

STATE OF TEXAS

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COUNTY OF DENTON

**FIRST AMENDED AND RESTATED
INTERLOCAL COOPERATION
AGREEMENT**

This First Amended and Restated Interlocal Cooperation Agreement (“Agreement”) is made by and between Denton County Transportation Authority (“DCTA”) and the City of Coppell, Texas (“Coppell”), (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS

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

WHEREAS, DCTA is a coordinated county transportation authority created under Chapter 460 of the Texas Transportation Code; and

WHEREAS, the Parties previously entered into that certain Interlocal Cooperation Agreement dated September 24, 2019, for purposes of providing transportation services to meet the mobility needs of Coppell businesses and residents (the "Original Agreement");

WHEREAS, the Parties have agreed on the terms and conditions for DCTA to deploy first/last mile workforce mobility solutions within the city limits of Coppell and between transit stations located outside of the city limits, as set forth in Section 3.1(b) of this Agreement, through use of a mobility provider; and

WHEREAS, due to the success of the pilot program and to incorporate DCTA’s Administrative Fee Policy established on April 23, 2020, the Parties desire to amend the Original Agreement to extend the Term for one (1) year, beginning October 1, 2020 and continuing through September 30, 2021,

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act (“Act”), Chapter 791, Texas Government Code; and

WHEREAS, DCTA and Coppell are units of local government that have the statutory authority under the Act to perform the services set forth in this Agreement; and

WHEREAS, pursuant to Chapter 460 of the Texas Transportation Code, DCTA is authorized to enter into this Agreement with Coppell to provide transportation services; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth in this Agreement, and other valuable consideration, the receipts and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I Purpose

1.1 The purpose of this Agreement is to provide for the administration and operation of mobility services to improve access to jobs within the city limits of Coppell for trips originating in a defined geofence to destinations located in the geofence and to/from designated transit stops as defined in section 3.1(b). Mobility services may include DCTA directly providing transportation to employees and residents in Coppell or through third-party service providers that directly contract with DCTA, including but not limited to taxi providers and transportation network companies (TNCs).

1.2 DCTA may execute a task order for a period not to exceed twelve (12) months with a contracted mobility provider (e.g. Lyft) to deploy first/last mile mobility services in the city limits of Coppell and as defined in section 3.1(b). The hours and days of operation shall be agreed upon by the Parties and adjusted based on ridership.

1.3 DCTA has entered into an appropriate mobility services provider agreement to provide their services herein; and, DCTA shall receive assurances under such agreement regarding the services provided herein; and, Coppell's sole responsibility shall be to fund such services.

Article II Term

2.1 Initial Term. The Term of this Agreement shall begin on October 1, 2020 and continue for the period ending on September 30, 2021 unless sooner terminated as provided herein (the "Initial Term").

2.2 Termination. Either Party may terminate this Agreement, with or without cause, by giving sixty (60) days prior written notice to the other Party. After the Initial Term, the required notice to terminate shall be at least ninety (90) days.

Article III Services

3.1 DCTA shall provide the Mobility Services as follows:

- (a) Beginning on October 1, 2019, DCTA shall deliver the Mobility Services during the hours and days of operation as mutually agreed upon by the Parties and based on ridership.
- (b) Mobility services will initially be provided generally within the city limits to serve the workforce population and to and from designated transit stops and stations that fall outside the Coppell city limits. Specific parameters will be determined through the Task Order process and in coordination with DCTA and Coppell. Location of mobility services and geofence boundaries

may be amended in writing as mutually agreed upon by the Parties and based on ridership trends.

- (c) The Parties shall work together to analyze and review ongoing service levels and alternative Mobility Service delivery methods and cost estimates to meet the long-term public transit needs of Coppell.
- (d) During the term of this Agreement, DCTA shall provide all administrative and operational services associated with the Mobility Services including, but not limited to, employment and management of necessary and sufficient personnel, contract management of third-party providers, billing, customer service, program management, and data reporting and analytics.
- (e) During the Term of this Agreement, Coppell shall be responsible for all primary marketing and outreach efforts, with ancillary support provided by DCTA.

Article IV Compensation and Fees

4.1 DCTA Compensation. DCTA shall be reimbursed for one-hundred percent (100%) of all costs for services invoiced from the mobility provider associated with this agreement, and an administrative fee per the schedule in Exhibit 1. Total costs shall not exceed one-hundred thousand dollars (\$50,000) in a twelve (12) month period, unless amended as mutually agreed upon in writing by the parties.

4.2 Invoicing. On or before the last day of each calendar month during the Term of this Agreement, DCTA shall prepare a written invoice to Coppell including number of trips, operating expenses, and administrative management fees for the services provided in the previous month.

4.3 Payment. Coppell shall pay DCTA within thirty (30) days of the receipt of each monthly invoice.

4.4 Current Revenues. To the extent applicable, Coppell and DCTA acknowledge that Coppell shall make payment of the aforementioned sums from current revenues. Coppell 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 Coppell, September 30 of each calendar year, shall be subject to approval by Coppell's City Council. This approval may be presumed if the City Council includes funding for the Mobility Services in an adopted budget. This Agreement cannot be an unfunded liability of Coppell 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 Coppell with notice as provided herein, without any penalty or liability to Coppell except for monies owed DCTA for Mobility Services provided pursuant to this Agreement and for

any costs incurred for demobilization, in the event Coppell's City Council fails to approve or appropriate funds for any continuation of this Agreement.

4.5 Fares. Customers utilizing the first/last mile service will pay a fare that shall be subsidized by Coppell. The subsidy and amount paid by the passenger shall be mutually agreed upon by DCTA and Coppell.

4.6 Additional Services. In an effort to provide the best Mobility Services possible, DCTA may work with additional third-party service providers to enhance service delivery to Coppell. At all times, DCTA shall be responsible for contracting directly with the third-parties and shall be responsible for ensuring the overall customer experience and complying with this Agreement. Furthermore, DCTA shall be responsible for managing the cost of such service providers within the mutually agreed funding authorizations established and approved between DCTA and Coppell.

Article V Dispute Resolution

The Parties agree to make a good faith effort to resolve through informal discussions any disagreement or other dispute between them in connection with this Agreement (a "Dispute"). If a Dispute cannot be resolved through informal discussions, before seeking an alternative remedy, either Party must submit a written complaint to the other Party setting out the basis of the complaint and a proposed resolution to the Dispute. The Party receiving the complaint must respond in writing within twenty-one (21) days after receipt of the complaint, by accepting the proposed resolution, rejecting the proposed resolution, or proposing an alternative resolution to the Dispute. If the proposed resolution is rejected, the Parties may seek alternative remedies as they deem appropriate. If an alternative resolution is proposed, the recipient of that alternative proposal shall, within twenty-one (21) days after receipt, either accept the alternative or reject it. If it is rejected, the Parties may seek alternative remedies as they deem appropriate. Subject to the procedure outlined in this section, both Parties will have all legal remedies allowed to them by applicable law. The provisions of this section are strictly limited in scope to serve as a prerequisite to the enforcement of remedies under this Agreement. Failure by either Party to raise a Dispute through this process shall not constitute waiver or acceptance of an alleged violation of this Agreement.

Article VI Insurance

During the Term of this Agreement, the mobility provider shall maintain and enforce during the Term, at the mobility provider's own expense, at least the following coverages:

- (a) Workers' Compensation Insurance in accordance with state statutory laws, including Employers' Liability with minimum limits of \$1,000,000 each Accident;
- (b) Commercial General Liability Insurance including, but not limited to, product and completed operations, personal and advertising injury and contractual liability

coverage with minimum limits of \$1,000,000 Each Occurrence; \$2,000,000 General Aggregate; and

- (c) Commercial Auto Liability Insurance including a minimum combined single limit of \$1,000,000 each accident and Uninsured/Underinsured motorist coverage with a minimum combined single limit of \$1,000,000.

The mobility provider will include Coppell as an additional insured via blanket endorsement under the mobility provider's commercial general liability insurance policy. All policies maintained shall be written as primary policies, not contributing with and not supplemental to coverage Coppell may carry and will contain a waiver of subrogation against Coppell and its insurance carrier(s) with respect to all obligations assumed by the mobility provider under this Agreement. The fact that the mobility provider has obtained the insurance required hereunder shall in no manner lessen or otherwise affect such mobility provider's other obligations or liabilities set forth in this Agreement.

Article VII Miscellaneous

7.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

7.2 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

7.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

7.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall exclusively be in the State District Court of Denton County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.5 No Waiver of Liability. 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 and performance 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.

7.6 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

7.7 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for DCTA:

Raymond Suarez
Chief Executive Officer
DCTA
1955 Lakeway Drive, Suite 260
Lewisville, Texas 75067
Phone: 972-221-4600

With Copy to:

Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
Phone: 214-965-9900

If intended for City of Coppell:

Mike Land
City Manager
255 Parkway Blvd.
Coppell, Texas 75019
Phone: 972-304-3618

7.9 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

7.10 Exhibits. The Exhibits attached hereto are incorporated herein.

7.11 Recitals. The recitals to this Agreement are incorporated herein and made a part hereof for all purposes.

7.12 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination hereof.

7.14 Approval of Parties. Whenever this Agreement requires or permits the approval or consent to be given by a Party, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

7.15 No Third-Party Beneficiary. Nothing in this Agreement shall be construed as creating or giving rise to any rights of third-parties or any persons other than the Parties hereto.

7.16 Recordkeeping and Right to Inspect Records. Each Party 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. Each Party shall have access during normal business 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 Agreement. Each Party shall give the other Party advanced written notice of at least forty-eight (48) business hours of intended audits.

(signature page to follow)

EXECUTED this _____ day of _____, 2020.

Denton County Transportation Authority

By: _____
Raymond Suarez, Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Joseph J. Gorfida, Jr., General Counsel
(08-07-2020:TM 117185)

EXECUTED this _____ day of _____, 2020.

City of Coppell, Texas
a home-rule municipality

By: _____
Mike Land, City Manager

APPROVED AS TO FORM:

By: _____
Robert E. Hager, Coppell City Attorney

EXHIBIT 1

AGENCY	Service Rendered	Cost Allocation Per Year \$50,000
Denton County Transportation Authority	Contracted Mobility Provider Service: <i>Direct invoiced costs</i>	Not-to-exceed \$28,125
	Administrative Fee: <i>Contract management, billing, administration, reporting, data analytics, and customer service</i>	Not-to-exceed \$16,875/60% of the direct invoiced costs
City of Coppell	Marketing and Outreach	Not-to-exceed \$5,000
		TOTAL: \$50,000