

**AGREEMENT  
BETWEEN  
MY POSSIBILITIES  
AND  
TEXOMA AREA PARATRANSIT SYSTEM, INCORPORATED  
FOR  
COMMUTER SHUTTLE TRANSIT SERVICES**

My Possibilities, a non-profit corporation, 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 as of the Effective Date for the provision of commuter shuttle transit services. My Possibilities and TAPS may be referred to jointly herein as the "Parties," and individually as a "Party."

**RECITALS**

**WHEREAS**, My Possibilities is non-profit organization organized pursuant to section 501(c)(3) of the Internal Revenue Code, as amended, and located within Collin County, Texas; and

**WHEREAS**, on or about April 1, 2014, My Possibilities 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 JA/RC Project; 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, including commuter shuttle transit services, within the State of Texas in the counties of Clay, Collin, Cooke, Fannin, Grayson, Montague, and Wise; and

**WHEREAS**, My Possibilities seeks to implement a JA/RC Project to provide commuter shuttle transit services to and from its offices located at 1631 Dorchester Drive, Plano, Collin County, Texas 75075; and

**WHEREAS**, My Possibilities has requested commuter shuttle transit services from TAPS, and TAPS agrees to provide the requested commuter shuttle transit services pursuant to this Agreement, to support the JA/RC Project; and

**WHEREAS**, the Parties acknowledge and find that it will increase the efficiency and effectiveness of their respective entities by entering this Agreement, and will be in their best interests and the interest of the public to cooperate in the provision of commuter shuttle 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: My Possibilities and TAPS enter into this Agreement for the purpose of providing services in which the parties are mutually interested.

1.2 Consideration: My Possibilities 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 for a period of twelve (12) months beginning on October 27, 2014, ~~2014~~ (the "Effective Date") and terminating on October 26, 2015 (the "Termination Date"), unless terminated earlier by either My Possibilities or TAPS in accordance with the terms of this Agreement ("Term").

2.2 Termination: ~~This Agreement may be terminated prior to the Termination Date as follows:~~ nt

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, My Possibilities 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 My Possibilities 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 My Possibilities at least five (5) days before reinstatement. In no event shall My Possibilities be liable for payment to TAPS during any period of suspension under this Section 2.5.

2.6 Force Majeure: Neither My Possibilities 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 October 27, 2015 and terminate on October 26, 2016 ("Renewal Term").

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

3.1 TAPS Responsibilities: TAPS shall provide services related to the administration and operation of commuter shuttle transit services (the "Transit Services") as follows.



- a. Approved Route, Dates and Times of Service: TAPS shall provide the Transit Services over the route that the Parties have approved (the "Approved Route") described in Exhibit A, attached hereto and incorporated by reference herein (the "Operation Plan"). The Transit Services shall be conducted substantially in conformance with the stop times, stop locations, and days of service set forth in the Operation Plan. The Parties may from time to time agree in writing to amend or revise the Operation Plan, as needed to address ridership patterns and levels.
- b. Administrative and Operational Services: TAPS shall provide all administrative and operational services for the Transit Services, including employment and management of necessary and sufficient personnel, registration of riders, and preventive maintenance of the vehicles.
- c. 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.
- d. Compliance: TAPS agrees that it will comply with and follow those guidelines that apply to My Possibilities in My Possibilities' agreement with NCTCOG, if any, wherein My Possibilities was approved to receive federal grant funding for the implementation of the JA/RC Project.
- e. Monthly Status Report: Not later than the tenth (10th) day of each calendar month, TAPS shall provide a status report to My Possibilities, in a format acceptable for reporting JA/RC Grant requirements to NCTCOG, stating Transit Services activities which occurred in the previous calendar month (the "Monthly Status Report"). Each Monthly Status Report shall set forth for each route approved as part of the Operation Plan at least the following information, as well as any other information required by NCTCOG for JA/RC Grant compliance:
- (a) the estimated or actual number of rides provided (measured by one-way trips);
  - (b) total revenue vehicle hours;
  - (c) the number of buses used during each day of operation;
  - (d) route lengths; and
  - (e) a description of delays or problems in providing Transit Services during the period covered by the Monthly Status Report (including, but not limited to, the date and approximate time of the delay or problem, the approximate length of delay, a description of the cause for the delay or problem (if known), and the applied resolution(s)); and





(f) Any JA/RC Project milestones and applicable performance measures related to the actual or estimated number of jobs being accessed.

f. Closeout Report: No later than sixty (60) days after any termination of this Agreement, TAPS shall provide to My Possibilities a closeout report documenting the final actual cost of providing the Transit Services for the JA/RC Project, including final data for JA/RC Project activities and the performance measures more fully described in the Section 3.1(h).

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

a. Payment for Services: My Possibilities agrees to pay TAPS for the Transit Services a sum not to exceed Forty-Eight Thousand Forty-Eight and 00/100 Dollars (\$48,048.00). Total payment for services shall be for reasonable and customary expenses related to providing the Transit Services including, but not necessarily limited to, associated administrative and operational services.

b. Vehicles: My Possibilities shall acquire and provide two shuttle buses so that TAPS may provide the Transit Services in accordance with the Operation Plan. The acquisition and provision of these buses will be in cooperation or partnership with NCTCOG.

c. Fares: My Possibilities shall handle the collection of fares for the Transit Services provided pursuant to the JA/RC Project. Transit Service fares shall be determined by My Possibilities, with the input of TAPS. Transit Service revenues generated by the collection of Transit Service fares shall be owned by and paid over to My Possibilities.

3.3 Compliance: My Possibilities and TAPS acknowledge that the Transit Services will be funded by federal grant money under the Job Access/Reverse Commute Program, 49 U.S.C. § 5316. My Possibilities and TAPS further agree to comply with any terms and conditions of the Job Access/Reverse Commute Program to the extent such terms and conditions apply to the Parties' responsibilities under this Agreement.

3.4 Terms of Payment for Services:

a. TAPS: Not later than ten (10) days after the end of each calendar month of the term of this Agreement, TAPS will submit to My Possibilities an invoice for an amount not to exceed \$4,004.00 ((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. TAPS shall provide with each invoice a status report in accordance with Section 3.1(e). At My Possibilities' written request, TAPS shall provide My Possibilities with all supporting documentation in connection with one



or more specific invoices or status reports, or any other aspect of the Transit Services.

- b. My Possibilities: My Possibilities shall pay TAPS on the thirtieth (30th) day of each month, unless supporting documentation has been requested by My Possibilities, in which case My Possibilities shall pay the invoice as soon after receiving the supporting documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case My Possibilities shall pay the undisputed amount of the invoice on the thirtieth (30th) day of each month and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. My Possibilities shall otherwise ensure that TAPS receives payment as set forth herein; otherwise, TAPS may suspend service of the route until it receives payment of an overdue sum.

**Article 4.**  
**Miscellaneous**

4.1 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 My Possibilities:	_____	With a copy to: <i>MD</i>
My Possibilities	_____	<u>Michael Kelly</u>
Attn: Executive Director	_____	<u>Basden &amp; Ivie, PC</u>
1631 Dorchester Dr.	_____	<u>17300 Dallas Parkway, Ste. 3160</u>
Plano, Texas 75075	_____	<u>Dallas, Texas 75248</u>
(____) _____ (facsimile)	_____	<u>(972) 248-9405 (facsimile)</u>

If to TAPS:	_____	With copy to:
Texoma Area Paratransit System, Inc.	_____	Darrell G-M Noga
Attention: Executive Director	_____	Cantey Hanger, LLP
3400 Texoma Parkway	_____	1999 Bryan Street, Suite 3300
Sherman, Texas 75090	_____	Dallas, Texas 75201
(903) 893-4766 (facsimile)	_____	(214) 978-4150 (facsimile)

4.2 Recordkeeping and Right to Inspect Records: My Possibilities 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. My Possibilities 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 4.2. My Possibilities and TAPS shall give the other Party advanced notice of at least forty-eight (48) business hours of intended audits.



4.3 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.

4.4 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.

4.5 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, My Possibilities shall have no control, supervision or direction of the means, methods, sequences, procedures, and techniques utilized by TAPS.

4.6 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 TAPS waiving any governmental immunity available to it under Texas law and other applicable law, and without TAPS waiving any available defenses under Texas law and other applicable law. Further, in the execution of this Agreement, TAPS does not waive, and TAPS shall not be deemed to have waived, any other immunity or defense that would otherwise be available to TAPS as a local governmental entity and political subdivision of the State of Texas.

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

4.8 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.

4.9 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.

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



4.11 Special and Consequential Damages: In no event, whether as a result of breach of contract, warranty, tort (including negligence or infringement), strict liability or otherwise, shall either Party be liable to the other Party for any special, consequential, incidental, indirect or exemplary damages including, but not limited to, loss of profits or revenues, cost of capital, cost of substitute goods, facilities, services or downtime costs.

4.12 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.

4.13 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 My Possibilities 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 My Possibilities or TAPS.

4.14 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.

4.15 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.

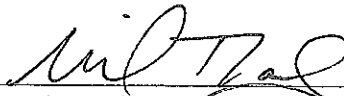
[Signatures on Following Page]





SIGNED AND AGREED this 12<sup>th</sup> day of December, 2014.

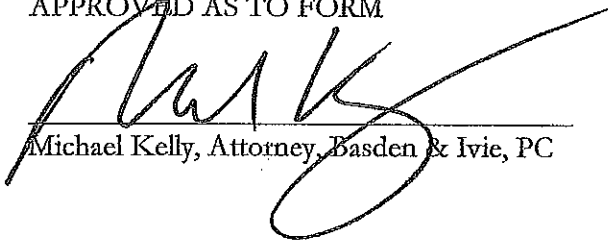
MY POSSIBILITIES

By:   
Michael Thomas, Executive Director

ATTEST

  
Elizabeth Romo, Development Director

APPROVED AS TO FORM

  
Michael Kelly, Attorney, Basden & Ivie, PC

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, Inc. pursuant to Board Resolution No. \_\_\_\_\_

