

STATE OF TEXAS §
§
COUNTY OF DALLAS § **AGREEMENT FOR TRANSPORTATION SERVICES.**

This Agreement for Transportation services is made by and between the City of Coppell, Texas (“City”) and SPAN, Inc. a non-profit corporation, to provide transportation for senior citizens and persons with disabilities (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City recognizes that has an aging population and special needs citizens which are in need of transportation alternatives to seek routine medical care and to attend to daily routine matters, the City desires to assist and provide a form of public/private transportation to said citizens, and

WHEREAS, City desires to engage the services of SPAN as an independent contractor, and not as an joint venture, partnership or employee, to provide the services described herein in connection with transportation services in the Coppell service area, as set forth herein; and

WHEREAS, SPAN is authorized as a non-profit corporation, grandfathered under the Texas Transportation Code to provide this type of transportation to municipalities located in whole or in part within Denton County, Texas,

WHEREAS, SPAN desires to provide transportability services for City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.01. This Agreement shall commence on October 1, 2020 (“Effective Date”) and continue until September 30, 2021.

1.02. Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party.

Article II
Service

2.01. SPAN shall provide door-to-door demand response transit services to Riders who are sixty (60) years of age or older and persons with documented disabilities (herein after Riders) in accordance with this Agreement.

2.02. Riders shall be picked up within service area and taken anywhere in the SPAN/CITY transit service destination area shown on Exhibit "A" hereto, at a cost to the Riders of \$3.00 for qualified seniors (age 60 and older) and people with documented disabilities in accordance with the SPAN Transportation policy and procedures which are attached hereto and incorporated herein as Exhibit "B" (herein after "the Policy"). The Riders shall remit the fare recited in this section at or prior to the time the service is rendered.

2.03. A Memorandum of Understanding has been established between the two entities to address situations when Riders call and request service that is outside or not identified as a covered area shown on Exhibit "A". SPAN may make a request to the City to temporarily or permanently amend the service area Exhibit "A". The amendment of Exhibit "A" can only be amended if both parties mutually agree in writing.

2.04. Riders may call in at least one (1) day in advance, but no more than two (2) weeks in advance, to set up appointments for pick-up and drop off by calling SPAN'S Transportation Office at 940-382-1900 weekdays between the hours of 8:00 a.m. and 2:00 p.m.; and

2.05. Demand response transit service is available between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday excluding Saturday, Sunday, major holidays and subject to capacity constraints and availability.

Article III Schedule of Work

SPAN agrees to complete the required services in accordance with the Project Schedule outlined in this Agreement.

3.01. SPAN shall provide all equipment, facilities, qualified employees, training, and insurance necessary to establish a demand response transit service for the Riders. SPAN shall further establish, operate, and maintain an accounting system for this program that will allow for a tracking of services provided to Riders and a review of the financial status of the program. SPAN shall also track and break down the information regarding the number of one-way trips it provides to Riders. SPAN shall adopt such policy and procedures to ensure safe and competitive public transportation services to Riders.

3.02. SPAN will be responsible for verifying and documenting the eligibility of Riders. SPAN reserves the right to determine on an individual basis whether SPAN has the capability to safely transport a passenger. In the event that safety is compromised, SPAN may decline transportation for this person and must document the reason why service was declined.

3.03. The CITY shall have the right to review the activities and financial records kept incident to the services provided to the Riders by SPAN under this Agreement. In addition,

SPAN shall provide monthly ridership information to the City Manager or his/her designee specifically identifying the number of Rider trips including rider origination, destination, and purpose. The sole purpose of such information is to determine whether to continue to contract with SPAN and to evaluate the Rider use.

Article IV Compensation and Method of Payment

4.01. SPAN is receiving CARES Act, federal funding for transportation operations which will allow for 100% reimbursed billing without the need for local funding match from the CITY. SPAN demand response transportation will be provided to the CITY without fee for the entirety of the agreement or until CARES Act funding is expended. SPAN invoices will not be sent nor payments made by CITY for the entirety of the agreement or until CARES Act funding is expended.

Article V Devotion of Time; Personnel; and Equipment

5.01. SPAN shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should City require additional services not included under this Agreement, SPAN shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with SPAN's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.02. To the extent reasonably necessary for SPAN to perform the services under this Agreement, SPAN shall be authorized to engage the services of any agents, assistants, persons, or corporations that SPAN may deem proper to aid or assist in the performance of the services under this Agreement. SPAN shall provide written notice to and approval from City prior to engaging services not referenced in Exhibit "A". The cost of such personnel and assistance shall be included as part of the total compensation to be paid SPAN hereunder, and shall not otherwise be reimbursed by City unless otherwise agreed to in writing.

5.03. SPAN shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article VI Miscellaneous

6.01. 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.

6.02. Assignment. SPAN may not assign this Agreement without the prior written consent of City. In the event of an assignment by SPAN to which City has consented, the

assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.03. 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 assigns.

6.04. Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

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

6.06. 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.

6.07. Independent Contractor. It is understood and agreed by and between the Parties that SPAN, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by SPAN pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. SPAN shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. Nothing contained herein shall constitute or provide for as a waiver of the City's immunity under state or federal law.

6.08. 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 City:

City Manager
City of Coppell, Texas
255 E. Parkway Boulevard
Coppell, Texas 75019
972.304.3673 – facsimile

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201
214.965.0010 - facsimile

If intended for SPAN:

Michelle McMahon
Executive Director
SPAN, Inc.
1800 Malone Street
Denton, Texas 76201
940.382.2224 – Office

6.09. Insurance.

(a) SPAN shall during the term hereof maintain in full force and effect the following insurance:

(1) a comprehensive commercial general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to SPAN's performance of services 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 with an aggregate of \$2,000,000.00;

(2) policy of automobile liability insurance covering any vehicles owned and/or operated by SPAN, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$5,000,000.00 combined single limit and aggregate for bodily injury and property damage;

(3) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of SPAN's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and

(b) All policies of insurance shall be endorsed and contain 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 at least thirty (30) days prior written notice to City for cancellation of the insurance;

(3) 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. SPAN shall provide written notice to City of any material change of or to the insurance required herein.

- (c) 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.
- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by City.

6.10. In the event of conflict between this Agreement and the Policy, this Agreement shall control. In performing services under this Agreement, the relationship between the CITY and SPAN is that of an independent contractor. No term or provision of this Agreement or act of SPAN in the performance of this Agreement shall be construed as making SPAN the agent, servant, or employee of the CITY. It is expressly understood that the City assumes no operational supervision, control or oversight to the services provided under this agreement. City does not have any ownership or beneficial interest in the business; and does not share any profits or losses generated from the business.

6.11. Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF SPAN PURSUANT TO THIS AGREEMENT. SPAN HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “CITY”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY’S OBLIGATIONS HEREUNDER. SPAN AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY SPAN’S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF SPAN, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF CITY, IN WHOLE OR IN PART, IN WHICH CASE SPAN SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO SPAN AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). SPAN’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY SPAN UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.12. 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.

6.13. Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.14. 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.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2020.

CITY OF COPPELL, TEXAS

By: _____
Karen Selbo Hunt, Mayor

ATTEST:

By: _____
Christel Pettinos, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

EXECUTED this _____ day of _____, 2020.

**SPAN, INC.
dba SPAN, INC.**

By: _____
Name: _____
Title: _____