

City of Broken Arrow

This Agreement is entered into by and between the Indian Nations Council of Governments (INCOG) and the City of Broken Arrow. In consideration and compliance of mutual promises herein contained, the City of Broken Arrow and INCOG agree as follows:

Project Description

The City of Broken Arrow agrees to provide transportation services according to the terms identified in the City of Broken Arrow Proposal for Coordinated Transit Program, which is attached hereto and incorporated herein as *Exhibit A*, specifically:

The City of Broken Arrow will enter into an Agreement with INCOG for contracting transportation services with another organization to provide mobility on demand transportation services to the City of Broken Arrow. Services will be provided in the Tulsa Urbanized Area and Tulsa Transportation Management Area (TMA).

Compensation

INCOG, as the Direct Recipient of Federal Transit Administration Section 5310 – Enhanced Mobility of Seniors and Individuals with Disabilities Program funds for the Tulsa Transportation Management Area, agrees to reimburse the City of Broken Arrow, as the Sub-Recipient, an amount not to exceed \$250,000 for contracting services in Section 5310 FY23 funds, in the manner more specifically set out below. The City of Broken Arrow agrees to perform duties and expend sums consistent with the requirements of 2 CFR Part 200 Office of Management and Budget (OMB) Uniform Guidance, which is incorporated herein by reference.

Term

The term of this Agreement shall be for a period beginning upon the date this Agreement is fully executed by both INCOG and the City of Broken Arrow and continuing until the completion of all processes and projects specified in *Exhibit A* of this Agreement, but in any event no later than September 30, 2026. Payments to the City of Broken Arrow will be made from Federal Transit Administration Section 5310 money FY23 made available to INCOG. Payments to the City of Broken Arrow are subject to the availability of funds. The parties may extend the term of this Agreement by written agreement.

Representations by The City of Broken Arrow

The City of Broken Arrow represents that it currently has the facilities, staff, and expertise to perform the terms of this Agreement. The City of Broken Arrow represents that the use of money received under this Agreement will comply with all applicable federal and state statutes and regulations.

It is further understood that the City of Broken Arrow will engage a subcontractor(s) for the purpose of contracting of transportation services, after a bidding process, according to federal regulations, as indicated in the City of Broken Arrow Proposal for Coordinated Transit Program (*Exhibit A*).

Reimbursement to The City of Broken Arrow

The City of Broken Arrow must submit requests for reimbursement to INCOG at the end of each month no later than 30 days after the end of the month, prepared in accordance with the City of Broken Arrow's standard invoicing practices. Such requests shall include sufficient documentation to support reimbursement of the expenditure, including financial forms provided by INCOG, copies of vendor invoices and checks from the City of Broken Arrow for payments of the invoices, employee time sheets, itemized detailed list of duties performed, hours of service, rates charged, and other eligible expenditures. INCOG staff will review the reimbursement request for compliance with the grant's scope, terms, and conditions. If questions arise regarding some portion of the reimbursement request, INCOG staff will contact the project manager for additional documentation. Upon approval of the request for payment, INCOG will submit a reimbursement request to FTA. Upon receipt of the reimbursement from FTA, INCOG shall transfer the reimbursed funds to the City of Broken Arrow. INCOG will

reimburse the City of Broken Arrow eighty (80) percent of capital costs and fifty (50) percent of operational costs.

Neither forbearance nor payment by INCOG shall be construed to constitute waiver of any remedies for any default or breach by the City of Broken Arrow that exists then or occurs later.

Amendments

This Agreement is subject to such modifications as may be required by state or federal law. Modification or waiver of any term of this agreement or its attachments must be made in writing and signed by the duly authorized representatives of both parties.

Termination or Suspension

This Agreement may be terminated or suspended in whole or in part at any time by written agreement signed by both parties. This Agreement may be terminated or suspended by INCOG, in whole or in part for cause after notice and an opportunity for the City of Broken Arrow to present reasons why such action should not be taken. Grounds constituting cause include but are not limited to: the City of Broken Arrow fails to comply with the provisions of this Agreement or with any applicable laws, regulations, guidelines or procedures or is unduly dilatory in executing its commitments under this Agreement; or in INCOG's sole judgment, the Agreement purpose has not been or will not be fulfilled or would be illegal to carry out.

In the event of termination or suspension, the City of Broken Arrow shall be entitled to payment for otherwise valid and allowable costs incurred in good faith prior to notice of termination or suspension. The City of Broken Arrow shall make all necessary efforts to mitigate the damages caused by the termination or suspension.

Employee Benefits and Insurance

The City of Broken Arrow has full responsibility for payment of Workers' Compensation insurance, unemployment insurance, social security, state and federal income tax, and any other deductions required by law for its workers or employees. Nothing herein shall be construed to create an agency relationship between the City of Broken Arrow and INCOG.

Ownership, Publication and Reuse of Data

The City of Broken Arrow shall not copyright any material produced in whole or in part under this Agreement. INCOG shall have unrestricted authority to publish, disclose, distribute, and otherwise use the data or reports prepared pursuant to this Agreement. INCOG will credit the City of Broken Arrow on data and report.

Audit and Inspections

At any time during normal business hours and as often as INCOG, the Comptroller General of the United States and the Secretary of the United States DOT, or their authorized representatives, agents, grantors or assigns designate, the City of Broken Arrow shall make available all of its records covering all matters dealt with in this Agreement.

The City of Broken Arrow will permit INCOG, the Comptroller General of the United States and the Secretary of the United States DOT, or their authorized representatives, agents, grantors or assigns to audit, examine, make excerpts or transcripts from such records, and to audit all contracts, invoices materials, payroll records, personnel records or other material which INCOG, the Comptroller General of the United States and the Secretary of the United States DOT, or their authorized representatives, agents, grantors or assigns may consider pertinent to the execution of this Agreement. The City of Broken Arrow agrees that an auditor of INCOG, the Comptroller General of the United States and the Secretary of the United States DOT, or their authorized representatives, agents, grantors or assigns, including the State Auditor and Inspector and the US DOT Inspector General, may conduct the audit.

The City of Broken Arrow shall permit INCOG, the Comptroller General of the United States and the Secretary of the United States DOT, or their authorized representatives, agents, grantors or assigns to inspect all vehicles, facilities, and equipment purchased by the City of Broken Arrow as part of the program, all transportation services rendered by City of Broken Arrow by the use of such vehicles, facilities, and equipment, and all relevant data and records. The City of Broken Arrow shall also permit the above-named persons to audit the books records and accounts of the Agreement or pertaining to the program.

Interpretation of Remedies

Neither forbearance nor payment by INCOG shall be construed to constitute waiver of any remedies for any default or breach by the City of Broken Arrow that exists then or occurs later.

FTA Certifications and Assurances

The City of Broken Arrow agrees to comply with all appropriate federal rules, regulations, and circulars, including but not limited to the regulations listed in this Agreement. The City of Broken Arrow further agrees to comply with all applicable provisions of the categories in the FTA Certifications and Assurances for Federal Funding Assistance Program which are herein incorporated by reference and made a part of this Agreement. In furtherance of these requirements, The City of Broken Arrow agrees to provide appropriate signatures for the “Certifications and Assurances for Federal Funding Assistance,” which is incorporated herein by reference as *Exhibit B*.

Compliance with Nondiscrimination Guidelines

The City of Broken Arrow agrees to comply with applicable requirements of the current FTA Circular 4702.1B “TITLE VI REQUIREMENTS AND GUIDELINES FOR FEDERAL TRANSIT ADMINISTRATION RECIPIENTS” which are herein incorporated by reference and made a part of this Agreement.

Compliance with Environmental Justice

The City of Broken Arrow agrees to comply with applicable requirements of U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations as embodied in Executive Order 12898 on Environmental Justice which are herein incorporated by reference and made a part of this Agreement.

Equal Employment Opportunity

The City of Broken Arrow agrees to comply with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), and 49 U.S.C. 5332 and any implementing requirements the Federal Transit Administration may issue which are herein incorporated by reference and made a part of this Agreement.

Compliance with Title VI Civil Rights Act, 1964

The City of Broken Arrow agrees to comply with applicable requirements of 49 CFR A 21, Nondiscrimination in Federally assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, which are herein incorporated by

reference and made a part of this Agreement. In furtherance of these requirements, The City of Broken Arrow agrees to the terms contained in *Exhibit C*, which is incorporated herein by reference.

Minority Business Enterprises Participation

The City of Broken Arrow agrees to comply with applicable requirements of 49 CFR A 23, Participation by Minority Business Enterprise in Department of Transportation Programs, which are herein incorporated by reference and made a part of this Agreement.

Nondiscrimination on the Basis of Handicap

The City of Broken Arrow agrees to comply with applicable requirements of 49 CFR A 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which are herein incorporated by reference and made a part of this Agreement.

Disadvantaged Business Enterprise (DBE)

To the extent required by Federal law, regulation, or directive, The City of Broken Arrow agrees to annually report purchases made from DBE vendors and provide a description of their good faith efforts to locate and purchase from DBE vendors. The City of Broken Arrow agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of this Agreement.

Debarment, Suspension and Voluntary Exclusion

The City of Broken Arrow agrees to comply with applicable requirements of 49 CFR A 29 Debarments, Suspensions and Voluntary Exclusions, which are herein incorporated by reference and made part of this Agreement. In furtherance of these requirements, The City of Broken Arrow agrees to provide appropriate signatures for the “Certification Regarding Debarment, Suspension, and other Responsibility Matters – Primary Covered Transactions,” which is incorporated herein by reference as *Exhibit D*.

Quarterly and Monthly Reports

At the end of each quarter (December 31, March 31, June 30, and September 30), The City of Broken Arrow will prepare a Quarterly Report for submittal to INCOG. This report will include both qualitative and quantitative information on the following indicators:

- (1) Service Improvements: related to geographic coverage, service quality, and/or service times that impact availability of transportation services for seniors and individuals with disabilities as a result of Section 5310 projects implemented in the current reporting year.
- (2) Physical Improvements: Additions or changes to environmental infrastructure (e.g., transportation facilities, sidewalks, etc.), technology, and vehicles that impact availability of transportation services for seniors and individuals with disabilities as a result of section 5310 projects implemented in the current reporting year.
- (3) Ridership: Actual or estimated number of rides (as measured by one-way trips) provided annually for seniors or individuals with disabilities on Section 5310 supported vehicles and services as a result of Section 5310 projects implemented in the current reporting year.
- (4) Activities completed for the quarter being reported and activities scheduled for the next quarter.

The City of Broken Arrow will also include a monthly financial status report provided by INCOG which must be prepared using the accrual method of accounting and containing the following items:

- (1) Total Prior Expenses
- (2) Total Expenses for the month being reported
- (3) Federal Share of Total Current Period Expenses
- (4) Matching Share of Total Current Period Expenses
- (5) Unpaid Agreement Balances (Unliquidated Obligations)
- (6) Federal Share of Unpaid Agreement Balances
- (7) Matching Share of Unpaid Agreement Balances

The City of Broken Arrow will submit the financial report within 30 calendar days of the end of each month and planning reports to INCOG within 30 calendar days of the end of the quarter.

Milestone Activity Reports

The City of Broken Arrow will notify INCOG of revised project milestone completion dates as each revision is made. An explanation as to why the date changes are necessary should be included in the notification.

Documentation Requirements

The City of Broken Arrow shall establish and maintain separate accounts for the program, either independently or within its existing accounting system. Properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges in accordance with the rules and regulations of FTA shall support all charges to the project account. Any check or order drawn by City of Broken Arrow with respect to any item which is or will be chargeable against the project account will be drawn only in accordance with a properly signed voucher then on file in the office of the City of Broken Arrow stating in proper detail the purpose for which such check or order is drawn. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the program shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

Entirety of Agreement

This Agreement, which sets forth the entire understanding of the parties, shall be interpreted and construed under the laws of the State of Oklahoma. It shall become effective as of the first date on which all parties have signed it.

INCOG

City of Broken Arrow

Name: Karen Keith

Name: _____

Title: Chair

Title:

Date: _____

Date: _____

EXHIBIT A: The City of Broken Arrow Proposal for Transit Service Program

EXHIBIT B: FTA Certifications and Assurances

EXHIBIT C: Contractual Assurances

During the performance of this Agreement, the City of Broken Arrow agrees as follows:

(1) Compliance with Regulations: The City of Broken Arrow shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter “DOT”), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) Nondiscrimination: The City of Broken Arrow, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, national origin, age, sex or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The City of Broken Arrow shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

(3) Solicitation of Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the City of Broken Arrow for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the City of Broken Arrow of the City of Broken Arrow’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) Information and Reports: The City of Broken Arrow shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by FTA or INCOG as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the City of Broken Arrow's noncompliance with the nondiscrimination provisions of the Agreement, INCOG shall impose such Agreement sanctions as it or FTA may determine to be appropriate, including but not limited to withholding of payments to the City of Broken Arrow under the Agreement until the City of Broken Arrow complies, and/or cancellation, termination, or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: The City of Broken Arrow shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The City of Broken Arrow shall take such action with respect to any subcontract or procurement as INCOG or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the City of Broken Arrow becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the City of Broken Arrow may request INCOG to enter into such litigation to protect INCOG, and, in addition, the City of Broken Arrow may request the United State to enter into such litigation to protect the interests of the United States.

EXHIBIT D: Certification Regarding Debarment, Suspension, and other Responsibility Matters – Primary Covered Transactions

FEDERAL-AID ELIGIBILITY CERTIFICATION

The undersigned, hereby certifies to the best of his or her knowledge and belief:

- (1) That he or she is the fully authorized agent of the City of Broken Arrow in this project which involves Federal funding and has full knowledge and authority to make this certification.

- (2) That, neither the City of Broken Arrow nor any person associated therewith in the capacity of director, officer, manager, auditor, or accountant, nor any person in a position involving the administration of federal funds:
 - a. Is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; and
 - b. Has been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; and
 - c. Has a proposed debarment pending; and
 - d. Has been indicted, convicted, or had a civil judgment rendered against any of the afore-mentioned by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years, except:

If none so state by entering the word none _____

City of Broken Arrow

_____ Date

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Forms to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards in excess of \$100,000, at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

City of Broken Arrow

Date