

INTERLOCAL AGREEMENT No. M1803220
BETWEEN
TEXAS A&M ENGINEERING EXPERIMENT STATION
AND
CITY OF BRYAN, TEXAS

This Interlocal Agreement (the “Agreement”) is made by and between the **Texas A&M Engineering Experiment Station**, a member of The Texas A&M University System and an agency of the State of Texas, having a place of business at 7607 Eastmark Drive, College Station, TX 77840 (“TEES”), and the **City of Bryan, Texas**, a municipal governing body having a place of business at 300 South Texas Avenue, Bryan, TX 77803 (“BRYAN”), each of the aforementioned being referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, TEES is the primary agent for engineering research within The Texas A&M University System, and is experienced in utilizing its staff, researchers, and students to develop and transfer its expertise to public and private sectors through technical services;

WHEREAS, TEES owns, or will acquire, up to four (4) Polaris GEM[®] e6[®] shuttles similar to the model depicted in Exhibit 1 (the “Shuttles”);

WHEREAS, TEES’s Unmanned Systems Laboratory conducts research in the field of autonomous vehicles and is capable of equipping the Shuttles with sensors and software which enable the Shuttles to operate autonomously;

WHEREAS, BRYAN oversees the development and maintenance of infrastructure in the cultural district known as Downtown Bryan represented on the map in Exhibit 2 (“Downtown Bryan”);

WHEREAS, the Parties desire to enter into this Agreement in order to facilitate the deployment and autonomous operation of the Shuttles for public transportation in Downtown Bryan (the “Program”); and

WHEREAS, the Parties intend to conform in all respects to the Interlocal Cooperation Act, Texas Government Code Section 791.001, et. seq., in their performance under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. PROGRAM SCOPE.** The Parties acknowledge that the Program is an experimental research effort, and that each Party shall use reasonable efforts to perform the Program tasks and duties as described in this Agreement.
- 2. TERM AND TERMINATION.**

- 2.01 This Agreement shall be effective October 1, 2018 (the “Effective Date”) and, unless earlier terminated in accordance with this Agreement, shall remain in force until February 1, 2019 (the “End Date”). The End Date may be extended or otherwise modified only by written agreement of the Parties.
- 2.02 This Agreement may be terminated for convenience by either Party upon thirty (30) days written notice.
- 2.03 Either Party may suspend performance of the Program for any reason, at any time, upon providing written notice to the other Party.

3. RESPONSIBILITIES OF TEES.

3.01 Shuttles. The Shuttles to be used in the Program shall be supplied and configured for autonomous operation by TEES. Additionally, TEES is solely responsible for obtaining any and all insurance coverage for the Shuttles and for performing all necessary maintenance and repair work on the Shuttles, sensors, cameras, safety lights, and other related equipment.

3.02 Operation.

- a. At least one (1) TEES employee will be present in each Shuttle at all times while it is in operation to serve as a safety driver.
- b. While in operation, the Shuttles will travel only on the fixed route agreed to by the Parties (the “Route”), attached hereto as Exhibit 3. The Route may be modified only by a subsequent written agreement signed by both Parties.
- c. TEES, in its sole discretion, may refuse to accept any passenger(s) for any reason.
- d. For the first thirty (30) calendar days of the Program, TEES will operate two (2) Shuttles for two (2) hours a day between the hours of 10:00am and 4:00pm every Monday through Friday, subject to the terms of Article 3.02(e) below. At the conclusion of the first thirty (30) calendar days of the Program, the Shuttle operation schedule may be modified by mutual written agreement of the Parties.
- e. Provided that initial operation results are satisfactory, TEES will use its reasonable efforts to operate two (2) Shuttles on November 2, 2018 from 5:00pm to 8:00pm during the monthly First Friday event in Downtown Bryan.

3.03 Parking.

- a. TEES shall enter into a separate agreement with Brazos Transit District (“BTD”) that will permit the Shuttles to be stored in a public parking garage located on Regent Avenue between E. 26th Street and E. 27th Street, Bryan, Texas (the “Parking Garage”), for the duration of the Program. A diagram of the Parking Garage showing the Shuttles’ designated parking spaces is attached hereto as Exhibit 4. A copy of the agreement between TEES and BTD will be provided to BRYAN.

- b. The fees for any parking permit or lease required by BTM will be paid by TEES.
- c. The provision and installation of security devices, such as cameras and fences, covering the Shuttles' designated parking spaces in the Parking Garage will be addressed, if addressed at all, in the agreement between TEES and BTM.

3.04 Marketing. The TEES Marketing and Communication point-of-contact listed in Appendix A, or their designee, will be made available to BRYAN for development and approvals of marketing plans and materials, as detailed further in Article 5 below.

4. RESPONSIBILITIES OF BRYAN.

4.01 Loading Zones. BRYAN shall create designated zones along the Route for loading and unloading Shuttle passengers, indicated by road surface markings, traffic signs, or any other appropriate means. The loading zones will be constructed so as to ensure, to the greatest reasonable extent, the safety of the public, including Shuttle passengers, pedestrians, and drivers. It is understood these loading zones will be located on existing street surfaces and may cause a temporary delay of motorists during loading and unloading.

4.02 Parking.

- a. BRYAN shall enter into a separate agreement with BTM to address the installation of signs and electric outlets for charging of the Shuttles in the Parking Garage. A copy of the agreement between BRYAN and BTM will be provided to TEES.
- b. BRYAN is responsible for all costs associated with installing such signs and electrical outlets in the Parking Garage, as well as the costs of utilities necessary to charge the Shuttles, if any.

4.03 Marketing.

- a. The BRYAN Marketing and Communication point-of-contact listed in Appendix A, or their designee, will be made available to TEES for development and approvals of marketing plans and materials, as detailed further in Article 5 below.
- b. In accordance with Article 5.04 below, BRYAN shall pay for all wraps and other signage to be applied to the Shuttles.

5. MARKETING AND PUBLICITY.

5.01 In order to properly implement and promote the Program, the Parties shall collaboratively develop a marketing plan and all marketing and publicity materials for the Program ("Marketing Materials"). The individuals listed in Appendix A as each Party's Marketing and Communication point-of-contact shall serve as their respective Party's lead representative for all marketing-related matters.

5.02 Each Party will, prior to the distribution of Marketing Materials that incorporate the other Party's Marks (as defined in Article 6.02), submit a copy of such Marketing Materials to

the other Party for its approval. Such approval will not be unreasonably withheld or delayed.

- 5.03 Except as provided in Article 5.04 below, each Party is responsible for the costs associated with the production and distribution of all Marketing Materials that Party does or intends to distribute itself.
- 5.04 BRYAN will pay for the costs of purchasing wraps to be affixed to the Shuttles.
- 5.05 All Marketing Materials and all public communications made about the Program shall refer to the Shuttles as being “self-driving.” The Shuttles shall not be publicly referred to as “autonomous.”
- 5.06 Each Party is responsible for its own compliance with all applicable laws and regulations in the development, design, and distribution of the Marketing Materials.
- 5.07 Unless specifically approved in writing by the other Party, any public communication made by a Party referring to the Program shall be worded so as not to be misleading or imply an endorsement by the other Party or its employees or affiliates. Neither Party may use the name of the other Party, nor the names of any of its employees or affiliates, nor any adaptation thereof, in any advertising, promotional, or sales literature or news release unrelated to the Program without the prior written consent of the other Party.

6. INTELLECTUAL PROPERTY RIGHTS AND LICENSES.

- 6.01 “Intellectual Property” means all intellectual property, including, without limitation, whether electronic or otherwise, patent rights, copyrights, Marks, mask work rights, trade secret rights, sui generis database rights, moral rights, and all other intellectual property rights of any kind which are recognized as legally protectable anywhere in the world (whether or not registered or perfected), together with all applications for or to register any of the foregoing, and any rights to renew, extend, or otherwise improve any of the foregoing.
- 6.02 “Marks” means those trademarks, service marks, trade dress, trade names, logos, wordmarks, and other legally protectable marks owned or controlled by a Party on the Effective Date or thereafter.
- 6.03 In order to allow BRYAN to carry out its obligations under this Agreement, TEES hereby grants to BRYAN, and BRYAN hereby accepts, a non-exclusive, non-transferable, non-sublicensable license and right under TEES’s Marks to develop and distribute the Marketing Materials for the life of this Agreement. TEES reserves all rights in its Intellectual Property not expressly granted in this Agreement and disclaims the grant of any implied rights to BRYAN.
- 6.04 In order to allow TEES to carry out its obligations under this Agreement, BRYAN hereby grants to TEES, and TEES hereby accepts, a non-exclusive, non-transferable, non-sublicensable license and right under BRYAN’s Marks to develop and distribute the Marketing Materials for the life of this Agreement. BRYAN reserves all rights in its

Intellectual Property not expressly granted in this Agreement and disclaims the grant of any implied rights to TEES.

- 6.05 Each Party shall remain the sole owner of all rights in and to its Marks and other Intellectual Property, as they exist as of the Effective Date or as they may thereafter be modified or developed (collectively, the “Intellectual Property Rights”). Neither Party shall be deemed to have any ownership interest in the Intellectual Property Rights of the other Party.
- 6.06 Upon execution of this Agreement, each Party shall provide the other Party with usage guidelines, if any, for the Party’s Marks. Neither Party shall use the other Party’s Marks in any way that violates the terms of this Agreement or any usage guidelines provided hereunder, nor shall any Party use the other Party’s Marks for any reason other than promotion of the Program without the other Party’s prior written consent.
- 6.07 The Parties acknowledge that the unauthorized use of a Party’s Marks may cause irreparable harm to that Party. Accordingly, each Party has the right to seek injunctive relief against any breach or threatened breach of the obligations set forth herein regarding usage of the Party’s Marks, as well as the right to pursue any other remedies available at law or in equity for such a breach or threatened breach.

7. TITLE TO TANGIBLE PROPERTY.

- 7.01 “Tangible Property” means tangible equipment, supplies, materials, and other physical items of personal property. Tangible Property includes, but is not limited to, the Shuttles, sensors, safety lights, cameras, and signs.
- 7.02 Each Party shall retain title to all Tangible Property which it owns and furnishes for use in the performance of the Program.
- 7.03 Title to Tangible Property owned by a Party shall not be affected by its incorporation into or attachment to any Tangible Property owned by the other Party or any third party, nor shall a Party’s Tangible Property become a fixture or lose its identity as personal property by being attached to any real property.
- 7.04 Except as otherwise provided in this Agreement, each Party assumes the risk of, and shall be responsible for, any loss or destruction of or damage to (in whole or in part) the Tangible Property it furnishes for use in the performance of the Program.

8. INSURANCE.

- 8.01 BRYAN recognizes that TEES, as a member of The Texas A&M University System and an agency of the State of Texas, is permitted by Chapter 502 of the Texas Labor Code to self-insure for workers’ compensation liability and, further, enjoys general liability protection under the Texas Tort Claims Act and the doctrine of sovereign immunity.
- 8.02 TEES will obtain and maintain, for the duration of this Agreement, the minimum insurance coverage(s) set forth in the table below. All coverages shall be written on an occurrence basis.

Coverage	Limit
<u>Automobile Liability</u> Combined Single Limit	\$1,000,000

- 8.03 TEES may, if it deems appropriate or prudent, maintain higher limits or broader coverages than those set forth in the table above.
- 8.04 The Automobile Liability policy shall name “City of Bryan, Texas” as an additional insured.
- 8.05 Certificates of insurance evidencing the insurance policy set forth in the table above, as well as evidence of BRYAN’s additional insured status, shall be provided to BRYAN by TEES within sixty (60) days of the Effective Date. Such certificates and evidence of additional insured status shall be sent to BRYAN in accordance with Article 13 below.

9. REPRESENTATIONS AND LIMITATION OF LIABILITY.

- 9.01 Each Party represents, to the best of its ability and knowledge, that: (a) it has the authority to enter into this Agreement; (b) it has the full right and power to grant the license under its Marks granted herein; and (c) it has obtained or will obtain all licenses or permits required to comply with such laws, rules, ordinances, and regulations in the performance of its Program obligations.
- 9.02 **EXCEPT FOR THOSE REPRESENTATIONS MADE ABOVE, THE PARTIES MAKE NO OTHER REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AS TO THE CONDUCT, SUCCESS, OR PARTICULAR RESULTS OF THE PROGRAM, OR THAT THE USE OF ANY INTELLECTUAL PROPERTY RIGHTS WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.**
- 9.03 **NEITHER PARTY SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR OTHER DAMAGES SUFFERED BY THE OTHER PARTY RESULTING FROM THE PROGRAM, NOR SHALL A PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR OTHER DAMAGES SUFFERED BY A THIRD PARTY AS A RESULT OF THE OTHER PARTY’S CONDUCT UNDER THIS AGREEMENT.**

- 10. INDEPENDENT CONTRACTOR.** For the purposes of this Agreement and the Program to be performed hereunder, the Parties shall at all times be, and shall be deemed to be, independent contractors and not agents or employees of the other Party. Except as may be explicitly provided for in this Agreement or subsequently authorized in writing, neither Party may make any statements, representations, or commitments of any kind, nor take any actions, which are binding on the other Party.

11. **CHOICE OF LAW.** This Agreement and all of the transactions it contemplates shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its conflict of laws principles).
12. **DISPUTE RESOLUTION.** The Parties shall attempt to resolve any and all disputes through good faith negotiations. If, after good faith negotiations, any dispute shall remain between the Parties, the Parties agree to submit the matter to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the Parties agree to terminate such mediation or the mediator declares an impasse. No lawsuit may be filed until mediation of the issue has been terminated in accordance with the terms of this Agreement.
13. **NOTICES AND COMMUNICATIONS.** All notices to the Parties under this Agreement shall be in writing and sent to the names and addresses stated below. Either Party may change such name and address by providing notice to the other Party in accordance herewith, and any such change shall take effect immediately upon receipt of such notice. Other communications between the Parties may be addressed to the relevant individual(s) listed in Appendix A.

Notices to TEES:

Texas A&M Engineering Experiment Station
TEES Contracts Office
7607 Eastmark Drive
College Station, TX 77840
Attn: Mark Andrews
Phone: 979-458-7482
Email: meandrews@tamu.edu
Cc: innovationsandcontracts@tees.tamus.edu

Notices to BRYAN:

City of Bryan
P.O. Box 1000
Bryan, TX 77805-1000
Attn: W. Paul Kaspar
Phone: 979-209-5030
Email: pkaspar@bryantx.gov

14. **MISCELLANEOUS.**
 - 14.01 Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties relative to the Program, and may be modified or amended only by a written agreement signed by both Parties.
 - 14.02 Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Parties, their representatives, successors, and permitted assigns.
 - 14.03 Severability. If any provision of this Agreement is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect if the essential terms of this Agreement remain valid, legal, and enforceable.

- 14.04 Assignment. This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. Any attempt to assign this Agreement without the other Party's prior written consent will be void.
- 14.05 No Waiver. Failure of a Party to enforce any provision of this Agreement shall not constitute a waiver of that provision or any other term of this Agreement, nor shall it impair the right of a Party to enforce the provision in the event of any subsequent breach or threatened breach by the other Party.
- 14.06 Force Majeure. If either Party fails to fulfill its obligations hereunder (other than an obligation for the payment of money), when such failure is due to an act of God or other circumstance beyond the Party's reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared and undeclared), revolution, acts of foreign or domestic terrorism, or embargos, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the Parties to resume performance under this Agreement.
- 14.07 Headings. The headings used herein are for reference and convenience only and shall not factor into the interpretation of this Agreement.
- 14.08 Legal Compliance. Each Party shall comply with all laws, regulations, and other legal requirements applicable to that Party in connection with its performance under this Agreement.
- 14.09 Survival. Those provisions of this Agreement which by their nature or by implication are to survive the conclusion or termination of the Agreement shall survive such conclusion or termination, as the case may be.
- 14.10 Governmental Unit. TEES is an agency of the State of Texas, and nothing in this Agreement waives or relinquishes TEES's rights to claim any exemptions, privileges, and immunities as may be provided by law. BRYAN is a Texas home-rule municipality, and nothing in this Agreement waives or relinquishes BRYAN's rights to claim any exemptions, privileges, and immunities as may be provided by law.
- 14.11 Counterparts. This Agreement may be executed in duplicate counterparts which, taken together, shall constitute one single representation between the Parties.

The Parties have caused this Agreement to be executed by their authorized representative.

**Texas A&M Engineering Experiment
Station**

City of Bryan, Texas

By: _____

By: _____

Name: Mark Andrews

Name: Andrew Nelson

Title: TEES Contracting Officer

Title: Mayor

Date: _____

Date: _____

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED TO FORM:

Janis Hampton, City Attorney

APPENDIX A COMMUNICATIONS

Communications to TEES:

Contract Administration:

Taylor Hanks
Texas A&M Engineering Experiment Station
7607 Eastmark Drive
College Station, TX 77840
Phone: 979-862-9168
Email: thanks@tamu.edu

Technical:

Dr. Srikanth Saripalli
Associate Professor
Texas A&M Engineering Experiment Station
Department of Mechanical Engineering
3123 TAMU
College Station, TX 77843-3123
Phone: 979-458-0352
Email: ssaripalli@tamu.edu

Marketing and Communication:

Bryan Blake
Director of Communications
Texas A&M Engineering Experiment Station
7607 Eastmark Drive, Suite 240
College Station, TX 77840
Phone: 979-845-5510
Email: brian.blake@tamu.edu

Communications to BRYAN:

Contract Administration:

Janis K. Hampton
City Attorney
City of Bryan
P.O. Box 1000
Bryan, TX 77805-1000
Phone: 979-209-5151
Email: jhampton@bryantx.gov

Technical:

W. Paul Kaspar, P.E., CFM
City Engineer
Engineering Services
City of Bryan
300 South Texas Avenue
Bryan, Texas 77803
Phone: 979-209-5030
Email: pkaspar@bryantx.gov

Marketing and Communication:

Kala McCain
Communications / Marketing Supervisor
City of Bryan
300 South Texas Avenue
Bryan, Texas 77803
Phone: 979-209-5141
Email: KMccain@bryantx.gov

**EXHIBIT 1
MODEL SHUTTLE**



EXHIBIT 2 DOWNTOWN BRYAN

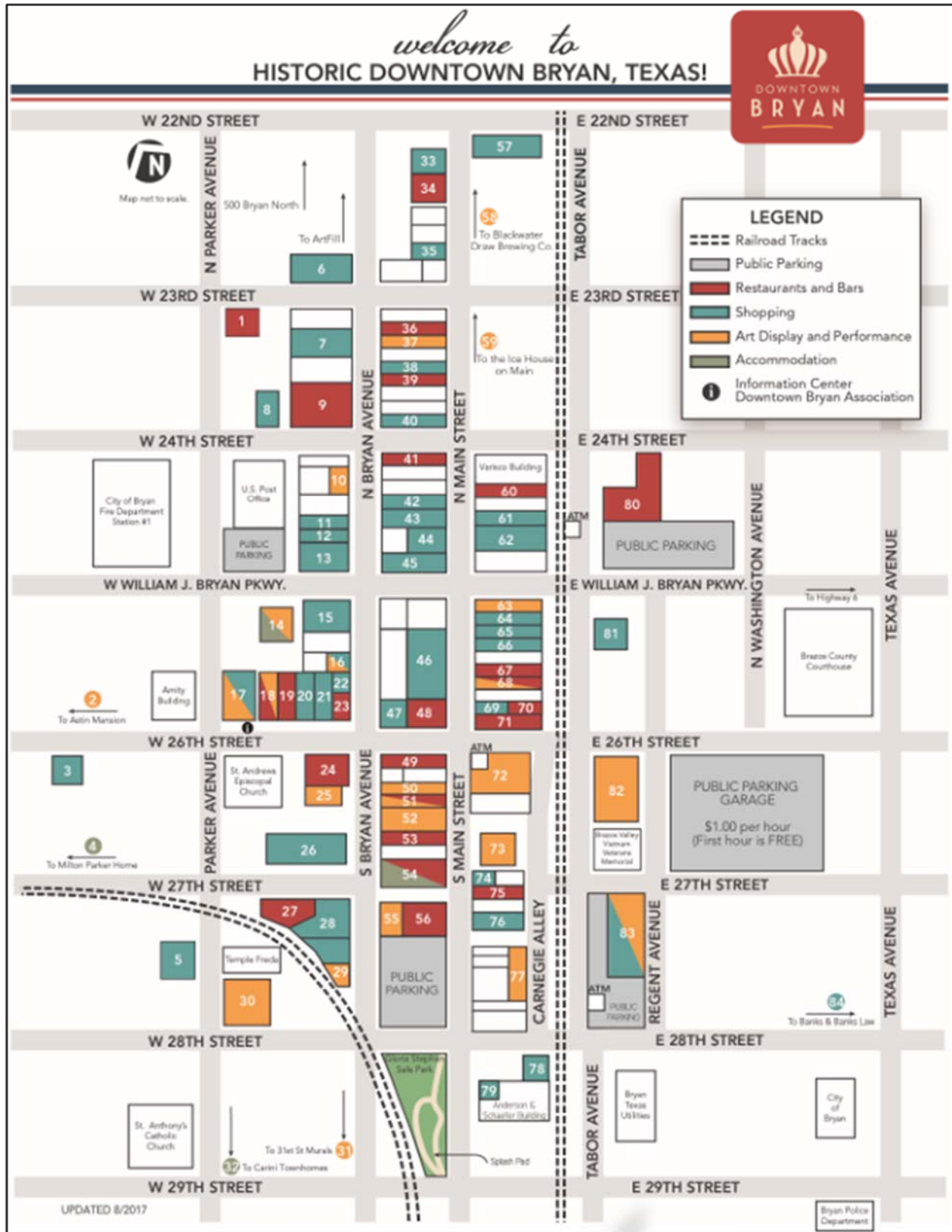


EXHIBIT 3 SHUTTLE ROUTE



EXHIBIT 4
PARKING GARAGE

