

**SECOND AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT
BY AND BETWEEN CITY OF MCKINNEY, TEXAS AND
DENTON COUNTY TRANSPORTATION AUTHORITY FOR
LIMITED PUBLIC TRANSPORTATION SERVICES**

This Second Amendment to the Interlocal Cooperation Agreement for limited public transportation services (“Second Amendment”) is entered into by and between the City of McKinney (“City”) and the Denton County Transportation Authority (“DCTA”) (collectively the “Parties” or “parties” or individually referred to as the “Party” or “party”), and this Second Amendment shall be effective on the date it is executed by all Parties hereto (“Effective Date”).

R E C I T A L S

WHEREAS, the Parties entered into that certain Interlocal Cooperation Agreement for limited public transportation services for the McKinney Urban Transit District (“MUTD”) dated May 15, 2017, and thereafter amended the Agreement on September 28, 2017, to provide for the addition of Saturday service (referred to collectively as the “Agreement”); and

WHEREAS, pursuant to the Agreement, DCTA agreed to provide limited public transportation services to eligible passengers as established by the McKinney Urban Transit District Board (“Board”) to the McKinney Urbanized Area (“MUZA”) whose members include the cities of McKinney, Celina, Princeton, Prosper, Melissa, Lowry Crossing, and Collin County; and

WHEREAS, the Parties desire to amend the Agreement to add provisions required by the Federal Transit Administration (“FTA”) to comply with federal contracting guidelines; and

WHEREAS, the Parties also desire to amend the Agreement to clarify DCTA’s scope of services for two (2) 2014 Glaval Titan LF buses (“Buses”) for the purpose of public transportation services for the MUTD.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

Section 1. All of the above Recitals are found to be true and correct and are incorporated into the body of this Second Amendment by reference as if copied in their entirety herein.

Section 2. Unless specifically amended herein, all provisions of the Agreement shall continue in full force and effect.

Section 3. Paragraph 1.1 of Article I, entitled “Purpose of Trips; Eligibility.” of the Agreement, is hereby amended and replaced in its entirety with the following paragraph to read as follows:

“1.1 The purpose of this Agreement is to provide for the administration and operation of transit services program for eligible passengers as defined by the policies of the Board to destinations located within Collin County municipalities and other destinations as may be defined in the future by the MUTD Board (the "Transit Services"). DCTA shall deliver or cause to be delivered through third-parties, transportation to eligible passengers through the Transit Services as defined in Exhibit “A,” as previously amended, and as further modified, amended and supplemented by Exhibits “C” and “D” of this Agreement.”

Section 4. Paragraph 3.1 of Article III, entitled “Services,” of the Agreement is hereby amended and replaced in its entirety with the following paragraph to read as follows:

“3.1 DCTA shall provide the Transit Services as set forth in Exhibit “A,” as previously amended, and as further modified, amended and supplemented by Exhibits “C” and “D” of this Agreement.”

Section 5. Paragraph No. 3.2, entitled “Compliance with Americans with Disabilities and Other Laws,” of the Agreement is hereby amended and replaced in its entirety with the following paragraph to read as follows:

“3.2 Compliance with Americans with Disabilities and Other Laws. DCTA acknowledges and understands that it is responsible for complying with, and agrees to comply with, the requirements of the Americans with Disabilities Act, as amended, in providing the Transit Services. In addition, DCTA acknowledges and understands that it is responsible for complying with, and agrees to comply with, all other federal, state and local laws, statutes, ordinances, regulations and policies, as they exist now or may be amended in the future, applicable to DCTA and the Transit Services provided under this Agreement specifically including, but not limited to the provisions and compliance documentation identified in Exhibit “C” to this Agreement. DCTA shall ensure that its officers, employees, agents, contractors and other parties performing services for or on behalf of DCTA comply with all applicable laws, statutes, ordinances, regulations and policies.”

Section 6. Paragraph 4.1 of Article IV, entitled “Compensation and Fees,” of the Agreement is hereby amended and replaced in its entirety with the following paragraph to read as follows:

“4.1 DCTA shall be compensated as set forth in Exhibit “A,” as previously amended, and as further modified, amended and supplemented by Exhibits “C” and “D” of this Agreement.”

Section 7. The Agreement is hereby amended by adding a new Exhibit “C” entitled “Required FTA Clauses and Compliance Documentation” together with Attachment “A” to Exhibit “C,”

Attachment “A.1” to Exhibit “C,” Attachment “B” to Exhibit “C,” and Attachment “B.1” to Exhibit “C” to the Agreement, which Exhibit “C” and Attachment “A” to Exhibit “C,” Attachment “A.1” to Exhibit “C,” Attachment “B” to Exhibit “C,” and Attachment “B.1” to Exhibit “C” are attached hereto and incorporated herein by reference for all purposes allowed by law.

Section 8. The Agreement is hereby further amended by adding a new Exhibit “D” entitled “Scope of Services for Buses” to the Agreement, which Exhibit “D” is attached hereto and incorporated herein by reference for all purposes allowed by law.

Section 9. Any term not defined herein shall be deemed to have the same meaning ascribed to it under the Agreement.

Section 10. The Parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Agreement and acknowledge and agree that the Agreement remains in full force and effect except as specifically amended hereby.

Section 11. To the extent that any provision contained in this Second Amendment conflicts with the Agreement, the provision contained in this Second Amendment shall supersede such conflicting provisions contained in the Agreement.

Section 12. This Second Amendment and the Agreement contain the entire agreement of the Parties with respect to the matters contained herein. This Second Amendment may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

Section 13. The individuals executing this Second Amendment on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Second Amendment to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Second Amendment in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Second Amendment and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date.

Section 14. This Second Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Second Amendment. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

[Signatures begin on following page.]

EXECUTED to be effective on the date of the last Party to sign the Agreement, as indicated below.

CITY OF McKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**DENTON COUNTY TRANSPORTATION
AUTHORITY**

By: _____
JAMES C. CLINE, JR., P.E.
President

Date Signed: _____

APPROVED AS TO FORM:

PETER G. SMITH
General Counsel

Exhibit C
Required FTA Clauses and Compliance Documentation

For the purposes of this Exhibit C, only, the word “Purchaser” shall mean and refer to City of McKinney or City and the word “Contractor” shall mean and refer to Denton County Transportation Authority or DCTA.

1. No Obligation by the Federal Government

- a. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the contract and shall not be subject to any obligations or liabilities to the Purchaser Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements and Related Acts

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. And U.S. DOT regulations, “Program Fraud Civil Remedies, “49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining the underlying contract or the FTA assisted project for which the contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18

U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extend the Federal Government deems appropriate.

- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records

- a. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor also agrees, pursuant to 49 C.F.R 633.17 to provide the FTA Administrator or authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, define at 49 U.S.C. 5302 (a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, define at 49 U.S.C. 5302 (a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- c. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R 19.48, Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- d. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (define at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit or inspection.
- e. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- f. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39(i)(11).
- g. FTA does not require the inclusion of the above Access to Records requirements in subcontracts.

4. Federal Changes

- a. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of contract.

5. Civil Rights

- a. Nondiscrimination - - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 - The following equal employment opportunity requirements apply to the underlying contract: et seq 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R.

Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of FTA Terms

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchaser requests which would cause Purchaser to be in violation of the FTA terms and conditions.

7. Energy Conservation

- a. The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

8. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- b. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

9. Termination Clause

- a. If the Contractor refuses or fails to execute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated, nor shall the Contractor be charged with damages, under this clause if:

- i. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and
- ii. The contractor, within [10] days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

10. Debarment and Suspension

- a. Title 2 of the Code of Federal Regulations (CFR), Subtitle A, Part 180 [OMB Guidelines for Agencies on Government-wide Suspension and Debarment (Non-Procurement)] and under DOT supervision through Subtitle B, Part 1200 (Non-Procurement Debarment and Suspension) mandate that contractors and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract

or subcontract with is not excluded or disqualified. The contract resulting from this procurement is a covered transaction for purposes of 2 CFR Part 180. The Purchaser does this by checking the Excluded Parties List System and adding a clause or condition to the contract. As such, the contractor is also required to verify that none of its principals, affiliates, or sub-contractors are excluded or disqualified and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into. The Contractor and its subcontractors shall comply with special provision “Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions,” which is included as Attachment A.

11. Buy America

- a. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60% domestic content.

12. Provisions for Resolution of Disputes, Breaches, or other Litigation

- a. All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

13. Lobbying

- a. The Contractor of these funds is prohibited from using monies for lobbying purposes; the Contractor shall comply with the special provision “Lobbying,” which provision is included as Attachment “B” to this Exhibit “C” to the Agreement. The Contractor shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by subcontractors and included in subcontractor contracts, as applicable.

14. Clean Air Requirements

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

15. Clean Water Requirements

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16. Non-construction Employee Protection (Contact Work Hours and Safety Standards Act)

- a. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10

for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

- c. Withholding for unpaid wages and liquidated damages – The Purchaser shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- d. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

17. Transit Employee Protective Arrangements

The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- a. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 USC A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310 (a)(2),n and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5311 in Non-urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

18. Charter Service Operations

- a. The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

19. School Bus Operations

- a. Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the

transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

20. Drug and Alcohol Testing

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety sensitive function on the recipient's behalf (usually sub-recipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its sub-recipients and contractors comply with the rules. Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

- a. Drug and Alcohol Testing Option 1 - The contractor agrees to participate in the Purchaser's drug and alcohol program established in compliance with 49 CFR 653 and 654.
- b. Drug and Alcohol Testing Option 2 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the City of McKinney, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before the 15th day of January, 2018, and to submit the Management Information System (MIS) reports before the 15th day of January, 2019, to Anthony Cao, in his/her capacity as Transit Administrator of the City of McKinney, Texas, at 406 N. Tennessee, McKinney, Texas, 75069. To certify compliance the contractor shall use the "Substance Abuse Certifications: in the "Annual List of Certifications and

Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

- c. Drug and Alcohol Testing Option 3 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the City of McKinney to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before the ____ day of _____, 20____, and to submit the Management Information System (MIS) reports before the ____ day of _____, 20____, to _____, in his/her capacity as _____ of the City of McKinney, Texas, at _____, McKinney, Texas, _____. To certify compliance, the contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before the ____ day of _____, 20____, a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt _____ as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before the ____ day of _____, 20____, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: _____ (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

21. Disadvantaged Business Enterprise

- a. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises as defined in the 49 C.F.R., Part 26, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part which federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R., Part 26, exclusive of Subpart D, apply to this agreement. The Purchaser and its subcontractors agree to ensure that Disadvantaged Business Enterprises as defined in the 49 C.F.R., Part 26, Subpart A, have the maximum opportunity to participate in the performance on contracts and subcontracts financed in whole in part with federal funds provided under this agreement. In this regard, the Purchaser and its subcontractors shall take all necessary and reasonable steps in accordance with 49 C.F.R., Part 26, exclusive of Subpart D, to ensure that

Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The Purchaser and its subcontractors shall not discriminate on the basis of race, creed, color, national origin, sex, or disability, in the award and performance of contracts funded in whole or in part with federal funds.

22. Recycled Products

The Recycled Products requirements apply to all procurement actions involving items designated by the EPA in their “Comprehensive Procurement Guideline for Products Containing Recovered Materials”. The RCRA directs the procuring agency, for purchases over \$10,000 or more, to specify a competitive preference for products containing these recycled products. FTA has developed the following language:

- a. Recovered Materials – The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247

23. Americans with Disabilities Act

- a. The Contractor must comply with applicable requirements of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and US DOT/FTA implementing regulations.

Attachment A to Exhibit C Debarment Certification

Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarment and Suspension

Department of Transportation (DOT) Circular 2015.1 excludes entities and individuals that the federal government has either debarred or suspended from obtaining federal assistance funds through grants, cooperative agreements, or third-party contracts. The City of McKinney has elected to include the requirements of the DOT Circular 2015.1 in all third-party contracts for federal funds. A certification process has been established by 49 C.F.R. Part 29 as a means to ensure that debarred, suspended, or voluntarily, excluded persons do not participate in a federally assisted project. The inability of a person to provide the required certification will not necessarily result in a denial of participation in a covered transaction. A person that is unable to provide a positive certification as set forth in the Circular may submit a complete explanation attached to the certification. DOT will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or any explanation may disqualify that person from participating in the project.

Each potential third-party contractor, subcontractor under a third-party contract, subgrantee, or subrecipient must provide to the grantee or recipient of a cooperative agreement, as appropriate, a certification for a lower tier participant. In general, lower-level employees or procurements of less than \$25,000 will not be covered by the certification process procedures, except in the case of procurements with individuals that would have a critical influence on or substantive control over the project; nevertheless, a participant is not authorized to involve a lower-level employee or enter into a contract of less than \$25,000 with a person actually known by the participant to be debarred, suspended or voluntarily excluded.

The City of McKinney requires each potential contractor, subgrantee, or subrecipient for a third-party contract to complete the certification in Attachment A.1 for itself and its principals.

If an applicant for a grant or cooperative agreement or a potential contractor for a third-party contract knowingly enters into a lower-tier covered transaction such as a third-party contract or subcontract under a major third-party contract or subgrant with a person that is suspended, debarred, ineligible, or voluntarily excluded from participation in the project, in addition to other remedies available to the federal government, DOT may terminate the grant or subcontract, the underlying grant or cooperative agreement for cause or default.

Certification Information

This certification is to be used by contractors pursuant to 49 C.F.R. 29 when any of the following occur:

- Any transaction between the contractor and a person (other than a procurement contract for goods and services), regardless of type, under a primary covered transaction
- Any procurement contract for goods or services when the estimated cost is \$25,000 or more
- Any procurement contract for goods or services between the contractor and a person, regardless of the amount, under which the person will have a critical influence on or substantive control over that covered transaction. Such persons include principal investigators and providers of federally required audit services

A *procurement* transaction is the process of acquiring goods and services.

A *nonprocurement* transaction is the granting of financial assistance to entities to assist the grantor in meeting objectives that are mutually beneficial to the grantee or grantor.

A COPY OF THIS CERTIFICATION IS TO BE FURNISHED TO AUTHORIZED REPRESENTATIVES OF THE STATE OR THE U.S. DEPARTMENT OF TRANSPORTATION UPON REQUEST.

**Attachment A.1 to Exhibit C
Certification**

**Lower Tier Participation Debarment Certification
(Negotiated Contracts)**

_____, the undersigned Certifying Official,
being duly sworn or under penalty of perjury under the laws of the United States. Certifies that
neither _____, (the “Lower Tier Participant”) nor
its principals are presently:

- Debarred, suspended, proposed for debarment
- Declared ineligible
- Or voluntarily excluded from participation in this transaction by any federal department or agency

Where the above identified Lower Tier Participant is unable to certify to any of the above statements in this certification, the prospective Lower Tier Participant shall indicate below to whom the exceptions applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

Signature of Certifying Official

Name: _____

Title: _____

Date: _____

Attachment B to Exhibit C
Lobbying Certification

Restrictions on Lobbying

Section 319 of Public Law 101-121 prohibits recipients of federal contracts, grants, and loans exceeding \$100,000 at any tier under a federal contract from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Section 319 also requires each person who requests or receives a federal contract or grant in excess of \$100,000 to disclose lobbying.

No appropriated funds may be expended by the recipient of a federal contract, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any federal executive department or agency as well as any independent regulatory commission or government corporation, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

As a recipient of a federal grant exceeding \$100,000, the City of McKinney requires its subcontractors of that grant to file a certification, set for in Attachment B.1, that neither the agency nor its employees have made, or will make, any payment prohibited by the preceding paragraph.

Subcontractors are also required to file with the City of McKinney a disclosure form, set forth in Attachment B.1, if the subcontractor or its employees have made or have agreed to make any payment using non-appropriated funds (to include profits from any federal action), which would be prohibited if paid for with appropriated funds.

Attachment B.1 to Exhibit C

Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Signature

Name: _____

Title: _____

Agency: _____

Date: _____

Exhibit D

Scope of Services for Buses

Overall Intent

The intent of this agreement is for DCTA to provide or cause to be provided bus services utilizing Glaval Titan II LF buses for residents deemed eligible by the McKinney Urban Transit District (“MUTD”) through a contract with the City of McKinney acting on behalf of the MUTD. DCTA will provide bus service, maintenance and program compliance. This exhibit establishes a framework for the services to be provided by DCTA. Changes required to meet the needs of the program may be made by mutual written agreement of the DCTA President and the City Manager or their designee.

Bus Management

Overall Bus Management. DCTA will be responsible for the overall management and maintenance of the buses and the successful delivery of the services within this Scope of Services.

Budget Management. DCTA will track service costs to ensure the budgeted funds will be sustainable. Service cost reporting and all requested backup shall be made available to the City on a monthly basis. Service cost reporting for each monthly period shall be submitted with the monthly DCTA invoice.

Compliance Reporting. DCTA will support audit, TxDOT, FTA, and National Transit Database reporting and compliance requirements.

Customer Service. DCTA will provide a phone number and electronic access for the receipt of customer requests.

Support to City of McKinney and McKinney Urban Transit District. DCTA will continue to participate in reasonable meetings of the City of McKinney, MUTD, and regulatory agencies in order to ensure the success of the program.

Trip Dispatch. DCTA will provide dispatch services during normal operating hours.

Fare. If applicable, passengers will pay a fare established by the City for their trip.

Reporting. DCTA will provide reports relating to bus operations.

Compensation

Bus Management. Bus management will be compensated by a rate agreed upon by the City and DCTA on an annual basis.

Invoicing. DCTA will invoice the City of McKinney monthly for the provision of bus maintenance and transportation services as defined above.