

PGA: FEDERAL SECTION 5309-CAPITAL INVESTMENT  
TRANSIT PROVIDER: **Fort Bend County**  
FTA GRANT NO: TX-04-0072-00  
CFDA #: 20.5  
TXDOT PROJECT #: VCR 1101(12)0072  
PROJECT GRANT AGREEMENT#: 51112F7160  
MASTER GRANT AGREEMENT #: 517XF7019

**Public Transportation Fiscal Year 2011 - 5309 Capital Investment  
VCR PGA Amendment # 1**

**THIS AMENDMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State", and **Fort Bend County**, hereinafter called the "Transit Provider".

**WITNESSETH**

**WHEREAS**, the State and the Transit Provider executed a contract on May 2, 2011 to effectuate their agreement to purchase nine vehicles and,

**WHEREAS**, it has become necessary to amend that grant agreement.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Transit Provider do agree as follows:

**AGREEMENT**

**Article 1. Description of Amended Items**

1. Amended the language in the first two sentences of **Article 2. Project Description** to "The Subrecipient shall commence, carry out and complete the public transportation project described in Attachment A, Approved Project Description and Project Budget (Attachment A), with all practicable dispatch, in a sound, economical and efficient manner.

The Subrecipient shall carryout the public transportation project described in the Attachment A in accordance with all of the documents associated with the MGA, and with all applicable federal and state laws and/or regulations."

2. Amended the language in the first sentence of **Article 3. Compensation** to "The maximum amount payable under this PGA without modification is **\$543,685 Federal and 92,426 TDCs** provided that expenditures are made in accordance with the amounts and for the purposes authorized in the Attachment A."
3. Added Attachment C - March 16, 2011 U.S. Department of Labor Letter.

All other provisions of the original grant agreement are unchanged and remain in full force and effect.

**Article 2. Signatory Warranty**

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

**IN WITNESS WHEREOF, THE STATE AND THE TRANSIT PROVIDER** have executed duplicate counterparts to effectuate this agreement.

THE STATE OF TEXAS	FORT BEND COUNTY
<p>Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.</p> <p>By: <u>Travis Madison</u> Travis Madison Houston District</p> <p>Date: <u>6/23/11</u></p>	<p>By: <u>Robert Hebert</u> Signature of Authorized Officer</p> <p><u>Robert Hebert</u> Typed, Printed or Stamped Name</p> <p>Title: <u>County Judge</u></p> <p>Date: <u>June 14, 2011</u></p>

**Attachment C**

Office of Labor-Management Standards

U.S. Department of Labor

Washington, D.C. 20210

March 16, 2011

Robert C. Patrick, Regional Administrator  
Federal Transit Administration, Region VI  
819 Taylor Street, Room 8A36  
Ft. Worth, Texas 76102

Re: FTA Application

**Texas Department of Transportation**

On Behalf Of:

**Alamo Area Council of Governments (AACOG)**

Purchase (4) Replacement < 30-Ft. Buses and

(2) Replacement Vans

**Aspermont Small Business Development  
Center, Inc.**

Purchase (2) Support Vehicles

**Capital Area Rural Transportation System (CARTS)**

Purchase (14) Replacement < 30-Ft. Buses

**Central Texas Rural Transit District**

Purchase (5) Replacement < 30-Ft. Buses

**Colorado Valley Transit, Inc.**

Purchase (2) Replacement < 30-Ft. Buses

**Community Action Council of South Texas**

Purchase (1) Replacement < 30-Ft. Bus and (2) Replacement Vans

**Community Council of Southwest Texas, Inc.**

Purchase (1) < 30-Ft. Bus for Expansion

**Community Services, Inc.**

Purchase (1) Replacement < 30-Ft. Bus

**Concho Valley Transit District**

Purchase (2) Replacement Vans

**East Texas Council of Governments**

Purchase (3) < 30-Ft. Buses for Expansion

**Fort Bend County**

Purchase (5) Replacement < 30-Ft. Bus, (3) Replacement Vans, and (1) Van for Service Expansion

**Golden Crescent Regional Planning Commission**

Purchase (3) Replacement < 30-Ft. Buses

**Hill Country Transit District**

Purchase (2) Replacement < 30-Ft. Buses

**Panhandle Community Services**

Purchase (4) Replacement Vans

**Rolling Plains Management Corporation**

Purchase (2) Replacement < 30-Ft. Buses

**South Padre Island, Town of**

Purchase (1) Replacement 30-Ft. Bus

**South Plains Community Action Association**

Purchase (3) Replacement < 30-Ft. Buses

**Special Programs for Aging Needs (SPAN)**

Purchase (2) Replacement < 30-Ft. Buses

**Texoma Area Paratransit System, Inc.**

**(TAPS)**

Purchase (7) Replacement < 30-Ft. Buses and (2) Replacement Vans

**The Transit System, Inc.**

Purchase (1) Replacement < 30-Ft. Bus

**Webb County Community Action Agency**

Purchase (2) Replacement < 30-Ft. Buses, (1) Replacement 30-Ft. Bus, and (1) Vans for Service Expansion

**West Texas Opportunities, Inc. (WTO)**

Purchase (2) Sports Utility Vehicles

TX-04-0072

Dear Mr. Patrick:

This is in reply to the request from your office that we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

**Fort Bend**

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of Fort Bend County, represented by the Transport Workers Union (TWU), shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

**Texoma Area Paratransit System, Inc. (TAPS)**

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of Texoma Area Paratransit System, Inc. (TAPS), represented by United Food and Commercial Workers (UFCW) Local 1000, shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

The parties have agreed to the application of the above referenced protective arrangements to their respective portions of the instant project.

In addition, the recipients identified in Attachment A to this certification have previously agreed to the terms and conditions of the Section 18 Warranty, which provide to the employees represented by the Amalgamated Transit Union (ATU), the United Transportation Union (UTU), the American Federation of State County and Municipal Employees (AFSCME), and the Texas Conference of Teamsters, affiliated with the International Brotherhood of Teamsters (IBT), and the Transport Workers Union (TWU) protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Pursuant to Paragraph (9) of the Section 18 Warranty, the ATU, on behalf of Locals 694, 1549, which has merged with Local 1091, and 1700, the UTU, and the IBT became party to the Section 18 Warranty for the recipients listed respectively in Attachment A. The UTU, IBT and the TWU did not specify recipients in their requests to become party to the Warranty. The Department has determined, however, that these unions, along with AFSCME, would also appropriately be party to the Warranty for respective recipients in Attachment A.

In addition, the Department of Labor makes the certification called for under the statute on condition that the attached "*Language for Incorporation into the Contract of Assistance*" is made applicable to the **Aspermont Small Business Development Center, Central Texas Rural Transit District, Concho Valley Transit District, East Texas Council of Governments, Hill Country Transit District, Rolling Plains Management Corporation, Town of South Padre Island, The Transit System, Inc., and the Webb County Community Action Agency**. These terms and conditions provide to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b).

In addition, the Department of Labor makes the certification called for under the statute on condition that the Texas Department of Transportation, as a precondition to the release of assistance to any Recipient under the grant, ensures that such Recipient agrees to the respective terms and conditions referenced herein. This certification letter, and the corresponding protective arrangements, shall be incorporated into the contract of assistance between the Texas Department of Transportation, and the U.S. Department of Transportation (DOT), by reference. The Texas Department of Transportation shall incorporate the terms of this certification into a contract with Recipients of funds under the grant, if any, as a precondition to the release of assistance to any Recipient. These terms and conditions provide to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the above Recipients under the instant project(s) on condition that:

1. This letter and the terms and conditions of the above protective arrangements, shall be made applicable to the instant project and made part of the contract of assistance between the Texas Department of Transportation and DOT, by reference;
2. As a precondition to the release of assistance to any Recipient, this letter and the terms and conditions of the respective protective arrangements referenced above, shall be incorporated into the contract of assistance between the Texas Department of Transportation and such Recipient, by reference;

Any dispute or controversy arising regarding the application, interpretation, or enforcement of this provision which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any party to any final and binding dispute settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for a final and binding determination;

3. The term "project" as used in each of the above employee protective arrangements shall be deemed to cover and refer to those portions of the instant project to which they have been applied;
4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and the Texas Department of Transportation, and the parties to the contract so signify by executing that contract. **Such transit employees are also third-party beneficiaries to the protective arrangements incorporated in any subsequent contract(s) of assistance between the Grantee and any Recipient(s).**<sup>1</sup> Employees not represented by any labor organization, or if so represented through their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government;

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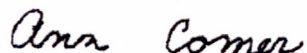
<sup>1</sup> This sentence in bold reflects an update that the Department has made to the third party beneficiary language.

5. Disputes over the interpretation, application and enforcement of the terms and conditions of the certified protective arrangements, including those disputes arising out of this letter of certification, except for any disputes arising out of enumerated paragraph 2 above, shall be resolved in accordance with the procedures specified in the aforementioned certified arrangements; and
6. Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a

neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

Sincerely,



Ann Comer, Chief  
Division of Statutory Programs

cc: Kerry Miller/FTA  
Kris S. Dudley/Texas DOT  
Beverly Lutz/AACOG  
David Marsh/CARTS  
Vastene Olier/Colorado Valley Transit District  
Noelia Ruiz/Community Action Council of South Texas - Rainbow Lines  
Sarah Hidalgo-Cook/Community Council of Southwest Texas - Southwest Transit  
Charlotte Clower/Community Services, Inc.  
Paulette Shelton/Fort Bend County Rural Transit District  
Lisa Cortinas/Golden Crescent Regional Planning Commission - R Transit  
Lylene Springer/Panhandle Community Services, Inc. - Panhandle Transit District  
Linda Leuckel/SPAN  
Brian Baker/South Plains Community Action Association  
Brad Underwood/TAPS  
Janet Everhart/WTO  
Gerald McEntee/AFSCME  
Jessica Chu/ATU  
James P. Hoffa/IBT  
Carl Martin/TWU  
Richard Hanna/UFCW Local 1000  
Billy Brown/UFCW Local 1000  
Victor Baffoni/UTU  
Paul Knupp/Guerrieri, Clayman, Bartos & Parcelli, P.C.  
Carolyn Gomes/Guerrieri, Clayman, Bartos & Parcelli, P.C.

LANGUAGE FOR INCORPORATION INTO THE  
CONTRACT OF ASSISTANCE  
TX-04-0072

As a precondition to the receipt of assistance, the Texas Department of Transportation, shall ensure, that the "Public Bodies," the **Aspermont Small Business Development Center, Central Texas Rural Transit District, Concho Valley Transit District, East Texas Council of Governments, Hill Country Transit District, Rolling Plains Management Corporation, Town of South Padre Island, The Transit System, Inc.**, and the **Webb County Community Action Agency**, agree that the following terms and conditions shall apply for the protection of employees in the mass passenger transportation industry in the service area of the project:

1. The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project. The "service area" as used herein, includes the geographic area over which the project is operated and the area whose population is served by the project, including adjacent areas affected by the project;
2. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued;
3. The Public Body shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project;
4. In the event an employee is terminated or laid off as a result of the project, he shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the Public Body shall provide or provide for such training or retraining at no cost to the employee;
5. Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the project, including any program of efficiencies or economics directly or indirectly related thereto, shall be entitled to receive any applicable

rights, privileges and benefits as specified in the employee protective arrangement, known as C-1, certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971 (See Appendix C-1, a copy of which is included on the Department's website.).

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used herein shall include events occurring in anticipation of, during, and subsequent to the project;

6. In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the Public Body, the employees and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions;
7. The Public Body agrees that any controversy respecting the project's effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.

In the event of any dispute as to whether or not a particular employee was affected by the project, it shall be the employee's obligation to identify the project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Public Body to prove that factors other than the project affected the employee. The claiming employee shall prevail if it is established that the project had an effect upon the employee even if other factors may also have affected the employee (See Hodgson's Affidavit in Civil Action No. 825-71);

8. The Public Body shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph;
9. The Public Body will post, in a prominent and accessible place, a notice stating that the Public Body is a recipient of Federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees; and
10. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the Grantee/Applicant, and the parties to the contract so signify by executing that contract. Such transit employees are also third-party beneficiaries to the protective arrangements incorporated in any subsequent contract(s) of assistance between the Grantee and any Recipient(s). Employees, or their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

As a precondition to the release of assistance to any Recipient, this letter and the terms and conditions of the protective agreements or arrangements referenced above, shall be incorporated into the contract of assistance between the Grantee and/or Applicant and such Recipient, by reference.

**Attachment A**

Small Urban and Rural Recipients

Alamo Area Council of Governments (AACOG) – ATU, IBT

Capital Area Rural Transit System (CARTS) – ATU, IBT, AFSCME

Colorado Valley Transit, Inc. – ATU

Community Action Council of South Texas – ATU, UTU

Community Council of Southwest Texas – ATU, IBT

Community Services, Inc. – ATU

Golden Crescent Regional Planning Commission – ATU

Panhandle Community Services – ATU, UTU

South Plains Community Action Association – UTU

Special Programs for Aging Needs, Inc. (SPAN) – IBT

West Texas Opportunities, Inc. (WTO) – ATU

