funding Period"); (viii) October 1, 2006 – September 30, 2007 (the "Eighth Funding Period"); (ix) October 1, 2007 – September 30, 2008 (the "Ninth Funding Period"); and (x) October 1, 2008 – September 30, 2009 (the "Tenth Funding Period").

2. Schedule of Payments. METRO agrees to make the following payment of City Revenue Allocations during the Term of this Agreement, unless terminated sooner pursuant to Article 7:

In the First Funding Period, METRO shall pay the City the amount of $200,000 on or about July 1, 1999 and the amount of $801,000 on or about October 1, 1999. During each subsequent Funding Period during the Term of this Agreement, METRO shall pay the amount of $801,000 on or about October 1, which amount the parties hereto acknowledge and agree equals approximately one-half (1/2) of the sales and use tax revenues collected during Fiscal Year 1997 by or for METRO within the corporate limits of the City..

EXHIBIT B

CERTAIN ELIGIBLE TRANSPORTATION PROJECTS

None

Metropolitan Transit Authority
of
Harris County, Texas
1201 Louisiana, 23rd floor
Houston, Texas 77002
713-739-4000
Writer's direct dial number 713-739-4839
713-739-9537 fax

Legal Department

P.O. Box 61429
Houston, Texas 77208-1429

June 29, 1999

The Honorable Charles Jacobus
Mayor, City of Bellaire
7008 S. Rice Avenue
Bellaire, TX 77401

RE: Interlocal Agreements

Dear Mayor Jacobus:

Enclosed herein are final Congestion Mitigation/Traffic Management Agreements between the City and METRO. The schedule of payments of the City Revenue Allocation is attached as Exhibit A. The documents are ready for consideration by your City Council and, if approved, execution by the appropriate Officials. Upon approval, please return the documents to me so that they may be presented to the Board for final action during its July 22 meeting.

Thank you for your attention to this matter. If I can provide you with additional information, please advise.

Very truly yours,

Paula J. Alexander
General Counsel

PJA/pb

Enclosures