

THE STATE OF TEXAS }

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COUNTY OF DALLAS }

INTERLOCAL PUBLIC TRANSIT SERVICE AGREEMENT

THIS AGREEMENT, (“Agreement”) by and between Dallas Area Rapid Transit Mobility Service, LGC (“LGC”), a Texas local government corporation organized and existing pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code and the City of Allen, Texas (hereafter referred to as “CITY”) a Texas municipal corporation whose address is 305 Century Parkway Allen, Texas 75013 (collectively, referred to as the “the Parties” or individually, as a “Party”).

WITNESSETH:

WHEREAS, the LGC began a demand responsive transportation program within Collin County that is available to residents of CITY who are 65 years of age or older or who have a disability (hereafter referred to as the “Service”); and

WHEREAS, CITY has provided funding to support the operation of this Service since 2016 and has determined that the Service is beneficial to the residents of the CITY; and

WHEREAS, CITY may modify the amount that CITY residents pay for the Service through this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Term and Termination

1.1. The term of this Agreement shall begin on the 1st day of October, 2019, and terminate at midnight on the 30th day of September, 2022, unless earlier terminated as herein provided (“the Term”).

1.2. In addition to any other termination provision contained herein, either Party shall have the right to terminate this Agreement by giving the other Party one hundred twenty (120) calendar days advance written notice of termination.

1.3. In the event that either Party shall fail to perform any of their respective material obligations under this Agreement, the non-defaulting Party shall have the right to terminate this Agreement if the defaulting Party has not cured any such failure to perform within thirty (30) calendar days following written notice by non-defaulting Party of such failure.

1.4. In the event that CITY fails to make any payment required by Section 4.4 of this Agreement, LGC shall have the option, at its sole discretion, to suspend such Service within CITY

or require that residents of the CITY pay a higher fare or percentage share of taxi vouchers for the Service. The suspension or revised user fees may continue until payments from the CITY resume.

2. Service Description

2.1. Service includes weekday contract demand-responsive service as operated by the LGC contractor. During the Term of this Agreement, the Service may be replaced with a transportation assistance program to provide accessible public transportation services for the eligible residents of Collin County, including CITY.

2.2. Except as may be limited in accordance with Section 1.4, Service shall be available to residents of Collin County who are 65 years of age or older or who have a disability and who have no access to alternative private or public transportation.

2.3. Eligible users of Service provided under this Agreement will be required to pay a fare per trip and/or percentage share of the subsidy value provided for the Service.

2.4. Eligible users of Service shall be required to schedule ride requests and rides will be available on-demand between the hours of 5:00 am and 11:00 pm on Monday through Sunday.

2.5. Eligible users of Service who fail to cancel a previously scheduled or regularly scheduled trip at least one hour in advance of the pickup time shall pay a fee in an amount as required by the LGC.

3. LGC Duties and Responsibilities

3.1. LGC may cause a contractor to provide the Service, including vehicles, drivers, supervisors, call center and scheduling staff, and any other staff or services required to provide the Service;

3.2. LGC may cause its contractor to clean, fuel and otherwise maintain any vehicles needed to provide a demand-responsive service.

3.3. LGC may cause a taxi or other transportation service to provide voucher management services, technology, software or other services, supplies, or equipment necessary to operate a user transportation assistance program.

3.4. LGC shall be responsible for the call center, customer information, complaint resolution, data collection, accounting, passenger ridership, invoicing, reconciliation of all invoices, and payment of contractors and suppliers.

3.5. Performance Measures and Reporting. LGC shall provide CITY with information regarding ridership, on-time performance of the Service, costs, and number of users, within thirty (30) days of receipt of such information from the contract provider.

3.6. LGC shall convene periodic meetings with CITY staff to discuss the Service.

3.7. LGC shall cause to be prepared planning, engineering, and financial planning services and data required by the North Central Texas Council of Governments (“NCTCOG”). NCTCOG is responsible for funding and managing the development of the Collin County Transit Service and Financial Plan, which will include CITY. This NCTCOG plan will meet the CITY obligations as required by Policy III.07 to develop a 20-year transit service and financial plan during the Term of this Agreement. Following the completion of the transit service and financial plan by NCTCOG, the CITY shall develop a plan for CITY membership in DART.

3.8. LGC will distribute to CITY and analyze any available surveys of the Service. CITY may provide input regarding the design of the survey instruments, if any are used.

4. CITY Duties and Responsibilities

4.1. CITY shall allow the LGC to operate the Service on CITY streets including contract demand-responsive service or taxi services.

4.2. CITY shall assist in marketing and communications of Service to residents, using the CITY website, resident newsletters, or other methods of communication controlled by the CITY to inform residents about the Service.

4.3. CITY shall cooperate with the NCTCOG, NCTCOG consultants, and LGC to prepare a Collin County Service and Financial Plan, as required by DART Policy III.07. Cooperation shall include, by example and not limitation, participating on policy, stakeholder and technical advisory committees, providing information about CITY economic development, demographic projections, financial projections, and reviewing and commenting on the Collin County Service Plan as required under DART Policy III.07. The cost of the planning prepared by NCTCOG will be the responsibility of NCTCOG.

4.4. Commencing September 1, 2019, and on the first day of every month thereafter during the Term hereof, CITY shall pay LGC CITY’s share of the Service as shown in Exhibit A to the following address:

Dallas Area Rapid Transit
Accounts Receivable
P.O. Box 840009
Dallas, TX 75284-0009

The final monthly payment of each year will be adjusted to reflect the annual total not-to-exceed amount shown in Exhibit A. Any payments made under this Agreement shall be made from revenues currently available to the Parties. The provisions of Chapter 2251 of the Texas Government Code shall apply to payments under this Agreement. The amount due hereunder is subject to change in the event that CITY requests a change in the program or LGC grant funds are depleted.

5. Joint Marketing and Communications. The Parties acknowledge that marketing and communications regarding the Service may require the use of marks and logos that are owned by each of the Parties. The Parties agree to such limited use of their individually owned or registered marks, logos, and trade names in connection with providing and promoting the Service under this Agreement. Any right to use such marks and logos shall terminate upon the termination or expiration of this Agreement.

6. Force Majeure. LGC shall at all times use reasonable commercial efforts to provide or cause the Service to be provided continuously, however, LGC does not warrant or guarantee uninterrupted Service and shall not be liable for any special, direct or consequential damages relating to or arising from an interruption in the Service. The obligations of the Parties to perform under this Agreement shall be suspended to the extent that either or both are unable to perform as a result of causes beyond the respective Party's reasonable control and without such Party's fault or negligence, including but not limited to, equipment breakdown, accidents, acts of nature and governmental action. In such event, the affected Party shall use reasonable efforts to eliminate the cause as quickly as possible.

7. Planning. On July 1, 2022, LGC shall provide a projected pricing schedule for continuation of the Service beyond the Term. CITY shall notify DART in the event that, prior to July 1, 2022, CITY has determined not to continue funding for the Service after September 30, 2022.

8. Audit and Retention of Records. Any Party shall have the right to request an audit of another Party's records related to the operation of the Service. The Parties shall retain adequate records for auditing purposes for a period of three years after final payment hereunder.

9. Liability. To the extent required by law, each party agrees to be responsible for any claims, negligence claims, demands or lawsuits arising out of its own negligence. Nothing contained in this Agreement shall be construed as an express or implied waiver by any party of any legal defenses including but not limited to the defense of governmental immunity. The Parties acknowledge that the Parties are prohibited by the Texas Constitution from indemnifying a third party. Nothing in this Agreement shall be construed to give rights to any person or entity that is not a party to this Agreement. A Party may be liable for reasonable attorney fees, court costs, and other reasonable expenses incurred if the other Party prevails in any legal action obtained to enforce its rights under this Agreement and a judgment for legal fees is obtained.

10. Insurance. LGC shall provide or cause its contractor providing the Service to obtain and maintain during the Term the following insurance policies and coverage:

10.1. Insurance Policy for: (i) a commercial general liability policy of insurance for bodily injury, death and property damage including the property of CITY, its officers, contractors, agents and employees (collectively referred to as the "CITY") insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$1,000,000.00 aggregate including products and completed operations coverage of \$1,000,000.00. This policy shall be primary to any policy or

policies carried by or available to CITY; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by LGC or its contractor (as applicable), its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of LGC contractor's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00.

10.2. All insurance shall be endorsed to provide the following provisions: (1) name CITY, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for a waiver of subrogation against CITY for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to CITY that indicates the insurance company will provide to the CITY at least a thirty (30) day prior written notice for cancellation, and/or non-renewal of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the LGC shall provide written notice to CITY of any material changes to any of the policies of insurance.

10.3. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by CITY.

10.4. A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to CITY prior to commencement of services.

11. Miscellaneous Provisions.

11.1. Notices. Any notice by any Party shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by United States mail, certified, return receipt requested, in a postage paid envelope addressed to the Parties as set out below:

LGC:

c/o DALLAS AREA RAPID TRANSIT
P.O. Box 660163
Dallas, Texas 75266-7213
Attention: Todd Plesko
Vice President, Planning and Development

CITY:

City of Allen
305 Century Parkway
Allen, Texas 75013
Attention:
Assistant City Manager

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

A Party may designate another address by giving notice thereof to the other Parties.

11.2. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. There shall be no third-party beneficiaries of this Agreement.

11.3. Fiscal Funding. CITY is a political subdivision of the State of Texas (or creation thereof). CITY shall have the right, upon the failure of the governing body of CITY to appropriate sufficient finances to fund of this Agreement, to terminate this Agreement as of the effective date of such lack of fiscal funding. When exercising this right, CITY shall give notice to LGC of any such failure of funding at the earliest possible time.

11.4. Construction and Drafting. The paragraph headings in this Agreement are intended for convenience only and shall not be taken into consideration in the construction or interpretation of this Agreement. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders. Both Parties have participated in the drafting hereof and accordingly no party shall be given credit therefor in the interpretation of this Agreement.

11.5. Partial Invalidity. Any portion of this Agreement being declared by law to be invalid shall not invalidate the remaining provisions which shall remain in full force and effect.

11.6. Merger and Amendment. This instrument constitutes the entire agreement of the Parties with respect to matters contemplated herein, and it may be modified or amended only in writing, signed by all Parties hereto and in accordance with the terms hereof.

11.7. No Partnerships or Joint Enterprise. It is mutually understood and agreed that this Agreement is intended by the Parties to establish only an independent contractual relationship and is not intended to create a partnership or joint venture between the Parties.

11.8. Use of Contractors. Nothing in this Agreement shall prevent a Party from using a contractor or agent to perform the duties and responsibilities contemplated by this Agreement.

11.9. Exhibits and Attachments. The exhibits attached to this Agreement are incorporated by reference as if written word for word herein. In the event of conflict between the exhibits and this Agreement, the terms of this Agreement shall prevail.

11.10. Assignment. No Party may assign its rights and obligations or either under this Agreement, in whole or in part, without first obtaining the prior written consent of the other Party, which consent may be withheld for any reason. No assignee or successor may further assign, in whole or in part, its rights and obligations without prior written consent of the other Party to this Agreement at the time of further assignment.

11.11. Incorporation of Recitations. The recitations and “whereas” provisions of this Agreement are incorporated herein as part of this Agreement for all purposes.

11.12. DART Board Policy III.07. The Provisions of the DART Board Policy are incorporated herein and binding on the Parties hereto. Any renewal of this Agreement must be approved by each Party and the DART Board of Directors.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple originals effective as of the date last signed by a Party.

DALLAS AREA RAPID TRANSIT MOBILITY SERVICE, LGC

By: _____

Date: _____

CITY OF ALLEN

By: _____

Date: _____

City Manager

Exhibit A

Exhibit A	FY20 Monthly Amount	FY21 Monthly Amount	FY22 Monthly Amount	FY20 Annual Not to Exceed Amount	FY21 Annual Not to Exceed Amount	FY22 Annual Not To Exceed Amount
Allen	\$ 12,625.00	\$ 13,003.75	\$ 13,393.83	\$ 151,500.00	\$ 156,045.00	\$ 160,726.00