

## **SAMPLE AGREEMENT**

THIS AGREEMENT, made and entered into this first day of \_\_\_\_\_, by and between the CITY OF LYNWOOD, a municipal corporation located in the County of Los Angeles, State of California, hereinafter referred to as "CITY" and \_\_\_\_\_, hereafter referred to as "CONTRACTOR".

### **WITNESSETH**

WHEREAS, CITY desires to engage CONTRACTOR to perform the operation of community transportation services on designated routes within the City of Lynwood.

The parties hereto do agree as follows:

**SECTION I. RECITALS.** This Agreement is entered into with respect to the following facts:

- a. That CITY wishes to engage the services of a qualified contractor to provide community fixed-route transportation services; and
- b. That the CONTRACTOR will commit to perform a responsive, cost effective, high level of service over the five-year contract term;
- c. That CONTRACTOR selected will be the most responsive proposer through a request for proposals process and has agreed to perform the services required in the time and manner set forth in this Agreement and all related Contract Documents; and
- d. That the legislative body of CITY has heretofore determined that the public interest, convenience and necessity require the execution of this Agreement.

**SECTION II. SERVICES.** CONTRACTOR agrees, during the term of this Agreement, or any extension thereof, to provide community fixed route transportation services in the time and manner required pursuant to the provisions of this Agreement.

**SECTION III. TERM.** This Agreement shall commence on \_\_\_\_\_, and it shall continue for a period of five (5) years.

CITY reserves the right to extend this Agreement for a two (2) year period if mutually agreed upon by CITY and CONTRACTOR.

**SECTION IV. CONTRACT DOCUMENT.** The Contract Document which are applicable to this Agreement include:

- a. The Request for Proposals issued by CITY (Attachment 1) and Subsequent Addenda, and
- b. CONTRACTOR's proposal (Attachment 2).

The provisions of this Agreement shall control all Contract Documents; in the event of any ambiguity or inconsistency, the same shall be resolved by reference first to the language of any written amendments signed by both parties, then to the language of the Agreement, then to the Contract Documents in the order above set forth.

**SECTION V. COMPLIANCE WITH THE LAW.** All services rendered hereunder shall be provided in accordance with the requirements of relevant local, State, and Federal Law.

**SECTION VI. FAMILIARITY WITH WORK.** By execution of this Agreement, CONTRACTOR warrants that:

- a. It has thoroughly investigated the continuation of the services.
- b. It has expertise in the areas of provision of community fixed- route transit services.
- c. It fully understands the difficulties and restrictions attending the performance of the work under this Agreement.

**SECTION VII. COMPENSATION.**

- a. Services Described in Proposal

For the provision of all services rendered under this Agreement in accordance with the Scope of Work described in Appendix 1 and all expenses associated therewith, CITY shall pay CONTRACTOR in the following manner;

Proposed Revenue Service Hour Rate, inclusive of vehicle capital expense for operation with new vehicles, is:

	<u>Hourly Rate</u>	<u>Annual Hours</u>	<u>Annual Cost</u>
Year 1	\$		
Year 2	\$		
Year 3	\$		
Year 4	\$		
Year 5	\$		

The phrase "revenue service hour" as used herein shall mean that figure estimated to be within 10% above or 10% below the estimated annual hours. Total revenue service hours are based upon actual hours in operation and estimated based upon historical

experience. Revenue service hours are those hours that are actually completed with the vehicles in revenue service on behalf of City. The City will not make payment on schedule runs not made or not completed or for deadhead time. Invoicing and payment shall occur as provided in Section I of the Scope of Work described in Appendix 1.

### **SECTION VIII. TERMINATION**

This Contract may be terminated prior to the expiration of the term or terms hereof, only in accordance with the following:

a. By CONTRACTOR:

(1) If CITY fails to make timely payments of sums required to be made pursuant to the provisions hereof or for any other default, provided the default is not cured within the applicable cure periods described in Section XIVe.

(2) For convenience with no less than one hundred eighty (180) days' notice to the City, and/or

(3) In either case of CONTRACTOR-initiated termination discussed above, CITY shall have the option at its sole discretion of purchasing all or part of the CONTRACTOR's fleet of five (5) vehicles dedicated to use in providing the service contemplated in this Agreement. The option must be exercised at or prior to the effective date of termination, and the exercise of the option shall be conditioned upon the following: (i) all outstanding sums due and owing CONTRACTOR, together with the purchase price which shall be the amount due and owing on said vehicles, shall be paid to CONTRACTOR at or prior to the effective date of termination, unless CONTRACTOR, in its sole discretion, agrees to received deferred payment pursuant to the terms of a purchase agreement and/or note in form satisfactory to CONTRACTOR and CONTRACTOR's counsel, (ii) vehicles will be sold pursuant to a purchase agreement containing such terms for the conveyance of the vehicles as are customary and reasonable within the industry in a form satisfactory to the CONTRACTOR and CITY and their respective counsel, provided such approval shall not be unreasonably withheld.

b. By CITY:

(1) If CONTRACTOR fails to maintain insurance as is required pursuant to the provision of this Agreement; and/or

(2) If CONTRACTOR makes a general assignment or general arrangement for the benefit of creditors; if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against CONTRACTOR and is not dismissed within thirty (30) days; if a trustee or receiver is appointed

to take possession of substantially all of CONTRACTOR's assets and possession is not restored to CONTRACTOR with thirty (30) days; or if substantially all of CONTRACTOR's assets are subjected to attachment, execution or other judicial seizure which is not discharged with thirty (30) days; and/or

(3) If CONTRACTOR fails, for any reason, to perform the services required pursuant to this Agreement in a reasonably satisfactory manner as determined by the City Council of CITY, including:

(a) Four (4) of more consecutive months of liquidated damage assessments for missed service hours; and/or

(b) Four (4) of more consecutive months of liquidated damage assessments for on-time performance.

(4) If CONTRACTOR fails or refuses to comply with any reasonable instruction of the CITY or with applicable laws, including but not limited to, the States of California Administrative Code Title 13, entitled "Motor Vehicles", published by the State of California Office of Administrative Procedures, Department of General Services; and/or

(5) If CONTRACTOR fails to notify the CITY within forty-eight (48) hours after receiving an "unsatisfactory" rating from the California Highway Patrol Motor Car Safety Inspectors; and/or

(6) If CONTRACTOR fails within thirty (30) days of receipt of an "unsatisfactory" rating from the California Highway Patrol to make necessary operational changes to obtain a satisfactory rating and to schedule a repeat inspection with the California Highway Patrol.

## **SECTION IX, COORDINATION OF WORK.**

### a. Selection of Representatives

The following designated managers of CONTRACTOR are hereby designated as the manager and representatives of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and to make all decisions in connection therewith, except for termination of this Agreement or approval of the purchase agreement described in Section VIII(b):

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The foregoing designated manager may not be changed by CONTRACTOR without the express written approval of CITY, unless said designated manager is no longer an employee of the CONTRACTOR. CITY shall have the right to request

replacement of a designated manager or managers for cause. CONTRACTOR shall notify CITY when either of the designated managers leaves the employment of the CONTRACTOR within three (3) business days of the termination of employment and shall immediately name an interim replacement and so notify the CITY.

b. Contract Officer

The Contract Officer for the City shall be the Director of Public Works/City Engineer or such other person as may be designated by the Director of Public Works/City Engineer. It shall be the CONTRACTOR's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the CONTRACTOR shall refer any decision which must be made by approval of CITY required hereunder shall mean the approval of the Contract Officer.

**SECTION X. INDEPENDENT CONTRACTOR**

a. Contractor Status

CONTRACTOR is an independent contractor and not an employee of CITY. Neither CITY nor any of its employees shall have control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth and, CONTRACTOR expressly warrants not to, in any time or in any manner, represent that CONTRACTOR, by any of CONTRACTOR's officers, employees, or agents, are in any manner officers, employees, or agents of CITY. It is distinctly understood that said CONTRACTOR shall at all times remain as to the CITY a wholly independent contractor, and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

b. Contractor's Personal Services - Inducement

This Agreement contemplates that the CONTRACTOR's personal services and those of CONTRACTOR's officers, employees and agents are a substantial inducement to the CITY for entering into this Agreement. CONTRACTOR may not assign any interest in this Agreement, except upon written consent of CITY.

Furthermore, unless expressly provided otherwise in CONTRACTOR's proposal, CONTRACTOR shall not subcontract any portion of the performance contemplated under this Agreement without the prior written approval of the CITY, Nothing in this Agreement shall be construed as preventing CONTRACTOR from employing as many employees as CONTRACTOR deems necessary for the proper and efficient execution of this Agreement.

c. Assignment

CONTRACTOR shall not be permitted to assign any of its rights or obligations hereunder, except the payment of funds due from the CITY, without the prior written consent of the CITY. The consent of the CITY to an assignment shall not be unreasonably withheld but prior to approving any assignment involving the performance of any obligations pursuant hereto, the City Council be satisfied by competent evidence that the proposed assignee is fully capable of performing those services proposed to be assigned. In the event of such assignment, the City Council may condition the same to ensure compliance with the provisions of the Agreement.

## **SECTION XI. INDEMNITY**

- a. CONTRACTOR is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and City is relying upon the skill and knowledge of CONTRACTOR to perform said services and duties.
- b. CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to CONTRACTOR or any other person for, and CONTRACTOR shall indemnify, defend, protect and hold harmless Indemnitees from and against, any all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring as a result of or allegedly caused by the CONTRACTOR's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of CONTRACTOR, its agents, officers, directors, subcontractors, or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provision of this subsection shall not apply to Claims occurring as a result of the CITY'S sole negligence or willful acts or omissions.
- c. CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required in this Section, CONTRACTOR agrees to be fully responsible according to the terms of this Section. Failure of the CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth herein shall survive termination of this Agreement for a period of four years and is in addition to any rights which CITY may have under the law. This indemnity is effective

without reference to the existence of any insurance coverages which may have been required under this Agreement or any additional insured endorsements which may extend to CITY.

## **SECTION XII. INSURANCE**

Without limiting CONTRACTOR's liability pursuant to the hold harmless and indemnity provisions of this Agreement, CONTRACTOR shall maintain, at a minimum, the insurance coverage listed below:

a. Worker's Compensation Insurance. Including:

- Statutory California worker's compensation coverage.
- Employer's liability with minimum limits of \$1,000,000 per accident and \$1,000,000 per disease, each employee and policy limit.
- An endorsement stating the CITY shall receive at least thirty (30) days' notice prior to cancellation or non-renewal of coverage.

b. Liability Insurance shall be provided as follows:

- General liability insurance (or equivalent form) including:
  - Blanket contractual liability coverage.
  - Broad form property damage liability coverage.
  - Personal injury liability coverage
  - Products and completed operations liability coverage
- .Automobile liability insurance (or equivalent form) including:
  - Coverage for owned, non-owned and hired vehicles.
  - Blanket contractual liability coverage.

The liability coverage shall be written on an occurrence from subject to a minimum of \$5,000,000 per occurrence and in the annual aggregate where aggregates are applicable. The policy or policies, if coverage is provided by combination of policies, shall include:

- (1) Cross liability coverage. (i.e., permitting cross suits between insureds)
- (2) An endorsement stating the CITY shall receive at least thirty (30) days' notice prior to cancellation, non-renewal, or substantial change in coverage.
- (3) An endorsement naming City of Lynwood, its elected and appointed officials, officers, employees and volunteers as additional insured for liabilities arising out of transit operations.
- (4) An endorsement stating the insurance required by this Agreement is primary and that the CITY's self-insurance fund and any insurance

purchased by the CITY shall apply in excess of the insurance purchased by the CONTRACTOR.

c. CONTRACTOR shall:

Furnish properly executed Certificates of Insurance and policy endorsements to CITY prior to commencement of work under this Agreement. The certificates and endorsements shall clearly evidence all coverage requirements described above. All insurance by this Agreement shall be maintained in full force and effect for the entire term of this Agreement. If CONTRACTOR, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. CITY, at its sole option, may forthwith terminate this Agreement and obtain damages from the Contractor resulting from said breach. Alternatively, CITY may purchase such required insurance coverage, and without further notice to CONTRACTOR, CITY, may deduct from sums due to CONTRACTOR any premium costs advanced by CITY for such insurance.

d. All notices regarding this insurance shall be sent to:

Director of Public Works  
City of Lynwood  
11330 Bullis Road  
Lynwood, CA 90262

### **SECTION XIII. PERFORMANCE STANDARDS**

Contractor shall provide timely and reliable transit service. This includes maintaining high trip completion levels and operating within the specified arrival and departure times. To encourage this, the liquidated damage and described below may be implemented by CITY. Implementation of liquidated damage clauses may be further delayed at the sole discretion of CITY and may not be initiated during the first twelve (12) months of operation, or at any time during the term of this Agreement, again at the sole discretion of CITY.

Determination of liquidated damage shall be made utilizing sampling methods mutually agreed to by CITY and CONTRACTOR. The following liquidated damage clauses shall apply:

a. On-time performance of 85% of sampled runs per month is the minimum level of acceptability. The CONTRACTOR shall be assessed by the CITY the amount of Two Hundred and Fifty Dollars (\$250.00) per month if sampled trips reflect on time performance below 85%.

b. Liquidated damages -- Complaints that are customer complaints verified to have a basis in fact, received by the City within 48 hours of the incident and meet or



exceed a rate of eight (8) per 10,000 passenger trips during any calendar month may result in a liquidated damages assessment of Two Hundred and Fifty Dollars (\$250) for that month.

c. The parties hereto acknowledge and agree that the actual damages which would be suffered by the CITY for CITY's damages in the event CONTRACTOR acts or fails to act in the manner set forth in this Agreement would result in substantial damages to the CITY but the amount of such damages would be difficult, if not impossible to ascertain due to the nature of this Agreement and the nature of such damages. Accordingly, the parties, pursuant to applicable law, have determined to establish the provision of this Section as and for CITY's damages for such acts or failures to act, and not as a penalty and further agree that such damages are reasonable. Each of the parties hereto specifically acknowledges agreement to the reasonableness thereof under the circumstances. CITY shall be entitled to take such other legal remedies as may be appropriate for such acts or failures to act, including but not limited to termination of this Agreement.

#### **SECTION XIV, MISCELLANEOUS**

##### a. Ownership of Documents

All reports, as well as all original reproducible drawings, plans, studies, traffic counts, memoranda, computation sheets, computer disks, and other documents assembled or prepared by CONTRACTOR or CONTRACTOR's agents officers or employees in connection with this Agreement shall be the property of the CITY and shall be delivered to the CITY upon either the completion or termination of the Project. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY, except as required by law.

##### b. Records

CONTRACTOR shall maintain all of its business records for a period of five (5) years after the termination of this Agreement. CITY shall be entitled, upon reasonable notice, to inspect and copy any or all such records.

##### c. Notices

Any notices to be given under this Agreement shall be given by enclosing the same in the sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

CITY:

Director of Public Works  
City of Lynwood  
11330 Bullis Road

CONTRACTOR:

Lynwood, CA 90262

Either CITY or CONTRACTOR may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions. Notices shall be deemed effective upon receipt or three (3) business days following deposit in the mail as provided herein, whichever occurs first.

d. Enforcement of Agreement

This Agreement shall be construed and interpreted as to both validity, and performance of the parties, in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and CONTRACTOR covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

e. Cure of Default and Termination

In the event a party breaches this Agreement the other party shall give notice of the default to the party in breach. Unless a different period is specified in Section VIII (a) and (b) above, a party in breach related to the payment of money shall have thirty (30) working days to cure the default and if it is not cured within said period the other party may terminate this Agreement pursuant to Section VIII (a) or (b) above or may take such further legal action as is authorized by this Agreement. If the breach involves a failure to obtain insurance or represents an immediate danger to the health, safety or general welfare, CITY may immediately suspend this Agreement and the CONTRACTOR's right to perform upon written or telephonic notice and if the default is not cured as provided in this Subsection, CITY may terminate this Agreement pursuant to Section VIII, procure the required insurance, or take such further legal action as is authorized by this Agreement. If the breach involves matters other than the payment of money, the party in breach shall have fifteen (15) working days to cure the default and if the default is not cured, the aggrieved party may terminate this Agreement pursuant to Section VIII (a) or (b) above or may take such further legal action as is authorized by this Agreement. If it is not possible to cure the default in such 15-day period, the party in breach must commence to cure the default within said 15-day period and diligently and with best efforts pursue the cure until complete, provided that the party in breach shall not have more than ninety (90) calendar days to effect the cure. The effective date of the termination shall be the date of notice served in compliance with this Agreement. Any termination may be rescinded within ten (10) working days of service of the notice.

f. Waiver

No delay or omission in the exercise of any right or remedy of a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. CITY's, consent or approval of any act by CONTRACTOR requiring CITY's consent to or approval of any subsequent act of CONTRACTOR shall not be construed as a waiver. Any waiver by a party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.

g. Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercises by either party of one of more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default to any other default by the other party.

h. Legal Action

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

i. Attorney's Fees

If either party commences an action against the other party arising out of or in connection with this Agreement, the Prevailing party shall be entitled to recover reasonable attorney's fees and costs of suit from the losing party.

j. Integration

This Agreement represents the entire understanding of the CITY and the CONTRACTOR. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may not be altered, amended or modified except in writing by both parties hereto.

k. Amendment

This Agreement may be amended only by the written mutual consent of the parties.

**SECTION XV. COMMUNITY EXCURSIONS, SPECIAL EVENTS, AND TRIPS**

CONTRACTOR shall provide vehicles designated for the Fixed Route Transit for special events, excursions and trips as requested by CITY based on special event hourly

rate. CONTRACTOR shall provide \$2,000 annual credit to CITY for community excursions, special events and trips. Any trip above the \$2,000 annual credit shall be charged based on special event hourly rate.

**XVII. FORCE MAJEURE**

In the event CONTRACTOR is unable to provide the transportation services as specified in this Agreement because of any act of God, civil disturbance, fire, riot, water, terrorism, or government action, CITY shall excuse the CONTRACTOR from performance under this Agreement. However, the CONTRACTOR shall not receive payment during the period that service is not provided.”

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed with all the formalities required by the law on the respective dates set forth opposite their signatures.

CITY OF LYNWOOD

CONTRACTOR

BY:

BY:

\_\_\_\_\_  
Mayor, City of Lynwood

\_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

DATE: \_\_\_\_\_



## APPENDIX 1

Scope of Work shall be the Scope of Work and Services included In the RFP and subsequent Addenda