

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF CARSON**

**and**

**LONG BEACH PUBLIC TRANSPORTATION COMPANY**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF CARSON AND  
LONG BEACH PUBLIC TRANSPORTATION COMPANY**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 27th day of September, 2021 by and between the CITY OF CARSON, a California municipal corporation ("City") and LONG BEACH PUBLIC TRANSPORTATION COMPANY, a California nonprofit public benefit corporation ("Long Beach Transit"). City and Long Beach Transit may be referred to, individually or collectively, as "Party" or "Parties."

**RECITALS**

A. City has sought the performance of the services defined and described in Article 1 of this Agreement.

B. Long Beach Transit is ready, willing and able to perform the services defined and described in Article 1 of this Agreement.

C. Pursuant to the City of Carson's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Long Beach Transit for performance of those services defined and described in Article 1 of this Agreement and desire that the terms of that performance be as defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF LONG BEACH TRANSIT**

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, Long Beach Transit shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Long Beach Transit represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Long Beach Transit shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein.

1.2 Compliance with Law.

Long Beach Transit shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, grant requirements and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.3 Licenses, Permits, Fees and Assessments.

Long Beach Transit shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Long Beach Transit shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Long Beach Transit's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.4 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

1.5 No Franchise Rights.

Neither Long Beach Transit nor City intend by this Agreement to grant to Long Beach Transit any franchise, right, or agreement to use the streets of the City of Carson, it being further agreed and understood that whether or not Long Beach Transit has such a franchise or is required to have such a franchise is not the subject of this Agreement, and no term or provision of this Agreement shall be used to prejudice the rights of either party in that regard.

**ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Long Beach Transit the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **Five Million Three Hundred Ten Thousand Dollars (\$5,310,000)** for the initial three-year term of this Agreement (the "Contract Sum"). The annual compensation shall not exceed **One Million Seven Hundred Seventy Thousand Dollars (\$1,770,000.00)** for each year of the initial three-year term.

## 2.2 Invoices

On a quarterly basis, Long Beach Transit will invoice the City for services rendered. Except as provided in Section 7.3, City will use its best efforts to cause Long Beach Transit to be paid for the services within 45 days of the submitted invoice; however, Long Beach Transit acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. Review and payment by City for any services provided by Long Beach Transit shall not constitute a waiver of any default by Long Beach Transit or any rights or remedies provided herein or any applicable law.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Long Beach Transit shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Long Beach Transit, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, pandemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if City or Long Beach Transit shall within thirty (30) days of the commencement of such delay notify the other Party's contract representative in writing of the causes of the delay. The Parties shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Parties such delay is justified. In no event shall Long Beach Transit be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Long Beach Transit's sole remedy being extension of the Agreement pursuant to this Section. During the delay, Long Beach Transit shall not render services to the City. Long Beach Transit shall not invoice City for, and shall not be entitled to, any compensation or fixed costs from City for the duration of the delay period.

### 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding an initial term of three (3) years, with two subsequent one-year options that may be exercised by a duly approved and executed amendment to this Agreement entered into between the Parties.

## **ARTICLE 4. COORDINATION OF WORK**

### **4.1 Representatives and Personnel of Long Beach Transit.**

Kenneth A. McDonald, President and CEO and or his designees (“Principals”) are hereby designated as being the principals and representatives of Long Beach Transit authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Long Beach Transit and devoting sufficient time to personally supervise the services hereunder. All personnel of Long Beach Transit, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Long Beach Transit without prior notice to City. Long Beach Transit shall notify City of any changes in Long Beach Transit’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

### **4.2 Status of Long Beach Transit.**

Long Beach Transit shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Long Beach Transit shall not at any time or in any manner represent that Long Beach Transit or any of Long Beach Transit’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Long Beach Transit, nor any of its officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Long Beach Transit expressly waives any claim Long Beach Transit may have to any such rights.

### **4.3 Contract Officer.**

The City of Carson’s Contract Officer shall be the Director of Community Services, or such other person as may be designated by the City Manager. It shall be Long Beach Transit’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services. Long Beach Transit shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Long Beach Transit, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Long Beach Transit’s employees, representatives or agents, or in fixing their number, compensation or hours of service. Long Beach Transit shall perform all services

required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Long Beach Transit in its business or otherwise or a joint venturer or a member of any joint enterprise with Long Beach Transit.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Long Beach Transit, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Long Beach Transit shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. No approved transfer shall release Long Beach Transit or any surety of Long Beach Transit of any liability hereunder without the express consent of City.

### ARTICLE 5. INSURANCE AND INDEMNIFICATION

#### 5.1 Insurance Coverages.

Long Beach Transit shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive commercial general liability insurance written on a per occurrence basis for products and completed operations, bodily injury, personal and advertising injury and property damage. The policy of insurance shall be in an amount not less than \$2,000,000.00 per occurrence or if a general aggregate limit is used, then either the general aggregate limit shall apply separately to the services Long Beach Transit shall render under this agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Long Beach Transit against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Long Beach Transit in the course of carrying out the services contemplated in this Agreement, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence basis for bodily injury and property damage in an amount not less than \$2,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Subcontractors. Long Beach Transit shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Long Beach Transit's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. If Long Beach Transit maintains broader coverage and/or higher limits than the minimums shown in Section 5.1 above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Long Beach Transit. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, Long Beach Transit shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

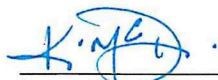
No work or services under this Agreement shall commence until Long Beach Transit has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]



Long Beach Transit Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Long Beach Transit performs; products and completed operations of Long Beach Transit; premises owned, occupied or used by Long Beach Transit; or any automobiles owned, leased, hired or borrowed by Long Beach Transit. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Long Beach Transit's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. Long Beach Transit agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Long Beach Transit may be held responsible for the payment of damages to any persons or property resulting from Long Beach Transit's activities or the activities of any person or persons for which Long Beach Transit is otherwise responsible nor shall it limit Long Beach Transit's indemnification liabilities as provided in Section 5.3.

In the event Long Beach Transit subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between Long Beach Transit and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Long Beach Transit is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Long Beach Transit agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Long Beach Transit, its officers, employees, agents, subcontractors, or any individual or entity for which Long Beach Transit is legally liable ("indemnitors"), or arising from Long Beach Transit's or indemnitors' reckless or willful misconduct, or arising from Long Beach Transit's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Long Beach Transit will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Long Beach Transit will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Long Beach Transit hereunder; and Long Beach Transit agrees to save and hold the City, its officers, agents, and employees harmless therefrom;



(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Long Beach Transit for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Long Beach Transit hereunder, Long Beach Transit agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Should any liability or sanctions be imposed against City pursuant to 8 U.S.C.A §§1101 et seq. arising from Long Beach Transit's employment practices or the status of individuals used by Long Beach Transit to provide services pursuant to this Agreement, Long Beach Transit hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

Long Beach Transit shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Long Beach Transit shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Long Beach Transit in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Long Beach Transit and shall survive termination of this Agreement.

#### 5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, Long Beach Transit agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Reports.

Long Beach Transit shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Long Beach Transit hereby acknowledges that the City is greatly concerned

about the cost of work and services to be performed pursuant to this Agreement. For this reason, Long Beach Transit agrees that if Long Beach Transit becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Long Beach Transit shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

## ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

### 7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to 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 Long Beach Transit covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

### 7.2 Disputes; Default.

In the event that Long Beach Transit is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Long Beach Transit for any work performed after the date of default. Instead, the City may give notice to Long Beach Transit of the default and the reasons for the default. The notice shall include the timeframe in which Long Beach Transit may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Long Beach Transit is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Long Beach Transit does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of Long Beach Transit's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### 7.3 Resolution of Disputed Invoices/Claims.

Within 90 days of the effective date of this Agreement, the Parties' contract representatives will establish a mutually agreeable dispute resolution process and related terms/provisions that would apply in the event City disputes an invoice submitted by Long Beach Transit on the basis that it does not accurately reflect services rendered pursuant to this Agreement. The foregoing dispute resolution process and related provisions would also apply with respect to any and all amounts for which City may be liable to third parties by reason of Long Beach Transit's acts or omissions in performing or failing to perform Long Beach Transit's obligation under Article 5 of this Agreement, including but not limited to, for (i) amounts of any claims made by a third party,

the amounts or validity of which is disputed by Long Beach Transit, or (ii) any indebtedness that may exist which shall appear to be the basis for a claim of lien.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Long Beach Transit shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either 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 this Agreement.

7.5 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 exercise by either party of one or more of 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 or any other default by the other party.

7.6 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 declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon ninety (90) days' written notice to Long Beach Transit, except that where termination is due to the fault of Long Beach Transit, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, Long Beach Transit reserves the right to terminate this Contract at any time, with or without cause, upon ninety (90) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as Long Beach Transit may determine. Upon receipt of any notice of termination, Long Beach Transit shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Long Beach Transit shall be entitled to compensation for all services rendered prior to the date of receipt of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Long Beach Transit.

If termination is due to the failure of Long Beach Transit to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and Long Beach Transit shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Long Beach Transit for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to Long Beach Transit, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Long Beach Transit or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

City and Long Beach Transit each covenant that neither it, nor any of its officers or employees, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the other or which would in any way hinder Long Beach Transit's performance of services under this Agreement. Long Beach Transit further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Long Beach Transit agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. Long Beach Transit warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## ARTICLE 9. MISCELLANEOUS PROVISIONS

### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of Long Beach Transit, to the person(s) at the address designated on the execution page of this Agreement, copy to Long Beach Transit General Counsel. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Long Beach Transit and by the City Council, except as otherwise provided herein. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

### 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "non-interests" pursuant to Government Code Sections 1091 or 1091.5. Long Beach Transit warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Long Beach Transit further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Long Beach Transit is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Long Beach Transit's Authorized Initials



9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation



*Lula Davis Holmes*  
Lula Davis-Holmes, Mayor

**ATTEST:**

*for* *John W. Carroll, Sr.* Deputy City Clerk  
John W. Carroll, Sr., Chief Deputy City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

*Sunny K. Soltani*  
Sunny K. Soltani, City Attorney  
[BRJ]

**LONG BEACH TRANSIT:**

LONG BEACH PUBLIC TRANSPORTATION  
COMPANY, a California public benefit nonprofit  
corporation

By: *Kenneth A. McDonald*  
Kenneth A. McDonald, President and CEO

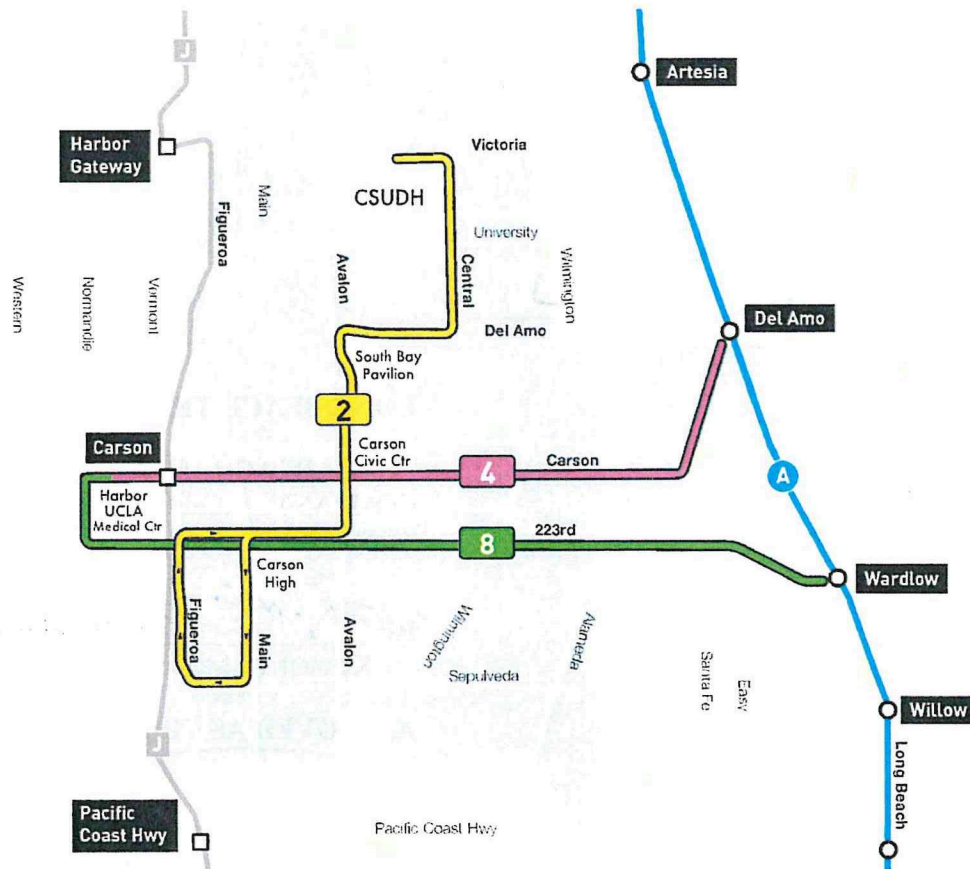
**APPROVED AS TO FORM**

By: *Vincent C. Ewing*  
Vincent C. Ewing  
General Counsel  
Address: 1963 E. Anaheim St.  
Long Beach, CA 90813

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**I. Long Beach Transit will perform the following Services:**

- A. Long Beach Transit will perform fixed-route public transit bus services as detailed in this Section.
- B. Long Beach Transit will operate the three fixed routes depicted below (identified as routes 2, 4 and 8) within the City, at the times and frequencies indicated below:



LBT Routes	Service Span			Frequency of Service (Headway In Minutes)		
	Weekday	Saturday	Sunday	Weekday	Saturday	Sunday
2	5:05AM - 7:30PM	10:15AM - 6:00PM	No Service	40	40	No Service
4	5:15AM - 7:45PM	10:35AM - 5:45PM	No Service	40	40	No Service
8	5:10AM - 7:50PM	10:30AM - 5:50PM	No Service	40	40	No Service



- C. Operation of the fixed routes at the times and frequencies set forth in subsection (B), above (the "Base Services"), will require six (6) buses.
- D. [Reserved]
- E. City may increase service levels beyond the Base Services subject to a City Manager-approved and Long Beach Transit-approved written amendment to this Agreement, executed by both Parties, to take advantage of any or all of the following additional or enhanced service options available from Long Beach Transit:
  - 1. Add Sunday service (Saturday hours of operation) to Base Services;
  - 2. Add one additional hour of service\* on weekdays to Base Services;
  - 3. Add one additional hour of service\* on Saturdays to Base Services;

The City Council hereby authorizes any or all of the foregoing increases subject to approval and execution of the necessary amendment to this Agreement by the City Manager if and when such increase is deemed appropriate by the City Manager. Additional costs for increased or enhanced services pursuant to this subsection (E) are as specified in Section II of Exhibit "C." Any contract amendment to increase or enhance services pursuant to this subsection shall require a corresponding increase to the contract sum provisions of this Agreement, including Section 2.1 and Section III of Exhibit "C," based on the rates set forth in Section II of Exhibit "C." Similarly, if, after any increase(s) or enhancement(s) of services pursuant to this subsection, Long Beach Transit or City wish to terminate such increased or enhanced services and/or return services back to the Base Services, such action shall require a City Manager-approved written amendment to this Agreement, executed by both Parties (City Manager may execute on behalf of City), prior to taking effect.

**\*The timing of the additional hour of service shall be determined mutually by parties and agreed upon at the time of entering into the relevant amendment to this Agreement.**

- F. Further increases, additions or enhancements to the services, including the following, may be authorized subject to a City Council and Long Beach Transit-approved and duly executed written amendment to this Agreement between the Parties:
  - 1. Increase service frequency of Base Services from 40 minutes to 30 minutes.
  - 2. Expand the service routes of the Base Services to provide access to key destinations such as Carson HS, South Bay Pavilion, Harbor Gateway, LA Harbor College, and UCLA Harbor Medical Center.
  - 3. Provide enhanced connections to regional high-capacity transit, including the J (Silver) Line and the A (Blue) Line.

4. Complement existing regional transit services provided by other regional providers,
  5. Extend service span to align with other LBT services.
  6. Serve priority transit arterials identified by the City of Carson.
  7. Add additional service hours, implement Sunday service, or adjust service frequency for the aforementioned potential expanded services.
- G.** All buses utilized for services pursuant to this Agreement shall be provided and operated by Long Beach Transit, and shall be ADA-accessible at all times. Additional ADA-accessible buses shall be provided by Long Beach Transit as necessary to accommodate any increased or enhanced services authorized pursuant to subsection (E), above, and to replace and continue services in the event of a breakdown, as detailed in subsection (I), below. For the avoidance of doubt, "ADA," as used in this Agreement, means and refers to the Americans with Disabilities Act of 1990.
- H.** All of the services required under this Agreement will be performed by Long Beach Transit or approved subcontractors under its supervision, and all personnel engaged in the work shall be duly qualified to perform such services.
- I.** Long Beach Transit shall provide towing and replacement buses as soon as reasonably practicable in the event of a vehicle breakdown. No request for towing of any vehicle pursuant to this Agreement shall be made by City, nor shall any such request be required for Long Beach Transit to perform the aforementioned obligations.
- Long Beach Transit shall be responsible for providing adequate training to its staff to ensure proper operation and maintenance of system vehicles. All drivers providing the services under this Agreement shall possess a Commercial Driver's license (CDL), Medical Examiner's Certificate and any other required certificates.
- J.** Long Beach Transit shall maintain and implement a policy of drug and alcohol testing for its employees as required for compliance with all laws, regulations, and grant program requirements as stated in Section 1.2.
- K.** Long Beach Transit will collect and retain all fares and will count and record the ridership or number of passengers using the services.
- L.** Vehicle Operation and Maintenance:
1. At all times, Long Beach Transit shall maintain all components of each vehicle as stated in section 1.2.
- II.** In the event City or Long Beach Transit, for any reason, determine that there is a need to reduce the hours of operation of any or all the fixed routes below the base

hours of operation specified in this Agreement for the Base Services without completely suspending services, then such reduction in service hours may be effectuated via a City Manager-approved and Long Beach Transit-approved written amendment to this Agreement, executed by both Parties (City Manager may execute on behalf of City), prior to the reduction taking effect.

- III. All of the services required under this Agreement will be performed by LBT or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. LBT reserves the right to determine the assignment of its employees to the performance of LBT's services under this Agreement. In the event City's Contract Officer determines there is a need to exclude any employee of LBT from performing services for City under this Agreement, the Parties agree to work together in good faith to find a mutually agreeable solution, provided no action shall be taken that would violate any federal, state or local law or regulation, including any applicable labor agreement between LBT and bus operators.

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

(added text shown in ***bold italics***, deleted text shown in ~~strikethrough~~)

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

- I. Long Beach Transit shall perform the Base Services at the flat annual rate of \$1,770,000 (i.e., per 12 months of service) for the initial three-year term of this Agreement (the "Base Services Rate").**
  
- II. The additional or enhanced service options specified in Section I.E of Exhibit "A", if and when authorized pursuant to said Section I.E during the term of this Agreement, shall be performed at the following flat annual rates (i.e., per 12 months of service, with actual compensation due for any relevant billing period prorated as necessary based on the timing of authorization):**
  - A. Add Sunday service (Saturday hours) to Base Services: add \$164,500 (+/- the rate of inflation to be determined at time of contract amendment) annually to Base Services Rate.**
  
  - B. Add one additional hour of service on weekdays to Base Services: add \$122,400 (+/- the rate of inflation to be determined at time of contract amendment) annually to Base Services Rate.**
  
  - C. Add one additional hour of service on Saturdays to Base Services: add \$25,200 (+/- the rate of inflation to be determined at time of contract amendment) annually to Base Services Rate.**
  
- III. The total compensation for the Services shall not exceed \$5,310,000 for the initial three-year term of this Agreement, as provided in Section 2.1 of this Agreement.**

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

**I. Long Beach Transit shall perform all Services timely in accordance with the following schedule:**

- A. Base Services: service to the public is provided in accordance with the schedule set forth in Section I.B of Exhibit "A."
- B. Long Beach Transit shall provide as requested service performance reports to the City such as:
  - Ridership;
  - On-Time Performance;
  - Adherence to the Plan Schedule;
  - Complaints or Compliments of Service;
  - Security Statistics;
  - Revenue Data.

## LONG BEACH PUBLIC TRANSPORTATION COMPANY / CITY OF CARSON Bus Service Agreement, Section 7.3 Dispute Resolution Process

### Resolution of Disputed Invoices/Claims.

This agreement is entered into under Section 7.3 ("Resolution of Disputed Invoices/Claims") of the Contract Services Agreement entered into by and between the City of Carson and Long Beach Public Transportation Company, effective September 7, 2021 ("Contract"), and is deemed incorporated into the Contract by reference as though fully set forth in the Contract at Section 7.3. LONG BEACH PUBLIC TRANSPORTATION COMPANY is hereinafter referred to as "LBT" and the CITY OF CARSON is hereinafter referred to as "Carson". Collectively, LBT and Carson are referred to hereinafter as the "Parties". Individually, LBT and Carson hereinafter are referred to as the "Party", or as a "Party".

Notwithstanding Section 7.2 of the Contract, any dispute, claim, or controversy that may arise between the Parties that is within the scope of Section 7.3 of the Contract ("Dispute") shall be resolved as herein provided. Prior to the initiation of any legal action pursuant to Section 7.6 of the Contract, the Parties shall first attempt to resolve their Dispute informally, in a timely and cost-effective manner, as follows:


1. If a Party has a Dispute with the other Party, the disputing Party shall give written notice thereof within five (5) business days following identification of the cause of the Dispute to LBT's President and CEO and Carson's City Manager, which notice shall describe the Dispute and recommend corrective action to be taken by the other Party. Notwithstanding the foregoing, the failure of a Party to give notice of a Dispute within the foregoing timeframe shall not, in and of itself, constitute a waiver of any claim or legal right or remedy related to the Dispute, nor a waiver of any default or any provision of the Contract. Nothing in this agreement is intended to alter any applicable statute of limitations. "Business days" as used in this agreement shall exclude Fridays and holidays observed by Carson or LBT.
  - a. While the Dispute is pending, and provided the Contract remains in effect and has not been terminated pursuant to Section 7.7 or 7.8, and services for the relevant period have not been suspended pursuant to Section 3.3, Carson will continue paying LBT's invoices for services rendered pursuant to the Contract and LBT will continue providing services pursuant to the Contract. With respect to the first type of dispute identified in Section 7.3 of the Contract, i.e., where Carson disputes an invoice submitted by LBT on the basis that it does not accurately reflect services rendered pursuant to the Contract, Carson doesn't have the right to retain funds that are subject to the Dispute and that come due pursuant to LBT's invoices while the Dispute is pending (the "Disputed Payments"), provided LBT's President/CEO, upon being notified of the Dispute, in good faith affirms to Carson's City Manager that LBT reasonably believes the Disputed Payments accurately reflect services rendered pursuant to the Contract. LBT doesn't have the right to stop services pursuant to the Contract while the Dispute is pending, provided the Contract remains in effect and has not been terminated pursuant to Section 7.7 or 7.8, and services for the relevant period have not been suspended pursuant to Section 3.3.

**LONG BEACH PUBLIC TRANSPORTATION COMPANY / CITY OF CARSON Bus Service Agreement, Section 7.3 Dispute Resolution Process**

2. LBT's President and CEO and Carson's City Manager shall, within eight (8) business days of receiving written notice of the Dispute ("Resolution Deadline"), meet and confer in a good faith attempt to resolve it. Other persons may be included in the meet and confer process as deemed necessary by LBT's President and CEO and Carson's City Manager.
3. If the Parties are unable to resolve the Dispute at least in principle prior to the Resolution Deadline, either Party may pursue a legal action pursuant to Section 7.6 of the Agreement. If the Parties agree in principle but do not have sufficient time to effectuate final approval of such agreement prior to the Resolution Deadline, then provided each Party acts diligently and in good faith to finalize the agreement, a reasonable time period not exceeding thirty (30) days beyond the Resolution Deadline shall be allowed to finalize such agreement prior to either Party pursuing a legal action thereon.
4. The prevailing party in a legal action regarding the Dispute shall be entitled to recover reasonable attorneys' fees and costs in accordance with Section 7.9 of the Agreement.

IN WITNESS WHEREOF, on the date and year first-below written, the Parties hereto have executed and agreed to this LONG BEACH PUBLIC TRANSPORTATION COMPANY / CITY OF CARSON Bus Service Agreement, Section 7.3 Dispute Resolution Process.

CITY:  
CITY OF CARSON, a municipal corporation

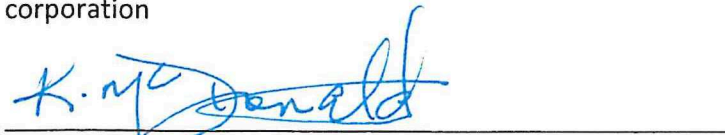
  
\_\_\_\_\_  
Sharon Landers, City Manager

Date: Nov 16, 2021

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

  
\_\_\_\_\_  
Sunny K. Soltani, City Attorney

LONG BEACH PUBLIC TRANSPORTATION COMPANY, a California public benefit nonprofit corporation


  
\_\_\_\_\_  
Kenneth A. McDonald, President and CEO

Date: 10/26, 2021



**LONG BEACH PUBLIC TRANSPORTATION COMPANY / CITY OF CARSON Bus Service Agreement, Section 7.3 Dispute Resolution Process**

APPROVED AS TO FORM:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Vincent C. Ewing, General Counsel