

**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF FRISCO, TEXAS  
AND  
TEXOMA AREA PARATRANSIT SYSTEM, INCORPORATED  
FOR  
DEMAND-RESPONSE TRANSIT SERVICES**

The City of Frisco, Texas (“Frisco”), a home-rule municipality and local governmental entity, and Texoma Area Paratransit System, Incorporated (“TAPS”), a rural transit district and political subdivision of the State of Texas, hereby enter into this Interlocal Agreement (the “Agreement”) as of the Effective Date for the provision of demand-response transit services. Frisco and TAPS may be referred to jointly herein as the “Parties,” and individually as a “Party.”

**RECITALS**

**WHEREAS**, Frisco is a home-rule municipality and local governmental entity located within the State of Texas in the counties of Collin and Denton; and

**WHEREAS**, TAPS is a rural transit district established pursuant to the authority of Chapter 458 of the Texas Transportation Code, as amended, that provides transit services within the State of Texas in the counties of Clay, Collin, Cooke, Fannin, Grayson, Montague, and Wise; and

**WHEREAS**, Frisco seeks to provide demand-response transit services for eligible citizens who reside within Frisco’s incorporated limits (“Frisco Citizens”); and

**WHEREAS**, Frisco has requested demand-response transit services from TAPS, and TAPS agrees to provide the requested demand-response transit services pursuant to this Agreement; and

**WHEREAS**, the Parties acknowledge and find that it will increase the efficiency and effectiveness of their respective entities by entering into an interlocal cooperation agreement pursuant to Chapter 791 of the Texas Government Code, as amended, which is also known as the “Interlocal Cooperation Act”; and

**WHEREAS**, the Parties acknowledge and find that it will be in their best interests and in the interest of the public to cooperate in the provision of demand-response transit services as set forth in this Agreement.

**NOW, THEREFORE**, the Parties hereby make and enter into this Agreement for and in mutual consideration of the covenants and agreements set forth herein.

**Article 1.  
Purpose and Consideration**

1.1 Purpose: Pursuant to Section 791.011 of the Texas Government Code, as amended, Frisco and TAPS are local governmental entities and enter into the Agreement for the purpose of

providing services in which the Parties are mutually interested and with each Party performing services it would be authorized to perform individually.

1.2 Consideration: Frisco and TAPS agree there is good and valuable consideration for entering into this Agreement, the receipt and sufficiency of which is acknowledged.

## **Article 2. Term and Termination**

2.1 Term: This Agreement shall be effective for a period of twelve (12) months beginning on December 1, 2014 (the "Effective Date") and terminating on November 30, 2015 (the "Termination Date"), unless terminated earlier by either Frisco or TAPS in accordance with the terms of this Agreement ("Term").

2.2 Termination:

- a. This Agreement may be terminated prior to the Termination Date as follows:
  - (1) The Parties may terminate this Agreement by a written agreement signed by both Parties setting forth the agreed termination date;
  - (2) Either Party may terminate this Agreement with or without cause by providing written notice to the other Party not less than sixty (60) days prior to the desired termination date; or
  - (3) Either Party may terminate this Agreement on the thirty-first (31st) day after providing written notice to the other Party that the other Party is in breach of its obligations under this Agreement, which notice shall describe the alleged breach with reasonable particularity, and the Party receiving the notice has failed to cure the alleged breach.
- b. Section 2.2(a) does not alter Section 2.3 or Section 2.5.
- c. TAPS may seek payment for any services that it may provide prior to the effective date of a termination under Section 2.2(a).

2.3 Regulatory Change: If there is a material change in state or federal regulation(s) that affects or impairs either Party's ability to perform this Agreement, the Parties may renegotiate the terms of this Agreement so the affected Party can comply with the material change. The affected Party shall provide the other Party with written notice of the applicable material regulatory change within five (5) days after the affected Party determines the change will affect or impair its ability to perform this Agreement. Should a Party choose not to renegotiate, or should the material regulatory change make it impossible for the affected Party to perform this Agreement, that Party may terminate this Agreement by providing fourteen (14) days' written notice to the other Party. Termination shall be effective on the fourteenth (14th) day after the day on which the notice is provided. TAPS may seek payment for any services that it may provide prior to the effective date of a termination under this Section 2.3.

2.4 Rescinding Termination: A Party that provides written notice of termination pursuant to Section 2.2(a)(2), Section 2.2(a)(3), or Section 2.3 may rescind same by providing written notice to the other Party on or prior to the effective date of the termination, in which event this Agreement shall remain in full force and effect as if the notice of termination had never been given. A written agreement of termination pursuant to Section 2.2(a)(1) may be rescinded by written agreement signed by both Parties prior to the effective date of the termination, in which event this Agreement shall remain in full force and effect.

2.5 Suspension and Reinstatement: To the extent applicable, Frisco and TAPS acknowledge that TAPS is a governmental entity of the State of Texas and that, upon the inability of TAPS to obtain or appropriate finances to meet its obligations under this Agreement, TAPS shall have the right to suspend the Transit Services as of the effective date of such lack of fiscal funding. TAPS shall give written notice to Frisco as to any such failure of funding at the earliest possible time, but in any case not later than five (5) days after TAPS becomes knowledgeable of the lack of funding. Upon receipt of fiscal funding that TAPS determines is sufficient to meet its obligations under this Agreement, TAPS shall reinstate the transit services and provide written notice to Frisco at least five (5) days before reinstatement. In no event shall Frisco be liable for payment to TAPS during any period of suspension under this Section 2.5.

2.6 Force Majeure: Neither Frisco nor TAPS shall be deemed in violation of this Agreement if either is prevented from performing any of the obligations hereunder by reason of, for, or through strikes, act of terror, stoppage of labor, riot, fire, flood, storm, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any cause reasonably beyond the Party's control and not attributable to its neglect. In the event of such an occurrence, the time for performance of such obligations or duty shall be suspended until such time that such inability to perform, for which the Party is not responsible, or circumstance beyond its control, shall be removed. The Party claiming the suspension shall give written notice of such impediment or delay in performance to the other Party within two (2) days of the knowledge of such occurrence. Each Party shall make all reasonable efforts to mitigate the effects of any suspension.

2.7 Renewal: This terms of this Agreement may be renewed for an additional twelve (12) months after the Termination Date. The Parties may effect this renewal in a writing signed by the Parties. If renewed, the renewal period shall begin on December 1, 2015 and terminate on November 30, 2016 ("Renewal Term") and shall be on the same terms as set forth herein.

### **Article 3. Responsibilities and Payment**

3.1 TAPS Responsibilities: TAPS shall provide services related to the administration and operation of curb-to-curb demand-response transit services (the "Transit Services"), as follows:

- a. Approved Transit Services, Times of Service: TAPS shall provide the Transit Services in Collin and Denton Counties on every weekday (Monday through Friday) for the Term and the Renewal Term, if any, 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

does not currently offer the Transit Services on the weekends (Saturdays and/or Sundays) in these counties. If TAPS begins to offer Transit Services on the weekends (Saturdays or Sundays), in whole or in part, in these counties during the Term or the Renewal Term, if any, TAPS shall provide Frisco with those weekend Transit Services (Saturdays and Sundays) at no additional cost, pursuant to this Agreement. Provided that a Frisco Citizen schedules Transit Services with TAPS by 3 p.m. on any given day, TAPS shall provide Transit Services to the citizen on the next business day or, if the citizen requests a different date for Transit Services, on the date requested by the citizen.

- b. Transit Services in Plano: The following provisions shall exclusively govern those Transit Services involving the pickup or drop-off of riders to locations within the City of Plano, Texas ("Plano Trips"):
  - (1) TAPS shall provide Transit Services for Plano Trips only to those Frisco Citizens who are at least 60 years old and/or who are disabled. Frisco Citizens seeking Transit Services for Plano Trips shall be required to submit reasonable proof of their eligibility under this subsection to TAPS' ADA Compliance Officer.
  - (2) TAPS shall only be required to provide shuttle service to Frisco Citizens who have not established their eligibility for Transit Services under Section 3.1(b)(1). TAPS' shuttle service shall transport these Frisco Citizens from one (1) designated location within Frisco, as reasonably determined by TAPS, to the Dallas Area Rapid Transit's Parker Road Station, located at 2600 Archerwood St., Plano, Texas 75074.
  - (3) In no event shall TAPS be required to provide Transit Services or other services involving Plano Trips other than as described in Sections 3.1(b)(1) and 3.1(b)(2).
- c. Administrative and Operational Services: TAPS shall provide all administrative and operational services associated with the Transit Services including, but not limited to, employment and management of necessary and sufficient personnel, management of dispatch and call center operations reasonable and necessary to provide the Transit Services, and collection and accounting of fares.
- d. Vehicles: TAPS shall provide the number of vehicles as may be necessary to provide the Transit Services.
- e. Americans with Disabilities Act: TAPS acknowledges and understands that it is responsible for compliance with, and agrees to comply with, the requirements of the Americans with Disabilities Act, as amended, in providing the Transit Services.
- f. Fares: TAPS shall administer the sale and distribution of bus passes and the collection of fares for the Transit Services. Transit Services fares shall be determined by TAPS, with the input of Frisco. Transit Services revenues generated by the collection of Transit Services fares shall be owned by TAPS.

- g. Promotion: TAPS shall not actively promote the Transit Services through paid media advertising.

3.2 Frisco Responsibilities: Frisco agrees to reasonably cooperate with TAPS so that TAPS may effectuate and fulfill the terms of this Agreement. Frisco's responsibilities in this regard shall include:

- a. Payment for Services: Frisco agrees to pay TAPS for the Transit Services a sum of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00). This sum is a flat amount for the Term and includes all expenses related to providing the Transit Services including, but not necessarily limited to, associated administrative and operational services and expenses. This sum shall not be revised for any reason, including any changes in ridership volume, fuel costs, vehicle maintenance and replacement costs, labor costs or other changes to operational costs that TAPS may incur during the Term and/or the Renewal Term, if any.
- b. Current Revenues: To the extent applicable, Frisco and TAPS acknowledge that Frisco will make payment of the aforementioned sums from current revenues. Frisco further agrees to make all appropriations reasonable and necessary to effectuate the terms of, and its responsibilities under, this Agreement. However, the Parties recognize that the continuation of this Agreement after the close of any given fiscal year of Frisco, which closes on September 30 of each calendar year, shall be subject to approval by Frisco's City Council, which approval may be presumed if the City Council includes funding for the Transit Services in an adopted budget. This Agreement cannot be an unfunded liability of Frisco in violation of the Texas Constitution's unfunded debt prohibition applicable to home-rule cities. The Parties agree that this Agreement may be terminated by Frisco, without any penalty or liability to Frisco, except for monies owed TAPS for services it provided pursuant to this Agreement prior to the effective date of a termination under this Section 3.2(b), in the event that Frisco's City Council fails to approve or appropriate funds for any continuation period of this Agreement.

3.3 Payment for Services:

- a. TAPS: Not later than ten (10) days after the end of each calendar month of the Term and the Renewal Term, if any, TAPS will submit to Frisco an invoice for services provided in an amount not to exceed Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) (1/12 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. At Frisco's written request, TAPS shall provide Frisco with all supporting receipts or other supporting documentation in connection with one or more specific invoices.
- b. Frisco: Frisco shall pay TAPS within thirty (30) days of receipt of each monthly invoice, unless supporting receipts or other supporting documentation have been requested by Frisco, in which case Frisco shall pay the invoice as soon after receiving the supporting receipts or documentation as is reasonable; or unless a dispute arises

as to any charge(s) contained in the invoice, in which case Frisco shall pay the undisputed amount of the invoice within thirty (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. Frisco shall otherwise ensure that TAPS receives payment as set forth herein; otherwise, TAPS may suspend service until it receives payment of an overdue sum.

3.4 Insurance: During the Term, Frisco and TAPS shall maintain such insurance or participation in a self-insurance risk pool for governmental entities as each is required by law to maintain, or may otherwise deem reasonable and necessary, to effectuate the terms of this Agreement.

3.5 Compliance with Laws: Frisco and TAPS shall comply with all governmental laws, ordinances and regulations that may apply to each and that may apply to this Agreement.

**Article 4.  
Liability**

4.1 Liability: TAPS and Frisco shall be fully and solely responsible and liable for their own acts and omissions, including those of their respective officers, agents, representatives, employees or any other third parties for whom TAPS or Frisco is legally responsible, and for any and all damage to their respective vehicles, equipment and other property. TAPS and Frisco assume no such responsibility or liability. Neither TAPS nor Frisco shall have such responsibility or liability to the other party or the other party's officers, agents, representatives, employees or other persons. The provisions of this Article are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**Article 5.  
Miscellaneous**

5.1 Notice: All notices, authorizations and requests in connection with this Agreement shall be deemed provided on the day they are (i) deposited in the mail, sufficient postage prepaid, certified or registered, return receipt requested; (ii) delivered by courier; or (iii) sent by facsimile as indicated by a fax confirmation sheet; and sent to the address or facsimile number of each party's agent as follows:

If to Frisco:

City of Frisco, Texas  
Attn: Asst. to the City Manager  
6101 Frisco Square Blvd.  
Frisco, Texas 75034  
(972) 292-5028 (facsimile)

With copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.  
Attn: Ryan D. Pittman  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
(214) 544-4044 (facsimile)

If to TAPS:

Texoma Area Paratransit System, Inc.  
Attention: Executive Director

With copy to:

Darrell G-M Noga  
Cantey Hanger, LLP

3400 Texoma Parkway  
Sherman, Texas 75090  
(903) 893-4766 (facsimile)

1999 Bryan Street, Suite 3300  
Dallas, Texas 75201  
(214) 978-4150 (facsimile)

5.2 Recordkeeping and Right to Inspect Records: Frisco and TAPS shall have mutual access to, and the right to examine, all books, documents, papers, and other records of the other Party involving transactions relating to this Agreement. Frisco and TAPS shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this Section 5.2. Frisco and TAPS shall give the other Party advanced notice of at least forty-eight (48) business hours of intended audits.

5.3 Entire Agreement: This Agreement contains all representations, understandings, contracts and agreements between the Parties regarding the subject matter of this Agreement. This Agreement supersedes all oral or written previous and contemporaneous agreements, writings, understandings, representations, or contracts between the Parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not regard the subject matter of this Agreement.

5.4 Parties Bound: This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and their respective successors and assigns.

5.5 Relationship: It is understood and agreed that the relationship between the Parties described in this Agreement is contractual in nature between independent Parties and does not constitute, and shall not be construed, as creating a partnership or joint venture relationship between or among the Parties. 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 any individual or entity that is not a signatory hereto. TAPS shall maintain sole control, supervision and direction over its operations and the Transit Services provided under this Agreement. With regard to said operations and Transit Services, Frisco shall have no control, supervision or direction of the means, methods, sequences, procedures, and techniques utilized by TAPS.

5.6 No Waiver of Immunity: The Parties acknowledge that neither Party is an agent, servant, or employee of the other Party, and each Party agrees it is responsible for its own individual negligent acts or omissions or other tortious conduct, as well as such acts and deeds of its contractors, agents, representatives, and employees, during the performance of this Agreement without waiving any governmental immunity available to the Parties under Texas law and other applicable law, and without waiving any available defenses under Texas law and other applicable law. Further, in the execution of this Agreement, the Parties do not waive, and neither Party shall be deemed to have waived, any other immunity or defense that would otherwise be available to each Party as a local governmental entity and/or political subdivision of the State of Texas.

5.7 Amendment: The Parties may revise, amend or modify this Agreement only by written agreement signed by both Parties.

5.8 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.

5.9 Governing Law: The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement, without regard to conflict of law principles.

5.10 Place of Performance and Venue: This Agreement is performable in the State of Texas in the counties of Collin and Denton. Any legal action between the Parties based on this Agreement shall be brought in Collin County, Texas.

5.11 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.

5.12 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 Frisco 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 Frisco or TAPS.

5.13 Counterparts: This Agreement may be signed in counterparts, and each executed copy shall be deemed a counterpart original, with full force and effect and enforceable against the Parties executing same.

5.14 Authority to Enter Agreement: Each Party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

[Signatures on Following Page]



SIGNED AND AGREED this \_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF FRISCO, TEXAS

By: \_\_\_\_\_  
George Purefoy, City Manager

ATTEST

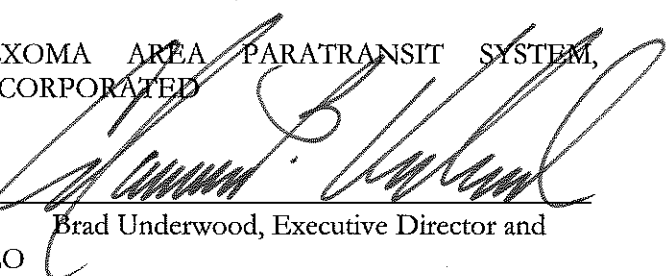
\_\_\_\_\_  
Jenny Page, City Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Abernathy, Roeder, Boyd & Joplin, P.C.  
Ryan D. Pittman, City Attorneys

SIGNED AND AGREED this \_\_\_\_ day of \_\_\_\_\_, 2014.

TEXOMA AREA PARATRANSIT SYSTEM,  
INCORPORATED

By:   
Brad Underwood, Executive Director and  
CEO

Executed on behalf of Texoma Area Paratransit  
System, Incorporated pursuant to Board Resolution  
No. \_\_\_\_

655926.3