

**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF MCKINNEY  
AND  
TEXOMA AREA PARATRANSIT SYSTEM, INC.  
FOR THE  
MCKINNEY JOB ACCESS / REVERSE COMMUTE PROJECT**

**WHEREAS**, in September 2009, the City of McKinney, Texas ( "CITY") received approval by the Regional Transportation Council ("RTC"), the regional transportation policy board of the North Central Texas Council of Governments ("NCTCOG"), to receive federal grant funding under the Job Access/Reverse Commute Program, found at 49 U.S.C. § 5316 ("JA/RC"), for the implementation of a three-year pilot project to provide round-trip commuter shuttle bus service between the City of McKinney, Texas and other locations within Collin County, Texas; and

**WHEREAS**, Texoma Area Paratransit System, Inc. ( "TAPS") is an existing private, not-for-profit corporation that provides public transportation services within the State of Texas; and

**WHEREAS**, CITY and TAPS (CITY and TAPS are sometimes individually referred to as "Party" and collectively referred to as "Parties") are local governmental entities pursuant to the Interlocal Cooperative Act, Chapter 791 of the Texas Government Code, and, as such, may contract with one another for the provision of governmental functions and services of mutual interest; and

**WHEREAS**, CITY and TAPS desire to enter into an agreement concerning the provision of transit services in support of the three-year pilot project to provide round-trip commuter shuttle bus service between the City of McKinney, Texas and other locations within Collin County, Texas.

**NOW, THEREFORE**, this agreement ("Agreement") is hereby made and entered into by and between CITY and TAPS for the mutual consideration stated herein.

**WITNESSETH:**

**Article I**

Term: This Agreement shall be for a period of 36 months beginning on \_\_\_\_\_ and terminating on \_\_\_\_\_, unless terminated earlier by either CITY or TAPS in accordance with the terms of this Agreement.

**Article II.**

Services: TAPS shall provide transit services for the administration and operation of round-trip commuter shuttle bus service from the CITY to and from the Dallas Area Rapid Transit ("DART") Parker Road Rail Station in the City of Plano, Collin County, Texas,

("PROJECT") as set forth in the terms of this Agreement. TAPS shall provide transit services for the PROJECT on every weekday (Monday through Friday) for the period described in Article I of this Agreement, excluding those weekdays on which New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day fall.

TAPS shall provide administrative services associated with the PROJECT, as set forth in the terms of this Agreement, including, but not necessarily limited to, employment and management of necessary personnel, sale and distribution of bus passes, collection and accounting of fares, and management of dispatch and call center operations.

TAPS shall provide a minimum of two buses, each with a minimum capacity of 28 seated riders. Each bus shall make four daily round-trips and include a minimum of two stop locations in CITY. Two of the daily round-trips shall begin and end between the morning hours of 5:00 a.m. and 9:00 a.m., and two of the daily round-trips shall begin and end between the afternoon-evening hours of 3:00 p.m. and 7:00 p.m.

CITY and TAPS may revise or expand the services described in this section by written agreement of both Parties.

### **Article III.**

Payment for Services: CITY agrees to pay TAPS for the PROJECT services described herein a sum not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000). Total payment for services shall be for reasonable and customary expenses including, but not necessarily limited to the administrative and operational services described herein.

No later than ten days after the end of each month of the term of this Agreement, TAPS will submit to CITY an invoice for an amount not to exceed \$13,888.89 (1/36 of the total amount of the Agreement). Each invoice shall identify the period for which the payment is being requested and the services, performed during that period. TAPS shall provide with each invoice a status report in accordance with Article VII. At the request of CITY, TAPS shall provide CITY with all supporting receipts and other documentation in connection with one or more specific invoices or status reports, or any other aspect of the PROJECT.

CITY shall pay TAPS within 30 days of receipt of each monthly invoice, unless supporting receipts and other documentation have been requested by CITY, in which case CITY shall pay the invoice as soon after receiving the supporting receipts and documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case CITY shall pay the undisputed amount of the invoice within 30 days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable.

Nothing contained in this Agreement shall require CITY to pay for any activities or expenditures that are not authorized, performed, or submitted in compliance with the terms of this Agreement, nor shall failure to withhold payment based on this provision constitute a waiver of any right that

CITY may have if TAPS is in default of the Agreement, including CITY's right to bring legal action for damages or for specific performance of this Agreement. Waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default.

#### **Article IV.**

Bus Amenities: Each bus providing services for the PROJECT shall include free Wi-Fi internet access and a media system consisting of an onboard DVD player connected to a flat panel television(s). CITY and TAPS shall share use of the media system during the hours of operation for each bus. "Shared use," as it is referred to in this Agreement, means an equal split of time between airing public announcements, commercial advertisements, and entertainment programming provided by or on behalf of CITY, and the airing of public announcements, commercial advertisements, and entertainment programming provided by or on behalf of TAPS, during the hours of operation. CITY is responsible for providing its desired content for airing on the media system to TAPS in a timely manner in order to incorporate and air said content.

#### **Article V.**

Station and Terminal Amenities: To the extent feasible, TAPS shall provide and install, at its sole cost, one or more digital, real-time trip countdown signs in the waiting area of each stop location in CITY in a manner to be agreed on by CITY and TAPS

#### **Article VI.**

Branding: TAPS shall provide and install, at its sole cost, a vinyl graphic wrap on select exterior surfaces of each of the buses used to provide the services for the PROJECT. CITY and TAPS shall share equally in co-branding opportunities presented by the vinyl graphic wrap.

TAPS shall also prepare, at its sole cost, co-branding and public outreach materials in support of the PROJECT. CITY and TAPS shall share equally in the use of the co-branding marketing campaign materials described herein including, but not necessarily limited to, use of flyers, posters, advertisements, and web marketing.

#### **Article VII.**

Fares: TAPS shall administer the sale and distribution of bus passes and the collection of fares for the PROJECT. PROJECT fares shall be determined by CITY at its sole discretion and all PROJECT revenue shall be the right and ownership of CITY.

No later than twelve days after the end of each month, TAPS shall make available to CITY PROJECT revenue collected from the previous month, including the number of PROJECT bus passes sold and fares collected.

#### **Article VIII.**

Performance: No later than 12 days after the end of each month, TAPS shall provide a

status report to CITY detailing PROJECT activities which occurred in the previous month. Each report shall identify for each service route the estimated or actual number of rides provided (measured by one-way trips), revenue vehicle hours, route lengths, and delays or problems in service and the applied resolution(s). TAPS shall also include any PROJECT milestones and applicable performance measures related to the actual or estimated number of jobs being accessed.

No later than 45 days after the termination of this Agreement, TAPS shall provide to CITY a closeout report documenting the final actual cost of providing transit services for the PROJECT, including final data for PROJECT activities and the performance measures more fully described in the first paragraph of this article.

#### **Article IX.**

Compliance: TAPS warrants and represents that it is able to and shall comply with all criteria and compliance terms under 49 U.S.C. § 5316 – Job Access/Reverse Commute Program – in connection with serving as the PROJECT provider. Failure by TAPS to comply with all grant assurances for the Job Access/Reverse Commute Program shall constitute a breach of this Agreement.

#### **Article X.**

Maintenance: TAPS shall maintain all vehicles providing services for the PROJECT according to vehicle manufacturers' recommendations and in compliance with all state and federal laws. TAPS shall promptly and properly perform all repairs necessary to keep such vehicles in good, safe, and legal operational condition and shall maintain records of all maintenance, repairs, and inspections performed on each vehicle.

#### **Article XI.**

Licensure: All vehicles providing services for the PROJECT shall be operated by an operator duly licensed by the State of Texas and in current possession of said license to operate vehicles of the type and size described in this Agreement.

TAPS shall ensure that all persons driving vehicles designed to transport 16 or more passengers (including the driver) have valid commercial driver's licenses, and shall further ensure compliance with rules for employees with commercial driver's licenses as specified in 49 CFR Part 382.

#### **Article XII.**

Insurance:

- A. TAPS shall, at its own expense, purchase, maintain, and keep in force during the term of this Agreement such insurance as set forth below. TAPS shall not commence work under this Agreement until TAPS has obtained all the insurance required under this Agreement and such insurance has been approved by CITY, nor shall TAPS allow any subcontractor

to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Agreement shall be written on an "occurrence" basis. The insurance requirements shall remain in effect throughout the term of this Agreement.

1. Workers' Compensation Insurance with statutory limits, with the policy endorsed to provide a waiver of subrogation in favor of CITY; and Employer's Liability coverage of not less than \$100,000 for each accident, \$100,000 per employee for disease, and \$500,000 aggregate limit for disease.
  2. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, insuring TAPS's liability for injury to or death of employees of CITY and third parties, extended to include liability for personal injury to and damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations aggregate, and \$1,000,000 general aggregate.
  3. Business Vehicle Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence, either directly or through an umbrella policy.
  4. Umbrella or Excess Liability insurance with minimum limits of \$1,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage (1, 2, and 3). The total limits required may be satisfied by any combination of primary, excess, or umbrella liability insurance provided all policies comply with all requirements..
- B. Each insurance policy to be furnished by TAPS shall include the following conditions by endorsement to the policy:
1. CITY and NCTCOG shall be named as additional insureds on all applicable coverage;
  2. A waiver of subrogation in favor of CITY, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
  3. The CITY, its officials, employees, and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
  4. For each policy, at least 30 days prior to the expiration, cancellation, non-renewal, or any other material change in coverage, a notice thereof shall be given to CITY by certified mail to:
    - (a) Tami Levens or her successor

Risk Manager  
City of McKinney  
222 North Tennessee Street  
McKinney, Texas 75070; and,

- (b) Robert Daake or his successor  
Executive Director, Development Services Division  
City of McKinney  
221 North Tennessee Street  
McKinney, Texas 75069

However, if the policy is canceled for nonpayment of premium, only ten days advance written notice to CITY is required;

TAPS shall also notify CITY within 24 hours after receipt of any notices of expiration, cancellation, non-renewal, or any other material change in coverage it receives from its insurer(s).

- C. All provisions of the Agreement concerning liability, duty, and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- D. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. Best Company or equivalent.
- E. The following are conditions precedent to acceptability of the insurance to be furnished by TAPS:
1. Any policy submitted shall not be subject to limitations, conditions, or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by TAPS. The CITY's decision(s) thereon shall be final.
  2. All policies are to be written through companies duly approved to transact the applicable class of insurance in the State of Texas.
  3. All liability policies required herein shall be written as "occurrence" basis coverage.
- F. TAPS agrees to the following:
1. TAPS hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CITY, it being the intention that the insurance policies shall protect all parties to this Agreement and be primary coverage for all losses covered by the policies.

2. Companies issuing the insurance policies and TAPS shall have no recourse against CITY for assessments for any deductible. Premiums and deductibles are the sole responsibility and risk of TAPS.
3. No special payments shall be made for any insurance that the TAPS and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

### **Article XIII.**

Non-appropriation: TAPS specifically recognizes that the continuation of this Agreement after the close of any given fiscal year of CITY, which fiscal year ends on September 30th of each year, shall be subject to approval by the McKinney City Council. TAPS recognizes that this Agreement cannot be an unfunded liability on CITY in violation of the Texas Constitution's unfunded debt prohibition applicable to home-rule cities. TAPS expressly agrees that this Agreement may be terminated by CITY, without any penalty or liability to CITY, in the event the City Council fails to approve or appropriate funds for any continuation period of this Agreement.

### **Article IV.**

Right to Inspect Records: TAPS agrees that CITY shall have access to and the right to examine all books, documents, papers, and other records of TAPS involving transactions relating to this Agreement. TAPS agrees that CITY shall have access during normal working hours to all necessary TAPS facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this article. CITY shall give TAPS at least 48- Businesshours' advance notice of intended audits.

### **Article XV.**

Breach/Opportunity to Cure: In the event either Party is in breach of its obligations herein, the Party not in breach shall provide the other Party at least 30-days' written notice and opportunity to cure said breach before exercising any rights it has under this Agreement based on the breach.

In the event TAPS fails to cure any breach within the 30-day cure period, CITY shall be entitled to recover all actual, special, and consequential damages it may suffer as a result of any such breach.

### **Article XVI.**

Termination: Either Party may terminate this Agreement at any time by providing 60-

days' written notice to the other Party. Each Party expressly reserves its rights to seek payment for any authorized work performed pursuant to this Agreement prior to the date of the provided notice of said termination.

In the event CITY terminates this Agreement, CITY shall not in any manner be liable for lost profits that might have been made by TAPS had TAPS completed the services required by this Agreement. The foregoing is cumulative and does not affect any right or remedy that CITY may have.

#### **Article XVII.**

Amendment: The Parties may amend or modify this Agreement only by written amendment signed by both Parties.

#### **Article XVIII.**

Notice: Unless otherwise instructed in writing, each Party shall send via certified mail, return receipt requested, all notices and required communications under this Agreement to the address of each Party's agent as follows:

City of McKinney, Texas  
Attention: Grants Administrator  
221 North Tennessee Street  
McKinney, Texas 75069

Texoma Area Paratransit System, Inc.  
Attention: Executive Director  
6104 Texoma Parkway  
Sherman, Texas 75090

Any notices and communications required to be given in writing by one Party to the other shall be considered as having been given to the receiving Party on the date the notice or communication is posted, faxed, or personally delivered by the sending Party.

#### **Article XIX.**

INDEMNIFICATION: TAPS DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF TAPS, AS WELL AS ANY NEGLIGENT OMISSION, ACT, OR ERROR OF TAPS, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, AND INVITEES, OR OTHER PERSONS FOR WHOM TAPS IS



LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, AND TAPS WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

CITY WILL MAKE ALL REASONABLE EFFORTS TO PROVIDE TAPS NOTICE OF CITY'S PERCEIVED RIGHT TO INDEMNIFICATION UNDER THIS PROVISION WITHIN THIRTY (30) DAYS AFTER THE CITY RECEIVES A NOTICE OF CLAIM FROM ANY PERSON OR PARTY ALLEGING A CLAIM OR CAUSE OF ACTION THAT FALLS WITHIN THE SCOPE OF THIS PROVISION.

#### **Article XX.**

Venue: The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement. This Agreement is performable in Grayson County, Texas, and Collin County, Texas, and that any legal action based on this Agreement shall be brought in either Grayson County, Texas or Collin County, Texas.

#### **Article XXI.**

Severability: The provisions in this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

#### **Article XXII.**

Remedies: No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without written consent of the Parties. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

#### **Article XXIII.**

Entire Agreement: This Agreement embodies the complete agreement of the Parties, superseding all oral or written previous and contemporaneous agreements between the Parties relating to matters herein.

#### **Article XXIV.**

Non-Waiver: One or more instances of forbearance by CITY of TAPS in the exercise of its rights herein shall in no way constitute a waiver thereof.

**Article XXV.**

Immunity: In the execution of this Agreement, neither Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of the Parties' respective governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**Article XXVI.**

Authority: Each of the parties represents and warrants to the other that they have the full power and authority to enter into and fulfill the obligations of this Agreement.

**Article XXVII.**

Assignment: This Agreement is not assignable except with the advanced written consent of the non-assigning party.

**Article XXVIII.**

No Third Party Beneficiary: For purposes of this Agreement, including its intended operation and effect: (1) the Agreement only affects matters or disputes between the Parties, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding that such third person or entity may be in contractual relationship with CITY or TAPS or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owed by them to either CITY or TAPS.

***CITY OF MCKINNEY***

By: \_\_\_\_\_

JASON GRAY  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
BLANCA I. GARCIA

Assistant City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TEXOMA AREA PARATRANSIT  
SYSTEM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Executed on behalf of TAPS  
pursuant to TAPS Board  
Resolution No. \_\_\_\_\_