

PARATRANSIT LOCAL SHARE AGREEMENT – RIDE DUPAGE

City of Naperville

This PARATRANSIT LOCAL SHARE AGREEMENT – RIDE DUPAGE (“Agreement”) is made by Pace, the Suburban Bus Division of the Regional Transportation Authority, an Illinois municipal corporation, (“Pace”) and the City of Naperville, an Illinois municipal corporation, (“Sponsor”). Pace and Sponsor are sometimes individually referred to as a “Party” and collective referred to as the “Parties” in this Agreement. In consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Effective Date.** This Agreement shall be in effect beginning on January 1, 2020. If a Party signs this Agreement but fails to date its signature, the date that the other Party receives the signing Party’s signature on this Agreement shall be deemed to be the date that the signing Party signed this Agreement.

2. **Service Description.** Demand response curb-to-curb paratransit service shall be provided for eligible riders as described in the attached Exhibit A (“Service”). The Service and its parameters are subject to change upon approval by Pace and Sponsor. Pace will keep Sponsor timely apprised of any increase in service costs.

3. **Term and Termination.** This Agreement shall remain in effect through December 31, 2020 unless earlier terminated by a Party upon 30 days’ advance written notice to the other Party in the event: (a) sufficient funds have not been appropriated to cover the required financial contribution by Pace or any other agency funding the Service; (b) Pace develops alternative public transportation services which, as determined by Pace, will better meet the transportation needs of the public; (c) Sponsor fails to make payments as required by Section 6 of this Agreement; (d) Pace has materially failed to perform its obligations under this Agreement; or (e) Sponsor otherwise determines that the Service is not satisfactory.

4. **Service Provider.** Pace shall contract with one or more outside service providers to provide the Service. Pace shall not be responsible for any failure to provide the Service due to circumstances beyond the reasonable control of Pace and/or Pace’s outside service provider(s). Pace shall make every reasonable effort to have the Service restored as soon as practical. No fees shall be charged by any outside service provider for Service not performed.

5. **Reporting.** Pace shall provide Sponsor with electronic access to the reports shown on the attached Exhibit B and Pace will also provide a hard copy of the reports to Sponsor, upon request. Pace, in its sole discretion, may design additional reports, as needed.

6. **Local Share Funding.** Sponsor shall participate in the financial support of the Service by reimbursing Pace monthly for the local share incurred by Pace in providing the Service (“Local Share”). The Local Share shall equal the total expense of the Service (“Total Expense”) less any fare revenue from the Service less any Pace subsidy for the Service (“Pace Contribution”) less any grants for the Service and shall be calculated as follows (see Cost Estimate Worksheet attached as Exhibit C):

- (a) The Total Expense shall equal the sum of the hourly Service expense and the per-trip Service expense. The hourly Service expense shall be calculated by multiplying the number of vehicle Service hours by the hourly rate charged to Pace by Pace’s outside provider(s) delivering the Service. The per-trip Service expense shall be calculated on a trip-by-trip basis. The operating expense shall be the aggregate of rates and/or fees charged to Pace by Pace’s outside service provider(s) delivering the Service.
- (b) The Pace Contribution, which shall be calculated monthly on a year-to-date basis to adjust for actual vehicle Service hours and to ensure that the annual Pace Contribution is not depleted before the expiration of this Agreement, shall equal the lesser of: (1) 75% of the actual Operating Deficit attributed to a maximum of 10,096 vehicle Service hours or (2) \$337,266.
- (c) Sponsor shall pay Pace within 30 days of receiving the monthly bill for the Local Share. Sponsor shall mail payment to:

Pace, the Suburban Bus Division of the Regional Transportation Authority
550 W. Algonquin Road
Arlington Heights, IL 60005
Attention: Accounts Payable

7. **Independent Relationship.** Pace is an independent contractor and not an employee, agent, joint venture, or partner of Sponsor, and nothing in this Agreement shall be construed as creating any other relationship between Pace and Sponsor or between any employee or agent of Pace and Sponsor. Pace employees shall at all times remain employees of Pace, and Pace shall be solely responsible for all aspects of their employment, including, without limitation, compensation, benefits, payment or withholding of taxes, Social Security, Medicare, unemployment or other insurance, and workers’ compensation.

8. **Insurance.** Pace shall require its outside service provider(s) providing the Service to obtain and maintain insurance coverage and furnish Pace with evidence of such coverage, including a certificate of insurance. Pace shall provide Sponsor with a copy of the certificate of insurance upon written request by Sponsor.

9. **Indemnification.** Sponsor shall indemnify, defend, and hold harmless Pace and Pace’s officers, directors, employees, and agents from and against any and all liability, losses, damages, claims, suits, payments, settlements, judgments, demands, awards, expenses, and costs,

including attorneys' fees, resulting from Sponsor's intentional or negligent acts or omissions concerning the performance of any of Sponsor's obligations under this Agreement. Pace shall indemnify, defend, and hold harmless Sponsor and Sponsor's officers, directors, employees, and agents from and against any and all liability, losses, damages, claims, suits, payments, settlements, judgments, demands, awards, expenses, and costs, including attorneys' fees, resulting from Pace's intentional or negligent acts or omissions concerning the performance of any of Pace's obligations under this Agreement. No Party shall be liable for or be required to indemnify the other Party for claims based upon the intentional or negligent acts or omissions of third persons. Upon written notice by the Party claiming indemnification ("Claimant") to the indemnifying Party ("Indemnitor") regarding any claim which Claimant believes to be covered under this Section, Indemnitor shall appear and defend all suits brought upon such claim and shall pay all costs and expenses incidental thereto, but Claimant shall have the right, at Claimant's option and expense, to participate in the defense of any suit, without relieving Indemnitor of Indemnitor's obligations under this Section.

10. **Compliance with Laws.** The Parties shall comply with all local, state, and federal laws, statutes, ordinances, and rules applicable to this Agreement, including but not limited to section 2-105(A)(4) of the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4)).

11. **Headings.** The headings contained in this Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Agreement.

12. **Waiver.** Failure of a Party to exercise any right or pursue any remedy under this Agreement shall not constitute a waiver of that right or remedy.

13. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective directors, officers, employees, agents, representatives, successors, and approved assigns.

14. **Entire Agreement and Non-Reliance.** This Agreement, including any introductory recitals and any attached exhibits, which are hereby incorporated into and made a part of this Agreement, constitutes the entire agreement between the Parties and supersedes any prior written or oral understandings, agreements, or representations between the Parties that may have related in any way to the subject matter of this Agreement, and no other written or oral warranties, inducements, considerations, promises, representations, or interpretations, which are not expressly addressed in this Agreement, shall be implied or impressed upon this Agreement.

Sponsor represents and warrants that: (a) Sponsor has conducted such independent review, investigation, and analysis (financial and otherwise) and obtained such independent legal advice as desired by Sponsor to evaluate this Agreement and the transaction(s) contemplated by this Agreement; (b) Pace has not made any representations or warranties to Sponsor with respect this Agreement and the transaction(s) contemplated by this Agreement, except such representations and/or warranties that are specifically and expressly set forth in this Agreement; and (c) Sponsor has relied only upon such representations and/or warranties by Pace that are specifically and expressly set forth in this Agreement and has not relied upon any other representations or warranties (whether oral or written or express or implied), omissions, or silences by Pace. Without limiting any representations and/or warranties made by Pace that are specifically and expressly set forth in this Agreement, Sponsor acknowledges that Pace will not have or be subject to any liability to Sponsor resulting from the distribution to Sponsor or Sponsor's use of any information, including any information provided or made available to Sponsor or any other document or information in any form provided or made available to Sponsor, in connection with this Agreement and the transaction(s) contemplated by this Agreement.

15. **Conflict.** In the event of a conflict or ambiguity between the terms and conditions of this Agreement and any exhibit to this Agreement, the terms and conditions of this Agreement shall control.

16. **Survival.** Any provision of this Agreement that imposes an obligation after termination or expiration of this Agreement shall be deemed to survive termination or expiration of this Agreement.

17. **Severability.** If any provision of this Agreement is held invalid or unenforceable by an Illinois court of competent jurisdiction, such provision shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

18. **Assignment.** No Party shall assign, delegate, or otherwise transfer all or part of its rights and obligations under this Agreement without the prior written consent of the other Party.

19. **Amendment.** No changes, amendments, or modifications to this Agreement shall be valid unless in writing and signed by the duly authorized signatory of each Party.

20. **Notice.** Any notice under this Agreement shall be in writing and shall be given in the following manner:

- (a) by personal delivery (deemed effective as of the date and time of delivery);
- (b) by commercial overnight delivery (deemed effective on the next business day following deposit of the notice with a commercial overnight delivery company);
- (c) by registered or certified mail, return receipt requested, with proper postage prepaid (deemed effective as of the second business day following deposit of the notice in the U.S. mail); or
- (d) by facsimile with confirmation of transmission (deemed effective as of the date and time of the transmission, except the effective date and time shall be 8:00 a.m. on the next business day after transmission of the notice if transmitted during non-business hours).

Business days are defined as Monday through Friday, excluding federal holidays. Business hours are defined as 8:00 a.m. to 5:00 p.m. Central Standard Time on Monday through Friday, excluding federal holidays. The notice shall be addressed as follows or addressed to such other address as either Party may from time to time specify in writing to the other Party:

If to Pace:

550 W. Algonquin Road
Arlington Heights, IL 60005
Attention: Executive Director
Facsimile No.: (847) 228-4205

If to Sponsor:

City of Naperville
400 S. Eagle Street
Naperville, IL 60540
Attention: Douglas A. Krieger

21. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to principles of conflicts of law, and the Parties shall submit to the exclusive jurisdiction and venue of the state courts of DuPage County, Illinois for any dispute arising out of or related to this Agreement.

22. **Authorization.** The signatories to this Agreement represent and warrant that they have full authority to sign this Agreement on behalf of the Party for whom they sign.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officials on the dates stated below.

PACE

CITY OF NAPERVILLE

By: _____
Signature

By: _____
Signature

Print Name: Rocco L. Donahue

Print Name: _____

Print Title: Executive Director

Print Title: _____

Date: _____

Date: _____

Exhibit C

COST ESTIMATE WORKSHEET

2020 LOCAL SHARE AGREEMENT

| | | |
|--------------------------|----------------------------------|-------------|
| PROJECT: | <u>NAPERVILLE / LISLE</u> | |
| REVENUE | | \$ 242,354 |
| EXPENSE | | \$1,484,365 |
| DEFICIT | | \$1,242,011 |
| NFI GRANT | | \$ 329,805 |
| PACE SUBSIDY | | \$ 337,266 |
| CALL CENTER GRANT | | \$ 123,463 |
| PACE CALL CENTER SUBSIDY | | \$ 30,866 |
| LOCAL SHARE | | \$420,611 |
| | Naperville Township | \$ 52,148 |
| | Lisle Township | \$ 96,090 |
| | Wheatland Township | \$ 48,098 |
| | City of Naperville | \$224,275 |
| RIDERSHIP | | 44,668 |
| VEHICLE HOURS | | 10,096 |

*City of Naperville portion includes DuPage Township

