

**AGENDA
REGULAR MEETING
LOCAL TRANSPORTATION AUTHORITY**

DATE: Thursday, September 21, 2017
3:00 P.M.

LOCATION: **Board of Supervisors Chambers**
481 Fourth Street, Hollister, CA 95023

DIRECTORS: Chair Ignacio Velazquez, Vice Chair Jaime De La Cruz
Directors Tony Boch, Anthony Botelho, and Jim Gillio
Alternates: San Benito County: Mark Medina;
City of Hollister: Mickie Solorio Luna; San Juan Bautista: Jim West

*Persons who wish to address the Board of Directors must complete a Speaker Card and give it to the Clerk prior to addressing the Board. Those who wish to address the Board on an agenda item will be heard when the Chairperson calls for comments from the audience. Following recognition, persons desiring to speak are requested to advance to the podium and state their name and address. After hearing audience comments, the Public Comment portion of the agenda item will be closed. **The opportunity to address the Board of Directors on items of interest not appearing on the agenda will be provided during Section B. Public Comment.***

3:00 P.M. CALL TO ORDER:

- A. **ACKNOWLEDGE** Certificate of Posting
- B. **PUBLIC COMMENT:** (Opportunity to address the Board on items of interest not appearing on the agenda. No action may be taken unless provided by Govt. Code Sec. 54954.2. **Speakers are limited to 3 minutes.**)

CONSENT AGENDA:

(These matters shall be considered as a whole and without discussion unless a particular item is removed from the Consent Agenda. Members of the public who wish to speak on a Consent Agenda item must submit a Speaker Card to the Clerk and wait for recognition from the Chairperson. Approval of a consent item means approval as recommended on the Staff Report.)

1. **APPROVE** Local Transportation Authority Draft Meeting Minutes Dated August 17, 2017 – Gomez
2. **RECEIVE** Specialized Transportation/Jovenes de Antaño July 2017 Monthly Service Reports – Valentine
3. **RECEIVE** County Express/MV Transportation July 2017 Monthly Operations Reports – Valentine
4. **APPROVE** Contract Amendment #5 to the Contract between LTA and Jovenes de Antaño (JDA) dated December 16, 2010 – Valentine

Adjourn to LTA Meeting on Thursday, October 19, 2017. Agenda deadline is October 3, 2017 at 12:00 p.m.

In compliance with the Americans with Disabilities Act (ADA), if requested, the Agenda can be made available in appropriate alternative formats to persons with a disability. If an individual wishes to request an alternative agenda format, please contact the Clerk of the Council four (4) days prior to the meeting at (831) 637-7665. The Local Transportation Authority Board of Directors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Board's office at (831) 637-7665 at least 48 hours before the meeting to enable the Council of Governments to make reasonable arrangements to ensure accessibility.

**San Benito County
LOCAL TRANSPORTATION AUTHORITY
REGULAR MEETING**

August 17, 2017 3:00 P.M.

DRAFT MINUTES

MEMBERS PRESENT:

Chair Velazquez, Director Boch, Director Botelho, Director De La Cruz and Director Gillio

STAFF PRESENT:

Deputy County Counsel, Shirley Murphy; Executive Director, Mary Gilbert; Transportation Planner, Veronica Lezama; Transportation Planner, Regina Valentine; Secretary, Monica Gomez

CALL TO ORDER:

Chair Velazquez called the meeting to order at 4:42 p.m.

A. CERTIFICATE OF POSTING

Upon a motion duly made by Director De La Cruz, and seconded by Director Botelho, the Directors unanimously acknowledged the Certificate of Posting. Vote: 5/0 motion passes.

B. PUBLIC COMMENT: None

CONSENT AGENDA:

1. **Approve** Local Transportation Authority Draft Meeting Minutes Dated June 15, 2017 – Gomez
2. **Receive** Specialized Transportation/Jovenes de Antaño May 2017 and June 2017 Monthly Service Report – Valentine
3. **Receive** County Express/MV Transportation May 2017 and June 2017 Monthly Operations Report – Valentine
4. **Receive** Operations Performance Report for the 4th Quarter of Fiscal Year 2016/2017 – Valentine
5. **Approve** Budget Adjustment/Transfer 16-17-08 – Postigo

There was no public comment on the consent agenda.

Upon a motion duly made by Director De La Cruz, and seconded by Director Boch, the Directors unanimously approved Items 1-5 from the Consent Agenda. Vote: 5/0 motion passes.

REGULAR AGENDA:

6. **Transit Services Operations Procurement Management Contract** – Valentine
 - a. **Approve** Contract between the San Benito County Local Transportation Authority (LTA) and Transit Professional Services for an amount not to exceed \$25,000 for the transit services operations procurement management
 - b. **Consider** formation of and **Select** members to an LTA Board subcommittee to participate in the 2018 procurement process for County Express and Specialized Transportation service operators

Transportation Planner, Regina Valentine, requested authorization from the LTA Board to enter into contract with Transit Professional Services for assistance to manage the 2018 procurement process for County Express and Specialized Transportation service operators. Additionally, staff asked that the Board consider formation of a subcommittee to participate during the process.

After brief discussion, Director Gillio and Director Botelho volunteered to be on the LTA Board subcommittee, to participate in the 2018 procurement process for County Express and Specialized Transportation service operators.

Ms. Gilbert noted that staff anticipates 2-3 meetings and there will not be much participation needed until after January.

Upon a motion duly made by Director De La Cruz, and seconded by Director Botelho, the Directors unanimously approved Item 6a. Vote: 5/0 motion passes.

Upon a motion duly made by Director De La Cruz, and seconded by Director Boch, the Directors selected Director Gillio and Director Botelho as members of the LTA Board subcommittee to participate in the 2018 procurement process for County Express and Specialized Transportation service operators. Vote: 5/0 motion passes.

There was no public comment.

Upon a motion duly made by Director De La Cruz, and seconded by Director Boch, the Directors unanimously adjourned the LTA meeting at 4:46 p.m. Vote: 5/0 motion passes.

ADJOURN TO LTA MEETING SEPTEMBER 21, 2017.



Jovenes de Antaño

Specialized Transportation Services

Monthly Service Report - July 2017

WEEKDAYS

Service	Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Donations/Fares Collected	Service Days
Out-of-County	378	260.00	3,385	\$ 162.50	20
Senior Lunch	654	117.75	873	\$ -	20
Medical/Shopping Assistance	90	91.00	834	\$ 117.50	16
Total	1,122	468.75	5,092	\$ 280.00	

WEEKENDS

Service	Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Donations/Fares Collected	Service Days
Out-of-County	66	39.50	439	\$ -	5
Total	66	39.50	439	\$ -	

MONTH

Service	Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Donations/Fares Collected	Service Days
Out-of-County	444	299.50	3,824	\$ 162.50	25
Senior Lunch	654	117.75	873	\$ -	20
Medical/Shopping Assistance	90	91.00	834	\$ 117.50	16
Total	1,188	508.25	5,531	\$ 280.00	

FISCAL YEAR TO DATE

Service	Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Donations/Fares Collected	Service Days
Out-of-County	444	299.50	3,824	\$ 162.50	25
Senior Lunch	654	117.75	873	\$ -	20
Medical/Shopping Assistance	90	91.00	834	\$ 117.50	16
Total	1,188	508.25	5,531	\$ 280.00	

VEHICLE MILEAGE INFORMATION

Vehicle Number	Ending Odometer
733	134386
734	176664
735	108451
736	95693
737	108859
738	77627
63	10928

ADDITIONAL INFORMATION

Service	Current Month	Year To Date
Lift Assisted Trips	82	82
Unduplicated Passengers	101	101
Turn Downs		0
No Shows	2	2
Cancellations		0
Employee Hours		0.00
Vehicles - Midday		
Vehicles - Peak		

NOTES



Jovenes de Antaño
Specialized Transportation Services
Monthly Service Report - July 2017

OUT OF COUNTY

ONE WAY PASSENGERS

Week of	M	T	W	TH	F	S	Total
7/1/2017						11	11
7/3-8/17	18		26	18	19	12	93
7/10-15/17	23	13	21	15	22	18	112
7/17-22/17	21	16	20	15	11	13	96
7/24-29/17	23	15	26	11	23	12	110
7/31/2017	22						22
Total	107	44	93	59	75	66	444

DONATIONS

M	T	W	TH	F	S	Total
						0
						0
						84
						32.5
						46
						0
						162.5

REVENUE HOURS

M	T	W	TH	F	S	Total
7		16	20.75	7.25	8	59
12.75	14.75	16	13.5	12.5	8	77.5
12	15	12.5	13.25	7.75	8	68.5
13.75	15	14.75	10.5	12.75	7.25	74
12.25						12.25
57.75	44.75	59.25	58	40.25	39.5	299.5

REVENUE MILES

M	T	W	TH	F	S	Total
60		200	202	65	94	672
159	216	174	150	162	63	924
195	169	175	223	59	70	891
219	225	268	64	234	67	1077
166						166
799	610	817	639	520	439	3824

SENIOR LUNCH

ONE WAY PASSENGERS

Week of	M	T	W	TH	F	Total
7/1/2017						0
7/3-8/17	35		38	40	37	150
7/10-15/17	20	30	37	15	38	140
7/17-22/17	41	36	38	35	32	182
7/24-29/17	33	36	37	28	15	149
7/31/2017	33					33
Total	162	102	150	118	122	654

DONATIONS

M	T	W	TH	F	Total
					0
					0
					0
					0
					0
					0
					0

REVENUE HOURS

M	T	W	TH	F	Total
6.25		6	5.75	5.5	23.5
5.75	5.75	5.75	5.5	5.75	28.5
6.25	6.5	7.25	6.25	6.5	32.75
5.75	6	6.25	5.75	3.25	27
6					6
30	18.25	25.25	23.25	21	117.75

REVENUE MILES

M	T	W	TH	F	Total
42		55	51	50	198
31	45	42	27	54	199
55	19	20	50	54	198
48	61	52	44	26	231
47					47
223	125	169	172	184	873

MEDICAL/SHOPPING ASSISTANCE

ONE WAY PASSENGERS

Week of	M	T	W	TH	F	Total
7/1/2017						0
7/3-8/17	10		10		5	25
7/10-15/17		14	6	3	3	26
7/17-22/17	3			4	2	9
7/24-29/17	4	6	6	6	6	28
7/31/2017	2					2
Total	19	20	22	13	16	90

FARES

M	T	W	TH	F	Total
12.5		12.5		6.25	31.25
6.25	17.5	7.5	6.25	3.75	35
5	5	7.5	7.5	7.5	35
2.5	26.25	25	27.5	18.75	117.5

REVENUE HOURS

M	T	W	TH	F	Total
7		6		4	17
8.75	6	4.75	4		23.5
5		7	2.5		14.5
6	5	6.25	6.5	6.25	30
6					6
24	13.75	18.25	18.25	16.75	91

REVENUE MILES

M	T	W	TH	F	Total
78		55		37	170
	110	52	39	9	210
27			73	32	132
66	42	51	29	80	268
54					54
225	152	158	141	158	834

July 2017
San Benito County Express Monthly Operations Report
 Operated by MV transportation

Year to Year comparison

	2017	2016
Passengers Per Hour		
Dial a Ride/Paratransit	3.88	3.38
Fixed Route Service	3.56	3.64
Gavilan Service	5.63	4.94
Caltrain Service	4.64	6.18
Greyhound Service	4.59	2.44
Total Passengers	6,613	5,942
Total Revenue Hours	1,604.04	1,546.63
Passengers per Hour	4.12	3.84
Lift Trips	125	157
No Shows	68	52
Cancellations	177	173

WEEKDAYS July 2017

Service	Passengers	Incidental Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Cash Fares Collected	Token Fares Collected	Token Sales	Service Days	Invoiced
Dial-A-Ride	1,405	21	294.27	2,888	\$ 726.65	\$ 335.97	\$ 21.00	20	\$ 13,472.86
Paratransit	1,468	137	520.57	11,151	\$ 2,179.96	\$ 1,007.93	\$ 63.00	20	\$ 23,833.78
Fixed Route	1,167	36	337.32	3,888	\$ 761.15	\$ 74.10	\$ -	20	\$ 15,443.86
Gavilan	1,001	0	177.78	3,921	\$ 1,477.58	\$ 495.20	\$ -	20	\$ 8,139.48
Caltrain	813	0	175.32	4,427	\$ 1,342.66	\$ 64.00	\$ -	20	\$ 8,026.85
Total	5,854	194	1,505.26	26,275	\$ 6,488.00	\$ 1,977.20	\$ 84.00		\$ 68,916.82

SATURDAY

Service	Passengers	Incidental Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Cash Fares Collected	Token Fares Collected	Token Sales	Service Days	Invoiced
Dial-A-Ride	83	0	13.50	222	\$ 121.40	\$ 1.10	\$ -	5	\$ 618.08
Greyhound	189	0	35.35	941	\$ 317.88	\$ 22.10	\$ -	5	\$ 1,618.46
Total	272	0	48.85	1,163	\$ 439.28	\$ 23.20	\$ -		\$ 2,236.55

SUNDAY

Service	Passengers	Incidental Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Cash Fares Collected	Token Fares Collected	\$ -	Service Days	Invoiced
Dial-A-Ride	59	94	13.71	214	\$ 80.65	\$ 13.20	\$ -	5	\$ 627.70
Greyhound	140	0	36.22	948	\$ 242.07	\$ 11.90	\$ -	5	\$ 1,658.30
Total	199	94	49.93	1,162	\$ 322.72	\$ 25.10	\$ -		\$ 2,286.00

MONTH

Service	Passengers	Incidental Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Cash Fares Collected	Token Fares Collected	Token Sales	Service Days	Invoiced
Dial-A-Ride	1,547	115	321.48	3,324	\$ 928.70	\$ 350.27	\$ 21.00	30	\$ 14,718.64
Paratransit	1,468	137	520.57	11,151	\$ 2,179.96	\$ 1,007.93	\$ 63.00	20	\$ 23,833.78
Fixed Route	1,167	36	337.32	3,888	\$ 761.15	\$ 74.10	\$ -	20	\$ 15,443.86
Gavilan	1,001	0	177.78	3,921	\$ 1,477.58	\$ 495.20	\$ -	20	\$ 8,139.48
Caltrain	813	0	175.32	4,427	\$ 1,342.66	\$ 64.00	\$ -	20	\$ 8,026.85
Greyhound	329	0	71.57	1,889	\$ 559.95	\$ 34.00	\$ -	10	\$ 3,276.76
Total	6,325	288	1,604.04	28,600	\$ 7,250.00	\$ 2,025.50	\$ 84.00		\$ 73,439.37

FISCAL YEAR TO DATE

Service	Passengers	Incidental Passengers	Vehicle Revenue Hours	Vehicle Revenue Miles	Cash Fares Collected	Token Fares Collected	Token Sales	Service Days	Invoiced
Dial-A-Ride	1,547	115	321.48	3,324	\$ 928.70	\$ 350.27	\$ 21.00	30	\$ 14,718.64
Paratransit	1,468	137	520.57	11,151	\$ 2,179.96	\$ 1,007.93	\$ 63.00	20	\$ 23,833.78
Fixed Route	1,167	36	337.32	3,888	\$ 761.15	\$ 74.10	\$ -	20	\$ 15,443.86
Gavilan	1,001	0	177.78	3,921	\$ 1,477.58	\$ 495.20	\$ -	20	\$ 8,139.48
Caltrain	813	0	175.32	4,427	\$ 1,342.66	\$ 64.00	\$ -	20	\$ 8,026.85
Greyhound	329	0	71.57	1,889	\$ 559.95	\$ 34.00	\$ -	10	\$ 3,276.76
Total	6,325	288	1,604.04	28,600	\$ 7,250.00	\$ 2,025.50	\$ 84.00		\$ 73,439.37

ADDITIONAL INFORMATION

	Current Month	Year To Date
Lift Assisted Trips	125	125
Turn Downs	0	0
No Shows	68	68
Cancellations	177	177
Employee Hours	2,000	2,000
Vehicles - Midday	7	
Vehicles - Peak	8	

NOTES

Greyhound Bikes = 1 Gavilan Bikes= 15 Caltrain Bikes = 3 Fixed Route = 0

FIXED ROUTE PASSENGER CT

	Business	Clockwise	Counter	Sunnyslope	Southside	Fixed Subtotal
1-Jul						
2-Jul						
3-Jul	17	38	0	0	0	55
4-Jul						
5-Jul	21	46	0	0	2	69
6-Jul	23	26	0	0	7	56
7-Jul	15	29	0	0	9	53
8-Jul						
9-Jul						
10-Jul	21	50	0	0	10	81
11-Jul	29	41	0	0	0	70
12-Jul	27	31	10	0	0	68
13-Jul	33	26	0	0	4	63
14-Jul	24	35	0	0	0	59
15-Jul						
16-Jul						
17-Jul	24	32	0	0	0	56
18-Jul	24	38	0	0	0	62
19-Jul	23	59	0	0	0	82
20-Jul	20	38	0	0	0	58
21-Jul	18	24				42
22-Jul						
23-Jul						
24-Jul	20	38	0	0	0	58
25-Jul	17	38	0	0	0	55
26-Jul	15	33	0	0	0	48
27-Jul	20	35	0	0	0	55
28-Jul	29	35	0	0	0	64
29-Jul						
30-Jul						
31-Jul	23	26	0	0	0	49
TOTALS	443	718	10	0	32	1203
DAILY						
AVERAG						
E	22	36	1	0	2	60

Staff Report

To: Local Transportation Authority
From: Regina Valentine, Transportation Planner Telephone: (831) 637-7665 x 205
Date: September 21, 2017
Subject: Jovenes de Antaño Contract Amendment #5

Recommendation:

APPROVE Contract Amendment #5 to the Contract between LTA and Jovenes de Antaño (JDA) dated December 16, 2010.

Summary:

The current contract with JDA expires at the end of 2017. Staff is proposing to exercise a contract optional year for 2018. This contract amendment will allow JDA to continue to provide Specialized Transportation Services for LTA.

Financial Considerations:

The agreed upon fee and operating hours sets the total "not to exceed" amount for the entire contract to \$1,762,511 for services through December 31, 2018.

Background:

In December of 2010, the LTA Board signed and executed a contract with Jovenes de Antaño to provide Specialized Transportation Services for LTA. Service with this contract began on January 1, 2011. The original contract was in effect through December 31, 2015 with the option for three additional years of service. In order to continue uninterrupted service, LTA extended the contract with JDA from January 1, 2016 to December 31, 2017 via contract amendments.

Staff Analysis:

Staff recommends that the contract amendment be approved in order to continue service uninterrupted throughout 2018. In 2018, LTA will be procuring service operators for its transportation services with new contracts effective January 1, 2019.

Executive Director Review: _____

Counsel Review: Yes

Attachment: JDA Contract Amendment #5

AMENDMENT TO CONTRACT

5

The San Benito County Local Transportation Authority ("LTA") and Jovenes de Antaño ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

LTA and CONTRACTOR acknowledge that the parties entered into a contract, dated December 16, 2010.

b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: April 21, 2011; December 19, 2013; December 17, 2015; and October 20, 2016

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☐ The term of the original contract is not modified.

☒ The term of the original contract (Exhibit 1) is extended from the current expiration date of December 31, 2017, to a new expiration date of December 31, 2018.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below:
(Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

Paragraphs 2.6.1.6 and 2.6.1.7 of EXHIBIT A of EXHIBIT 1 to this 5th Amendment, as previously amended, are hereby further amended to read as follow:

2.6.1.6. Operations – Service Hours: In no event shall the total quarterly vehicle revenue hours, for Option Year 1, Option Year 2, and Option Year 3, billed to the LTA for ST services exceed 1,640 hours.

2.6.1.7. In no event will the total monthly vehicle revenue hours billed to the LTA for ST services exceed the maximum monthly revenue service hours without the LTA's prior written authorization

Except as expressly modified in this 5th Amendment, all other provisions of EXHIBIT A of EXHIBIT 1 to this Amendment, as previously amended, shall remain in full force and effect.

- ☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:
(Insert new services.)

c. Payment Terms. (Check one.)

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.
☒ The payment terms in the original contract (Exhibit 1) are modified as specified below:
(Check one.)

- ☒ The payment terms are modified only as specified below:

Modified or New Payment Terms:

Paragraph 1.1 (PRICE FORMULA) of EXHIBIT B of EXHIBIT 1 to this 5th Amendment, as previously amended, is hereby further amended to read as follows:

1. PAYMENT

1.1. Price Formula

For services rendered as set forth in EXHIBIT 1 to this Amendment, payment shall be based on the firm fixed hourly rate per vehicle revenue service hour for the following period:

Optional Year	Length of Period	Hourly Rate per Vehicle Revenue Hour
1	Jan. 1, 2016 – Jun. 30, 2016	\$ 31.00
1	Jul. 1, 2016 – Dec. 31, 2016	\$ 36.00
2	Jan. 1, 2017 – Dec. 31, 2017	\$ 36.00
3	Jan. 1, 2018 – Dec. 31, 2018	\$ 36.00

Paragraph 2 (MAXIMUM OBLIGATION) of EXHIBIT B of EXHIBIT 1 to this 5th Amendment, as previously amended, is hereby further amended to read as follows:

2. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Amendment to the contrary, LTA and CONTRACTOR mutually agree that LTA'S maximum cumulative obligation is limited to \$1,762,511 including amounts payable to CONTRACTOR for leases, materials, and costs arising from or due to, termination of this Agreement. It is the intent of the parties hereto that said maximum obligation shall be sufficient to compensate CONTRACTOR for services performed for eight years, and that said maximum obligation may have to be amended if CONTRACTOR provides services for LTA subsequent to that time period.

In the event that the maximum cumulative obligation provided hereinabove is reached, CONTRACTOR shall have no obligation to perform any additional work described in EXHIBIT 1 of this Amendment and, any work performed or expenditures incurred by CONTRACTOR over and above the cumulative obligation amount specified above shall be the sole risk of CONTRACTOR.

In the event that LTA does not intend to amend this maximum obligation amount, LTA shall so notify CONTRACTOR by written notice at least one month before the maximum obligation amount specified herein is estimated to be reached. For purposes of amending this AGREEMENT to provide for additional funding of the maximum obligation amount specified hereinabove, only the Board of Directors of the LTA shall have authority to obligate LTA.

Except as expressly modified in this 5th Amendment, all other provisions of EXHIBIT B of EXHIBIT 1 to this 5th Amendment, as previously amended, shall remain in full force and effect.

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
- ☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by LTA to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

LTA shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$ _____, or

☐ a total sum not to exceed \$ _____,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.

☐ The following specific terms of compensation shall apply:

d. Other Terms. (Check one.)

☒ There are no other terms of the original contract that are modified.

☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:

(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

LTA:

By: _____

Date: _____

CONTRACTOR:

By: 

Date: 9/13/17

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By: 

Shirley L. Murphy, Deputy County Counsel

Date: Sept. 13, 2017

**EXHIBIT 1
TO AMENDMENT # 5**

**ORIGINAL
CONTRACT**

**(Please attach the initial contract and any prior amendments, from the most recent
to the initial contract, in reverse chronological order.)**

AMENDMENT TO CONTRACT

4

The San Benito County Local Transportation Authority ("LTA") and Jovenes de Antaño ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

LTA and CONTRACTOR acknowledge that the parties entered into a contract, dated December 16, 2010.

b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: April 21, 2011; December 19, 2013; and December 17, 2015

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☐ The term of the original contract is not modified.

☒ The term of the original contract (Exhibit 1) is extended from the current expiration date of December 31, 2016, to a new expiration date of December 31, 2017.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

The following paragraphs of EXHIBIT A of EXHIBIT 1 to this Amendment are hereby amended as follow:

2.6.1.6. Operations – Service Hours: In no event shall the total quarterly vehicle revenue hours, for Option Year 1 and Option Year 2, billed to the LTA for ST services exceed 1,640 hours.

2.6.1.7. In no event will the total monthly vehicle revenue hours billed to the LTA for ST services exceed the maximum monthly revenue service hours without the LTA's prior written authorization

[] The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:
(Insert new services.)

c. **Payment Terms. (Check one.)**

[] The payment terms in the original contract (Exhibit 1) are not modified.

[X] The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

[] The payment terms are modified only as specified below:

Modified or New Payment Terms:

[X] The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

[X] One month in arrears.

[] Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.

[] The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by LTA to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

LTA shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$ _____,
or

☒ a total sum not to exceed \$ 1,526,351

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply:

1. PAYMENT

1.1. Price Formula

For services rendered as set forth in EXHIBIT 1 to this Amendment, payment shall be based on the firm fixed hourly rate per vehicle revenue service hour for the following period:

Optional Year	Length of Period	Hourly Rate per Vehicle Revenue Hour
1	Jan. 1, 2016 – Jun. 30, 2016	\$ 31.00
1	Jul. 1, 2016 – Dec. 31, 2016	\$ 36.00
2	Jan. 1, 2017 – Dec. 31, 2017	\$ 36.00

1.2. Vehicle Revenue Service Hour

Vehicle revenue service hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers.

1.2.1. Out-of-County Non-Emergency Medical Transportation (OOCMT), Senior Lunch Transportation Program (SLTP), and Medical Shopping Assistance Program (MSAP) vehicle revenue service hours are definite as the time from when a vehicle picks up its first passenger of the day or scheduled service period through the time the vehicle drops off its last passenger of the day or scheduled service period.

1.2.2. For all modes of operations, vehicle revenue service hours shall specifically exclude time for travel to and from storage facilities, downtime for roadcalls, road tests, fueling, vehicle inspections, driver

training and driver rest or meal breaks. Fixed Hourly Rate costs elements are detailed in EXHIBIT E to EXHIBIT 1 of this Amendment and are incorporated herein by reference.

1.3. Vehicle Delivery Expense Reimbursements

LTA shall reimburse CONTRACTOR for actual labor expenses, at the rate contained in Paragraph 1.1 of this Section, incurred to deliver vehicles to LTA-designated suppliers for repair and servicing, as requested by LTA maintenance staff. No reimbursement shall be paid if vehicle delivery is necessary to correct loss or damage that is determined by LTA to be due to collision, vandalism, theft, or abuse.

1.4. Invoice; Payment

CONTRACTOR shall submit to LTA on or before the 1st day of July, an invoice to advance payment for the months of July and August. For July and August ST operations, CONTRACTOR shall submit the information provided hereafter noting that payment was made in July. On or before the 10th day of each month, CONTRACTOR shall submit an invoice to the LTA, Attention: Transportation Planner. Said invoice shall itemize CONTRACTOR'S full and complete performance hereunder for the previous monthly period. Invoices shall be in such form and shall incorporate such supporting documentation as the LTA may from time to time require. At a minimum, CONTRACTOR shall provide the following itemization for each invoice submitted:

- a. Vehicle Revenue Hour Charges shall be directly traceable by LTA to ST as identified in EXHIBIT A of EXHIBIT 1 of this AGREEMENT, or revisions thereto, and operator trip sheets.
- b. Other Charges for which prior written authorization has been provided by LTA, but not covered in the Fixed Monthly Rate or Fixed Vehicle Revenue Hour, shall be billed monthly with charges directly traceable to receipts, bills, etc., copies of which shall be attached to the invoice.

All payments by LTA shall be made in arrears after the service has been provided. LTA shall pay all reasonable and allowable items in CONTRACTOR'S invoice within 30 days following receipt of such invoice. If LTA disputes any item on an invoice for a reasonable cause, LTA may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONTRACTOR within thirty (30) working days after receipt of invoice by LTA.

1.5. Deduction of Payment: Vehicle and Equipment Damages

CONTRACTOR shall be responsible for the cost of all repairs to LTA vehicles and equipment to correct loss or damage due to collision, vandalism, theft, or abuse. Cost of repairs shall include all parts, labor, vehicle transportation or towing, and other costs associated with completing necessary repairs. When LTA determines that vehicle or equipment loss or damage is the responsibility of CONTRACTOR, LTA shall notify CONTRACTOR as provided under Paragraph 3.4 of EXHIBIT A of

EXHIBIT 1 to this Amendment, and will direct CONTRACTOR to expeditiously effect the repairs. Alternatively, LTA may complete the repairs or have the repairs completed by a third party, and the cost of said repairs shall be deducted from payments due CONTRACTOR.

1.6. Liquidated Damages

CONTRACTOR and LTA acknowledge and agree that LTA may suffer substantial damage in the event CONTRACTOR acts or fails to act in the manner set forth in following items a. through h. of Paragraph 1.6.10. of this Amendment. The amount of the damage is difficult, if not impossible, to ascertain, due to the nature of this Amendment and the nature of such damages. Accordingly, the parties hereto have determined to establish the provision of this Section as LTA's compensation for damages for such acts or failures to act, and not as a penalty, and further agree that such damages are reasonable.

Any liquidated damages assessed and received as described herein shall not constrain LTA from receiving additional recompense where said damages can be proven, nor shall payment of any liquidated damage in itself absolve or find the CONTRACTOR of being in material breach of the contract.

- 1.6.1. Prior to the assessment of any liquidated damages; the CONTRACTOR shall be notified in writing of the violation.
- 1.6.2. CONTRACTOR shall be given an opportunity to respond to LTA staff within five (5) business days of notice.
- 1.6.3. All appeals of this nature shall be submitted in writing. Disputes arising concerning the intended assessment of any liquidated damages, which are not resolved by mutual agreement of the parties' authorized representatives, shall be decided by the LTA Executive Director or his/her designee. LTA shall not assess liquidated damages to events beyond the reasonable control of CONTRACTOR.
- 1.6.4. Should it be determined that liquidated damages are to be imposed, the LTA may deduct the amounts owed in U.S. dollars from CONTRACTOR's unpaid invoice(s) for service rendered.
- 1.6.5. Should any entity assess liquidated damages to LTA for actions, inactions, or omissions of the CONTRACTOR or its agents, the liquidated damages assessed to the CONTRACTOR shall be equal to U.S. dollars to that suffered by LTA.
- 1.6.6. Any liquidated damages of sub-standard productivity shall be assessed to the CONTRACTOR on a quarterly basis for the previous quarter.
- 1.6.7. Liquidated damages will not be assessed sooner than three months after the initiation of services under EXHIBIT 1 of this Amendment.

- 1.6.8. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated complaint. Where appropriate, determination of liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident.
- 1.6.9. The maximum limit of liquidated damages assessed to the CONTRACTOR shall not exceed one thousand dollars (\$1,000) per month.
- 1.6.10. By accepting the terms and conditions of the Exhibit 1 of this Amendment, the CONTRACTOR agrees to the following liquidated damages. The liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident. LTA may assess liquidated damages as follows for CONTRACTOR'S act(s) or failure(s) to act:
- a. One Hundred Dollars (\$100) per incident for each day that: a vehicle or vehicles in revenue service are not maintained in a clean condition, in accordance with contract standards.
 - b. Five Hundred Dollars (\$500) per incident for each day, beginning on the sixth day, that CONTRACTOR fails to deliver an operable vehicle for repair and/or servicing following a written request by LTA maintenance staff.
 - c. One Thousand Dollars (\$1,000) per incident for each occurrence that: (1) a wheelchair becomes unfastened from its tie down(s) while being transported, or (2) a wheelchair is not fastened by tie-down(s) while being transported.
 - d. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety percent (90%) or better for ST, based on the standards set forth in Paragraph 2.6.1.3. of EXHIBIT A to EXHIBIT 1 of this Amendment.
 - e. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety-five percent (95%) or better for Reservation Reliability, based on the standards set forth EXHIBIT A to EXHIBIT 1 of this Amendment.
 - f. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to submit a monthly report after the specified due date in Paragraph 2.21. of EXHIBIT A of EXHIBIT 1 to this Amendment.
 - g. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to maintain the transit facilities set forth in Paragraph 3.3. of EXHIBIT A to EXHIBIT 1 to this Amendment.

- h. One Hundred Dollars (\$100) per vehicle code violation during annual California Highway Patrol Vehicle (CHP) Safety Compliance Inspection.

Liquidated damages will not be assessed sooner than three months after the initiation of services in EXHIBIT 1 of this Amendment. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated and validated complaint. LTA will deduct liquidated damages from payment of CONTRACTOR invoice. Where appropriate, determination of liquidated damages shall be based on sampling methods mutually agreed to by LTA and CONTRACTOR.

The determination of whether or not to assess liquidated damages shall be at the sole discretion of the LTA. LTA 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 Amendment.

2. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Amendment to the contrary, LTA and CONTRACTOR mutually agree that LTA'S maximum cumulative obligation is limited to \$1,526,351 including amounts payable to CONTRACTOR for leases, materials, and costs arising from or due to, termination of this Agreement. It is the intent of the parties hereto that said maximum obligation shall be sufficient to compensate CONTRACTOR for services performed for five years, and that said maximum obligation may have to be amended if CONTRACTOR provides services for LTA subsequent to that time period.

In the event that the maximum cumulative obligation provided hereinabove is reached, CONTRACTOR shall have no obligation to perform any additional work in EXHIBIT 1 of this Amendment and, any work performed or expenditures incurred by CONTRACTOR over and above the cumulative obligation amount specified above shall be the sole risk of CONTRACTOR.

In the event that LTA does not intend to amend this maximum obligation amount, LTA shall so notify CONTRACTOR by written notice at least one month before the maximum obligation amount specified herein is estimated to be reached. For purposes of amending this AGREEMENT to provide for additional funding of the maximum obligation amount specified hereinabove, only the Board of Directors of the LTA shall have authority to obligate LTA.

3. OPERATING REVENUES

All operating revenues collected by CONTRACTOR are the property of LTA. For the purposes of this AGREEMENT, operating revenues shall include but not necessarily be limited to farebox receipts and pass sales revenue. CONTRACTOR shall be responsible for handling farebox receipts and pass sales revenues in the manner discussed in Paragraph 2.20. of EXHIBIT A of EXHIBIT 1 to this Amendment, and as necessary for LTA to meet the requirements of State and Federal funding sources.

d. Other Terms. (Check one.)

- ☒ There are no other terms of the original contract that are modified.
- ☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:
(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

LTA:

By:

Date:

Greg Boeh
10/28/16

CONTRACTOR:

By:

Date:

Pauli
10/13/16

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By:

Counsel

Date:

Shirley L. Murphy
Shirley L. Murphy, Deputy County

Oct. 13, 2016

**EXHIBIT 1
TO AMENDMENT #__4__**

**ORIGINAL
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

AMENDMENT TO CONTRACT

3

The San Benito County Local Transportation Authority ("LTA") and Jovenes de Antaño ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

LTA and CONTRACTOR acknowledge that the parties entered into a contract, dated December 16, 2010.

b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: April 21, 2011 and December 19, 2013

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☐ The term of the original contract is not modified.

☒ The term of the original contract (Exhibit 1) is extended from the current expiration date of December 31, 2015, to a new expiration date of December 31, 2016.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

The following paragraphs of EXHIBIT A of EXHIBIT 1 to this Amendment are hereby amended as follow:

2.6.1.6. Operations – Service Hours: In no event shall the total quarterly vehicle revenue hours, for Option Year 1, billed to the LTA for ST services exceed 1,640 hours.

2.6.1.7. In no event will the total monthly vehicle revenue hours billed to the LTA for ST services exceed the maximum monthly revenue service hours without the LTA's prior written authorization

☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

c. **Payment Terms.** (Check one.)

☐ The payment terms in the original contract (Exhibit 1) are not modified.

☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ The payment terms are modified only as specified below:

Modified or New Payment Terms:

☒ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

☒ One month in arrears.

☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.

☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by LTA to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

LTA shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$ _____,
or

☒ a total sum not to exceed \$ 1,273,791,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply:

1. PAYMENT

1.1. Price Formula

For services rendered as set forth in EXHIBIT 1 to this Amendment, payment shall be based on the firm fixed hourly rate per vehicle revenue service hour for the following period:

Optional Year	Length of Period	Hourly Rate per Vehicle Revenue Hour
1	Jan. 1, 2016 – Dec. 31, 2016	\$ 31.00

1.2. Vehicle Revenue Service Hour

Vehicle revenue service hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers.

1.2.1. Out-of-County Non-Emergency Medical Transportation (OOCMT), Senior Lunch Transportation Program (SLTP), and Medical Shopping Assistance Program (MSAP) vehicle revenue service hours are definite as the time from when a vehicle picks up its first passenger of the day or scheduled service period through the time the vehicle drops off its last passenger of the day or scheduled service period.

1.2.2. For all modes of operations, vehicle revenue service hours shall specifically exclude time for travel to and from storage facilities, downtime for roadcalls, road tests, fueling, vehicle inspections, driver training and driver rest or meal breaks. Fixed Hourly Rate costs elements are detailed in EXHIBIT E to EXHIBIT 1 of this Amendment and are incorporated herein by reference.

1.3. Vehicle Delivery Expense Reimbursements

LTA shall reimburse CONTRACTOR for actual labor expenses, at the rate contained in Paragraph 1.1 of this Section, incurred to deliver vehicles to LTA-designated suppliers for repair and servicing, as requested by LTA maintenance staff. No reimbursement shall be paid if vehicle delivery is necessary to correct loss or damage that is determined by LTA to be due to collision, vandalism, theft, or abuse.

1.4. Invoice; Payment

CONTRACTOR shall submit to LTA on or before the 1st day of July, an invoice to advance payment for the months of July and August. For July and August ST operations, CONTRACTOR shall submit the information provided hereafter noting that payment was made in July. On or before the 10th day of each month, CONTRACTOR shall submit an invoice to the LTA, Attention: Transportation Planner. Said invoice shall itemize CONTRACTOR'S full and complete performance hereunder for the previous monthly period. Invoices shall be in such form and shall incorporate such supporting documentation as the LTA may from time to time require. At a minimum, CONTRACTOR shall provide the following itemization for each invoice submitted:

- a. Vehicle Revenue Hour Charges shall be directly traceable by LTA to ST as identified in EXHIBIT A of EXHIBIT 1 of this AGREEMENT, or revisions thereto, and operator trip sheets.
- b. Other Charges for which prior written authorization has been provided by LTA, but not covered in the Fixed Monthly Rate or Fixed Vehicle Revenue Hour, shall be billed monthly with charges directly traceable to receipts, bills, etc., copies of which shall be attached to the invoice.

All payments by LTA shall be made in arrears after the service has been provided. LTA shall pay all reasonable and allowable items in CONTRACTOR'S invoice within 30 days following receipt of such invoice. If LTA disputes any item on an invoice for a reasonable cause, LTA may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONTRACTOR within thirty (30) working days after receipt of invoice by LTA.

1.5. Deduction of Payment: Vehicle and Equipment Damages

CONTRACTOR shall be responsible for the cost of all repairs to LTA vehicles and equipment to correct loss or damage due to collision, vandalism, theft, or abuse. Cost of repairs shall include all parts, labor, vehicle transportation or towing, and other costs associated with completing necessary repairs. When LTA determines that vehicle or equipment loss or damage is the responsibility of CONTRACTOR, LTA shall notify CONTRACTOR as provided under Paragraph 3.4 of EXHIBIT A of EXHIBIT 1 to this Amendment, and will direct CONTRACTOR to expeditiously effect the repairs. Alternatively, LTA may complete the repairs or have the repairs

completed by a third party, and the cost of said repairs shall be deducted from payments due CONTRACTOR.

1.6. Liquidated Damages

CONTRACTOR and LTA acknowledge and agree that LTA may suffer substantial damage in the event CONTRACTOR acts or fails to act in the manner set forth in following items a. through h. of Paragraph 1.6.10. of this Amendment. The amount of the damage is difficult, if not impossible, to ascertain, due to the nature of this Amendment and the nature of such damages. Accordingly, the parties hereto have determined to establish the provision of this Section as LTA's compensation for damages for such acts or failures to act, and not as a penalty, and further agree that such damages are reasonable.

Any liquidated damages assessed and received as described herein shall not constrain LTA from receiving additional recompense where said damages can be proven, nor shall payment of any liquidated damage in itself absolve or find the CONTRACTOR of being in material breach of the contract.

- 1.6.1. Prior to the assessment of any liquidated damages; the CONTRACTOR shall be notified in writing of the violation.
- 1.6.2. CONTRACTOR shall be given an opportunity to respond to LTA staff within five (5) business days of notice.
- 1.6.3. All appeals of this nature shall be submitted in writing. Disputes arising concerning the intended assessment of any liquidated damages, which are not resolved by mutual agreement of the parties' authorized representatives, shall be decided by the LTA Executive Director or his/her designee. LTA shall not assess liquidated damages to events beyond the reasonable control of CONTRACTOR.
- 1.6.4. Should it be determined that liquidated damages are to be imposed, the LTA may deduct the amounts owed in U.S. dollars from CONTRACTOR's unpaid invoice(s) for service rendered.
- 1.6.5. Should any entity assess liquidated damages to LTA for actions, inactions, or omissions of the CONTRACTOR or its agents, the liquidated damages assessed to the CONTRACTOR shall be equal to U.S. dollars to that suffered by LTA.
- 1.6.6. Any liquidated damages of sub-standard productivity shall be assessed to the CONTRACTOR on a quarterly basis for the previous quarter.
- 1.6.7. Liquidated damages will not be assessed sooner than three months after the initiation of services under EXHIBIT 1 of this Amendment.

- 1.6.8. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated complaint. Where appropriate, determination of liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident.
- 1.6.9. The maximum limit of liquidated damages assessed to the CONTRACTOR shall not exceed one thousand dollars (\$1,000) per month.
- 1.6.10. By accepting the terms and conditions of the Exhibit 1 of this Amendment, the CONTRACTOR agrees to the following liquidated damages. The liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident. LTA may assess liquidated damages as follows for CONTRACTOR'S act(s) or failure(s) to act:
- a. One Hundred Dollars (\$100) per incident for each day that: a vehicle or vehicles in revenue service are not maintained in a clean condition, in accordance with contract standards.
 - b. Five Hundred Dollars (\$500) per incident for each day, beginning on the sixth day, that CONTRACTOR fails to deliver an operable vehicle for repair and/or servicing following a written request by LTA maintenance staff.
 - c. One Thousand Dollars (\$1,000) per incident for each occurrence that: (1) a wheelchair becomes unfastened from its tie down(s) while being transported, or (2) a wheelchair is not fastened by tie-down(s) while being transported.
 - d. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety percent (90%) or better for ST, based on the standards set forth in Paragraph 2.6.1.3. of EXHIBIT A to EXHIBIT 1 of this Amendment.
 - e. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety-five percent (95%) or better for Reservation Reliability, based on the standards set forth EXHIBIT A to EXHIBIT 1 of this Amendment.
 - f. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to submit a monthly report after the specified due date in Paragraph 2.21. of EXHIBIT A of EXHIBIT 1 to this Amendment.
 - g. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to maintain the transit facilities set forth in Paragraph 3.3. of EXHIBIT A to EXHIBIT 1 to this Amendment.

- h. One Hundred Dollars (\$100) per vehicle code violation during annual California Highway Patrol Vehicle (CHP) Safety Compliance Inspection.

Liquidated damages will not be assessed sooner than three months after the initiation of services in EXHIBIT 1 of this Amendment. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated and validated complaint. LTA will deduct liquidated damages from payment of CONTRACTOR invoice. Where appropriate, determination of liquidated damages shall be based on sampling methods mutually agreed to by LTA and CONTRACTOR.

The determination of whether or not to assess liquidated damages shall be at the sole discretion of the LTA. LTA 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 Amendment.

2. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Amendment to the contrary, LTA and CONTRACTOR mutually agree that LTA'S maximum cumulative obligation is limited to \$1,070,431, including amounts payable to CONTRACTOR for leases, materials, and costs arising from or due to, termination of this Agreement. It is the intent of the parties hereto that said maximum obligation shall be sufficient to compensate CONTRACTOR for services performed for five years, and that said maximum obligation may have to be amended if CONTRACTOR provides services for LTA subsequent to that time period.

In the event that the maximum cumulative obligation provided hereinabove is reached, CONTRACTOR shall have no obligation to perform any additional work in EXHIBIT 1 of this Amendment and, any work performed or expenditures incurred by CONTRACTOR over and above the cumulative obligation amount specified above shall be the sole risk of CONTRACTOR.

In the event that LTA does not intend to amend this maximum obligation amount, LTA shall so notify CONTRACTOR by written notice at least one month before the maximum obligation amount specified herein is estimated to be reached. For purposes of amending this AGREEMENT to provide for additional funding of the maximum obligation amount specified hereinabove, only the Board of Directors of the LTA shall have authority to obligate LTA.

3. OPERATING REVENUES

All operating revenues collected by CONTRACTOR are the property of LTA. For the purposes of this AGREEMENT, operating revenues shall include but not necessarily be limited to farebox receipts and pass sales revenue. CONTRACTOR shall be responsible for handling farebox receipts and pass sales revenues in the manner discussed in Paragraph 2.20. of EXHIBIT A of EXHIBIT 1 to this Amendment, and as necessary for LTA to meet the requirements of State and Federal funding sources.

d. Other Terms. (Check one.)

☒ There are no other terms of the original contract that are modified.

☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:
(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

LTA:

By: 

Date: 12/17/2015


CONTRACTOR:

By: 

Date: 12/8/15

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By: 
Shirley L. Murphy, Deputy County
Counsel

Date: Dec. 11, 2015

**EXHIBIT 1
TO AMENDMENT #__3__**

**ORIGINAL
CONTRACT**

**(Please attach the initial contract and any prior amendments, from
the most recent to the initial contract, in reverse chronological
order.)**

AMENDMENT TO CONTRACT

2

The San Benito County Local Transportation Authority ("LTA") and Jovenes de Antaño ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

LTA and CONTRACTOR acknowledge that the parties entered into a contract, dated December 16, 2010.

b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: April 21, 2011.

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of _____, to a new expiration date of _____.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below:
(Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

The following has been added to Section 3.4 of the initial contract:

CONTRACTOR shall be responsible for the maintenance of the LTA vehicles used to transport clients whose trips are paid through a third party company using Medi-Cal or Medicare funds. CONTRACTOR shall insure that such trips follow services outlined in Sections 2.2, 2.3, and 2.4.

☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

LTA:

By: 

Date: December 19, 2013

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By: 

Shirley L. Murphy, Deputy County Counsel

Date: Dec. 11, 2013

CONTRACTOR:

By: 

Date: 12/12/13

Federal Tax ID Number: # 94-2280033

AMENDMENT TO CONTRACT

1

The San Benito County Local Transportation Authority ("LTA") and Jovenes de Antaño ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

LTA and CONTRACTOR acknowledge that the parties entered into a contract, dated December 16, 2010.

b. Prior Amendments. (Check one.)

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows: _____

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of _____, to a new expiration date of _____.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

The following paragraphs of Exhibit A to the original contract (Exhibit 1 to this Amendment) are hereby amended as follow:

2.6.1.6. Operations – Service Hours: In no event shall the total quarterly vehicle revenue hours billed to the LTA for ST services exceed 1,800 hours in Contract Years 1, 2, and 3. In Contract Years 4, the total quarterly vehicle hours billed to LTA for ST services shall not exceed 1,632 hours. In Contract Years 5, the total quarterly vehicle hours billed to LTA for ST services shall not exceed 1,640 hours.

2.6.1.7. In no event will the total monthly vehicle revenue hours billed to the LTA for ST services exceed the maximum monthly revenue service hours without the LTA's prior written authorization

- ☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

c. Payment Terms. (Check one.)

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.
☒ The payment terms in the original contract (Exhibit 1) are modified as specified below:
(Check one.)

- ☐ The payment terms are modified only as specified below:

Modified or New Payment Terms:

- ☒ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☒ One month in arrears.
☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by LTA to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

LTA shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$ _____, or
☒ a total sum not to exceed \$ 1,070,431,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

- ☐ There are no additional terms of compensation.
☒ The following specific terms of compensation shall apply:

1. PAYMENT

1.1. Price Formula

For services rendered as set forth in Exhibit 1 to this Amendment, payment shall be based on the firm fixed hourly rate per vehicle revenue service hour for the following periods:

Contract Year	Length of Period	Hourly Rate per Vehicle Revenue Hour
1	April 1, 2011 – Dec. 31, 2011	\$ 32.08
2	Jan. 1, 2012 – Dec. 31, 2012	\$ 31.90
3	Jan. 1, 2013 – Dec. 31, 2013	\$ 32.77
4	Jan. 1, 2014 – Dec. 31, 2014	\$ 28.69
5	Jan. 1, 2015 – Dec. 31, 2015	\$ 29.55

The LTA reserves the right to renegotiate with the CONTRACTOR the hourly rate and service hours in Contract Year 3 for Contract Years 4 and 5.

1.2. Vehicle Revenue Service Hour

Vehicle revenue service hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers.

1.2.1. Out-of-County Non-Emergency Medical Transportation (OOCMT), Senior Lunch Transportation Program (SLTP), and Medical Shopping Assistance Program (MSAP) vehicle revenue service hours are defined as the time from when a vehicle picks up its first passenger of the day or scheduled service period through the time the vehicle drops off its last passenger of the day or scheduled service period.

1.2.2. For all modes of operations, vehicle revenue service hours shall specifically exclude time for travel to and from storage facilities, downtime for roadcalls, road tests, fueling, vehicle inspections, driver training and driver rest or meal breaks. Fixed Hourly Rate costs

elements are detailed in Exhibit E to the original contract (Exhibit 1 to this Amendment).

1.3. Vehicle Delivery Expense Reimbursements

LTA shall reimburse CONTRACTOR for actual labor expenses, at the rate contained in Paragraph 1.1 of this Section, incurred to deliver vehicles to LTA-designated suppliers for repair and servicing, as requested by LTA maintenance staff. No reimbursement shall be paid if vehicle delivery is necessary to correct loss or damage that is determined by LTA to be due to collision, vandalism, theft, or abuse.

1.4. Invoice; Payment

CONTRACTOR shall submit to LTA on or before the 1st day of July, an invoice to advance payment for the months of July and August. For July and August ST operations, CONTRACTOR shall submit the information provided hereafter noting that payment was made in July. On or before the 10th day of each month, CONTRACTOR shall submit an invoice to the LTA, Attention: Transportation Planner. Said invoice shall itemize CONTRACTOR'S full and complete performance hereunder for the previous monthly period. Invoices shall be in such form and shall incorporate such supporting documentation as the LTA may from time to time require. At a minimum, CONTRACTOR shall provide the following itemization for each invoice submitted:

- a. Vehicle Revenue Hour Charges shall be directly traceable by LTA to ST as identified in Exhibit A of the original contract (Exhibit 1 to this Amendment), or revisions thereto, and operator trip sheets.
- b. Other Charges for which prior written authorization has been provided by LTA, but not covered in the Fixed Monthly Rate or Fixed Vehicle Revenue Hour, shall be billed monthly with charges directly traceable to receipts, bills, etc., copies of which shall be attached to the invoice.

All payments by LTA shall be made in arrears after the service has been provided. LTA shall pay all reasonable and allowable items in CONTRACTOR'S invoice within 30 days following receipt of such invoice. If LTA disputes any item on an invoice for a reasonable cause, LTA may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions shall be documented to CONTRACTOR within thirty (30) working days after receipt of invoice by LTA.

1.5. Deduction of Payment: Vehicle and Equipment Damages

CONTRACTOR shall be responsible for the cost of all repairs to LTA vehicles and equipment to correct loss or damage due to collision, vandalism, theft, or abuse. Cost of repairs shall include all parts, labor, vehicle transportation or towing, and other costs associated with completing necessary repairs. When LTA determines that vehicle or equipment loss or damage is the responsibility of CONTRACTOR, LTA shall notify CONTRACTOR as provided under Paragraph 3.4 of Exhibit A to the original contract (Exhibit 1 to this Amendment), and will direct CONTRACTOR to expeditiously effect the repairs. Alternatively, LTA may complete the repairs or have the repairs completed by a third party, and the cost of said repairs shall be deducted from payments due CONTRACTOR.

1.6. Liquidated Damages

CONTRACTOR and LTA acknowledge and agree that LTA may suffer substantial damage in the event CONTRACTOR acts or fails to act in the manner set forth in following items a. through h. of Paragraph 1.6.10. of this Amendment. The amount of the damage is difficult, if not impossible, to ascertain, due to the nature of this contract and the nature of such damages. Accordingly, the parties hereto have determined to establish the provision of this Section as LTA's compensation for damages for such acts or failures to act, and not as a penalty, and further agree that such damages are reasonable.

Any liquidated damages assessed and received as described herein shall not constrain LTA from receiving additional recompense where said damages can be proven, nor shall payment of any liquidated damage in itself absolve or find the CONTRACTOR of being in material breach of the contract.

1.6.1. Prior to the assessment of any liquidated damages; the CONTRACTOR shall be notified in writing of the violation.

1.6.2. CONTRACTOR shall be given an opportunity to respond to LTA staff within five (5) business days of notice.

1.6.3. All appeals of this nature shall be submitted in writing. Disputes arising concerning the intended assessment of any liquidated damages, which are not resolved by mutual agreement of the parties' authorized representatives, shall be decided by the LTA Executive Director or his/her designee. LTA shall not assess liquidated damages to events beyond the reasonable control of CONTRACTOR.

- 1.6.4. Should it be determined that liquidated damages are to be imposed, the LTA may deduct the amounts owed in U.S. dollars from CONTRACTOR's unpaid invoice(s) for service rendered.
- 1.6.5. Should any entity assess liquidated damages to LTA for actions, inactions, or omissions of the CONTRACTOR or its agents, the liquidated damages assessed to the CONTRACTOR shall be equal to U.S. dollars to that suffered by LTA.
- 1.6.6. Any liquidated damages of sub-standard productivity shall be assessed to the CONTRACTOR on a quarterly basis for the previous quarter.
- 1.6.7. Liquidated damages will not be assessed sooner than three months after the initiation of services under the original contract (Exhibit 1 to this Amendment).
- 1.6.8. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated complaint. Where appropriate, determination of liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident.
- 1.6.9. The maximum limit of liquidated damages assessed to the CONTRACTOR shall not exceed one thousand dollars (\$1,000) per month.
- 1.6.10. By accepting the terms and conditions of the original contract (Exhibit 1 to this Amendment), and the amendments reflected herein, the CONTRACTOR agrees to the following liquidated damages. The liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident. LTA may assess liquidated damages as follows for CONTRACTOR'S act(s) or failure(s) to act:
 - a. One Hundred Dollars (\$100) per incident for each day that: a vehicle or vehicles in revenue service are not maintained in a clean condition, in accordance with contract standards.
 - b. Five Hundred Dollars (\$500) per incident for each day, beginning on the sixth day, that CONTRACTOR fails to deliver an operable vehicle for repair

and/or servicing following a written request by LTA maintenance staff.

- c. One Thousand Dollars (\$1,000) per incident for each occurrence that: (1) a wheelchair becomes unfastened from its tie down(s) while being transported, or (2) a wheelchair is not fastened by tie-down(s) while being transported.
- d. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety percent (90%) or better for ST, based on the standards set forth in Paragraph 2.6.1.3. of Exhibit A to the original contract (Exhibit 1 to this Amendment).
- e. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety-five percent (95%) or better for Reservation Reliability, based on the standards set forth in Exhibit A to the original contract (Exhibit 1 to this Amendment).
- f. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to submit a monthly report after the specified due date in Paragraph 2.21. of Exhibit A to the original contract (Exhibit 1 to this Amendment).
- g. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to maintain the transit facilities set forth in Paragraph 3.3. of Exhibit A to the original contract (Exhibit 1 to this Amendment).
- h. One Hundred Dollars (\$100) per vehicle code violation during annual California Highway Patrol Vehicle (CHP) Safety Compliance Inspection.

Liquidated damages will not be assessed sooner than three months after the initiation of services reflected in the original contract (Exhibit 1 to this Amendment). Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated and validated complaint. LTA will deduct liquidated damages from payment of CONTRACTOR invoice. Where appropriate, determination of liquidated damages shall be based on sampling methods mutually agreed to by LTA and CONTRACTOR.

The determination of whether or not to assess liquidated damages shall be at the sole discretion of the LTA. LTA 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 Amendment.

2. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Amendment to the contrary, LTA and CONTRACTOR mutually agree that LTA'S maximum cumulative obligation is limited to \$1,070,431, including amounts payable to CONTRACTOR for leases, materials, and costs arising from or due to, termination of this Agreement. It is the intent of the parties hereto that said maximum obligation shall be sufficient to compensate CONTRACTOR for services performed for five years, and that said maximum obligation may have to be amended if CONTRACTOR provides services for LTA subsequent to that time period.

In the event that the maximum cumulative obligation provided hereinabove is reached, CONTRACTOR shall have no obligation to perform any additional work in reflected in the original contract (Exhibit 1 to this Amendment) and, any work performed or expenditures incurred by CONTRACTOR over and above the cumulative obligation amount specified above shall be the CONTRACTOR'S sole risk.

In the event that LTA does not intend to amend this maximum obligation amount, LTA shall so notify CONTRACTOR by written notice at least one month before the maximum obligation amount specified herein is estimated to be reached. For purposes of amending this amended contract, in order to provide for additional funding of the maximum obligation amount specified hereinabove, only the Board of Directors of the LTA shall have authority to obligate LTA.

3. OPERATING REVENUES

All operating revenues collected by CONTRACTOR are the property of LTA. For the purposes of this amended contract, operating revenues shall include but not necessarily be limited to farebox receipts and pass sales revenue. CONTRACTOR shall be responsible for handling farebox receipts and pass sales revenues in the manner discussed in Paragraph 2.20. of Exhibit A to the original contract (Exhibit 1 to this Amendment), and as necessary for LTA to meet the requirements of State and Federal funding sources.

d. Other Terms. (Check one.)

- ☒ There are no other terms of the original contract that are modified.
☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:

(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

LTA:

By:

Date:

CONTRACTOR:

By:

Date:

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By:

Shirley L. Murphy, Deputy County Counsel

Date:

Federal Tax ID Number: 94-2280033

**EXHIBIT 1
TO AMENDMENT # 1**

**ORIGINAL
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

San Benito County Local Transportation Authority

Specialized Transportation Operations and Management Services Contract

Contractor:	Jovenes de Antaño
Board Approval:	December 16, 2010
Commencement Date:	January 1, 2011
Expiration Date:	December 31, 2015

San Benito County Local Transportation Authority

Specialized Transportation Operations and Management Services Contract

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AGREEMENT FOR SPECIALIZED TRANSPORTATION MANAGEMENT AND OPERATIONS SERVICES

This AGREEMENT for management of the Specialized Transportation hereinafter referred to as "ST", is made and entered into this 16th day of December 2010 by and between the San Benito County Local Transportation Authority, hereinafter referred to as "LTA" and, Jovenes de Antaño, hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the LTA has determined that it requires management and operation services for its ST service; and

WHEREAS, CONTRACTOR has represented that it has the necessary expertise and personnel and is qualified to perform such services;

NOW, THEREFORE, it is mutually understood and agreed as follows:

1. COMPLETE AGREEMENT

This AGREEMENT and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the AGREEMENT between the LTA and the CONTRACTOR and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this AGREEMENT shall not affect the validity of other provisions. Either party's failure to insist in one or more instances upon the performance of any term or terms of this AGREEMENT shall not be construed as a waiver or relinquishment of that party's right to such performance by the other party. The following Exhibits are attached hereto and incorporated herein reference:

- a. Exhibit A – Scope of Services
- b. Exhibit B – Compensation for Services, Payment Schedule
- c. Exhibit C – General Provisions
- d. Exhibit D -- Federal Clauses
- e. Exhibit E – Proposal
- f. Exhibit F – Approved Amendments

2. LTA DESIGNATED REPRESENTATIVES

The Executive Director or his/her designee shall have the authority to act for and exercise any of the rights of the LTA as set forth in this AGREEMENT, subsequent to the authorization of the Board of Directors of the LTA.

3. EMPLOYMENT OF THE CONTRACTOR

LTA hereby engages the CONTRACTOR and the CONTRACTOR agrees to perform the services, hereinafter described in connection with the management and operation of the ST.

4. INDEPENDENT CONTRACTOR

CONTRACTOR'S relationship to LTA in performance of this AGREEMENT is that of an independent contractor. The personnel performing services under this AGREEMENT shall at all times be under

CONTRACTOR'S exclusive direction and control and shall be employees of CONTRACTOR and not employees of LTA. CONTRACTOR shall pay all wages, salaries and other amounts due its employees in connection with this AGREEMENT and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers compensation insurance, and similar matters.

CONTRACTOR shall notify its employees by written notice that any and all obligations in connection with their employment are those of the CONTRACTOR and not of the LTA.

5. SCOPE OF WORK

Subject only to the general policies and direction of the LTA with regard to ST management and operation, and to the provisions and requirements of this AGREEMENT, CONTRACTOR shall, upon receiving LTA's notice to proceed, do all things necessary to supervise and operate the ST in accordance with EXHIBIT A of this AGREEMENT.

6. CHANGES IN SCOPE OF WORK

It is understood and agreed by LTA and CONTRACTOR that it may be necessary during the term of this AGREEMENT, to modify its provisions or to revise the scope and/or extent of ST system operations.

6.1. Amendment

In each such instance, LTA and CONTRACTOR shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced to writing, and when appropriately executed by both parties, shall constitute an amendment to this AGREEMENT.

Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all of the other applicable provisions of this AGREEMENT, and shall be attached to EXHIBIT F of this AGREEMENT, entitled "APPROVED AMENDMENTS - ST AGREEMENT". Until an amendment has been approved in the foregoing manner, it shall have no force or effect.

6.2. Minor Changes

- a. Notwithstanding the above, LTA without invalidating the AGREEMENT may from time to time order minor changes in the scope and/or extent of ST service operations involving routes, service area boundaries, schedules, operating hours, bus stop locations, and so forth, to respond to demand, special events and other occurrences without requiring an amendment pursuant to this Paragraph. In the event any such change will cause an anticipated increase in cost of, or the time required for, the performance of any part of the work under this AGREEMENT, or would result in an anticipated increase or decrease of twenty percent (20%) or more to the CONTRACTOR's estimated annual vehicle revenue hours in EXHIBIT E, the parties shall meet to negotiate an equitable adjustment to Contractor's rate and the Contract may be amended accordingly.
- b. In the event any Federal, State, or local law, rule, regulation or ordinance becomes operative during the term of this AGREEMENT that has the effect of increasing

CONTRACTOR's operating costs, to include, but not limited to, laws, rule, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on energy consumption; changes in the Americans with Disabilities Act; or government required increases to employee wages and/or benefits, to include health care benefits, the LTA and CONTRACTOR shall meet to discuss the impact of these unanticipated additional costs and consider adjustment to CONTRACTOR's rates.

- c. In the event of an unforeseen circumstance that may increase CONTRACTOR's operating costs, the LTA and CONTRACTOR shall meet to discuss impact of such circumstance and consider a temporary adjustment to CONTRACTOR's rate.

7. COMPENSATION FOR SERVICES; PAYMENT SCHEDULE

In consideration for CONTRACTOR'S performance of services under this AGREEMENT, LTA shall compensate CONTRACTOR according to the terms and schedule in EXHIBIT B of this AGREEMENT.

8. INSURANCE; BONDS; PERFORMANCE GUARANTEE

8.1. Insurance

With respect to performance of work under this AGREEMENT, CONTRACTOR shall secure and maintain, and shall require all of its subcontractors to maintain, insurance as described below:

8.1.1. **WORKERS' COMPENSATION INSURANCE** with statutory limits, and **EMPLOYER'S LIABILITY INSURANCE** with limits of not less than one million dollars (\$1,000,000) per occurrence. CONTRACTOR certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this AGREEMENT.

8.1.2. **COMPREHENSIVE GENERAL LIABILITY INSURANCE** with a combined single limit of not less than five million dollars (\$5,000,000) per occurrence. Such insurance shall include products/completed operations liability, owner's and CONTRACTOR's protective, blanket contractual liability and broad form property damage coverage. Such insurance shall (1) name the LTA, the City of Hollister, the City of San Juan Bautista, the County of San Benito, the Council of San Benito County Governments, and all of their appointed and elected officials, officers, employees, volunteers, agents and assigns as additionally insured; (2) be primary with respect to any insurance or self-insurance programs maintained by the LTA; and (3) contain standard cross liability provisions. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

8.1.3. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE** with a combined single limit of not less than \$5,000,000 (FIVE MILLION DOLLARS) per occurrence. Such insurance shall (1) include coverage for owned, leased, hired and non-

owned automobiles; (2) include Uninsured Motorist with coverage limits as required by law, (3) include Medical Payments with coverage limits of at least \$2,000 per occurrence, (2) name the LTA, the City of Hollister, the City of San Juan Bautista, the County of San Benito, the Council of San Benito County Governments, and all of their elected and appointed officials, officers, employees, volunteers, agents and assigns as additionally insured; (3) be primary for all purposes; and, (4) contain standard cross liability provisions. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

8.1.4. **AUTOMOBILE COLLISION AND COMPREHENSIVE INSURANCE COVERAGE** for the actual cash value of LTA vehicles. Such insurance shall (1) contain deductibles of not more than five thousand dollars (\$5,000), and (2) shall name the LTA as loss payee. CONTRACTOR shall be responsible for all deductibles. In case of damage or destruction of any vehicle or vehicles provided by LTA under the terms of this AGREEMENT, LTA agrees that liability for CONTRACTOR shall be limited to the appraised fair market value of the vehicle(s) at the time of the loss. CONTRACTOR and LTA agree that the appraised fair market value shall be that value established by an appraiser or appraisers as mutually agreed upon.

8.1.5. **ALL INSURANCE** shall contain the following provisions:

- a. Coverage shall be on an "occurrence" basis.
- b. If Commercial General Liability or another form with a general aggregate is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate amount shall be twice the required occurrence limit.
- c. The Liability policy must cover personal injury as well as bodily injury.
- d. The Liability policy shall include a cross-liability or severability of interest endorsement.
- e. Broad form property damage liability must be afforded.
- f. CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates or endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- g. Insurance shall be placed with insurers with a current A.M. Best rating of no less than A: VII.
- h. Policies shall name LTA, the City of Hollister, the City of San Juan Bautista, the County of San Benito, the Council of San Benito County Governments, and all of their officers, officials, agents, employees, volunteers and assigns

as insured under any policy, and the policy shall stipulate that this insurance shall operate as primary insurance and that no other insurance effected by insured will be called upon to contribute to a loss covered thereunder.

- i. CONTRACTOR shall furnish properly executed Certificates of Insurance from insurance companies acceptable to LTA and signed copies of the specified endorsements for each policy prior to commencement of work under this AGREEMENT. Such documentation shall clearly evidence all coverage required above including specific evidence of separate endorsements naming the LTA and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after 30 days prior written notice by certified mail, return receipt requested, has been given to the LTA.

8.1.6. CONTRACTOR shall furnish complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications prior to commencement of work under this AGREEMENT.

8.1.7. Such insurance shall be maintained from the time work first commences until completion of the work under this AGREEMENT. CONTRACTOR shall replace such certificates for policies expiring prior to completion of work under this AGREEMENT.

8.1.8. 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. LTA, at its sole option, may terminate this AGREEMENT and obtain damages from the CONTRACTOR resulting from said breach. Alternatively, LTA may purchase such required insurance coverage, and without further notice to CONTRACTOR, LTA may deduct from sums due to CONTRACTOR any premium costs advanced by LTA for such insurance.

8.2. Fidelity Bond

CONTRACTOR shall secure for its employees a Fidelity Bond or a policy of employee dishonesty insurance protecting the LTA from employee theft up to the amount of fifty thousand dollars (\$50,000) for any one occurrence. Such Fidelity Bond or employee dishonesty insurance shall name LTA as loss payee with respect to amounts claimed thereunder arising out of CONTRACTOR'S performance under this AGREEMENT. CONTRACTOR shall provide LTA a copy of said bond or insurance certificate.

8.3. Performance Guarantee

CONTRACTOR shall perform no services pursuant to this AGREEMENT, nor be entitled to compensation therefore, unless and until CONTRACTOR submits a bond or other acceptable surety to LTA for use of LTA, such bond executed by CONTRACTOR and a surety company licensed to do business in the State of California, such bond in the amount of TEN PERCENT (10%) of the annual AGREEMENT price, and which shall at all times be kept in full force and effect. The condition of such bond shall be that CONTRACTOR shall fully and faithfully

perform all conditions and covenants of this AGREEMENT or that the face amount of such bond shall be forfeited to LTA. The bond may be a renewable one-year bond, and shall be renewed annually before its expiration date; provided, however, that such bond must remain in full force and effect from and after the date LTA makes any demands for payment on the bond until the LTA releases such claim. Provision of such bond or its equivalent, approved by LTA, is a material covenant of this AGREEMENT. LTA shall not approve any security that is not unconditionally payable to LTA upon demand.

9. TERM OF AGREEMENT³

9.1. Base Term

This AGREEMENT shall become effective January 1, 2011 and shall continue in full force and effect through December 31, 2015 unless earlier terminated as herein provided.

9.2. Month-to-Month Extensions

Upon completion of the full term of this AGREEMENT, LTA at its sole discretion may extend the term of this AGREEMENT on a month-to-month basis up to a maximum of six (6) months. LTA shall notify CONTRACTOR in writing of such extensions on or before September 1st of the termination year of this AGREEMENT. The compensation rates in effect during the last monthly period of the full term of this AGREEMENT shall remain in effect during any such extensions.

9.3. Option Term

If and only if mutually agreeable by the CONTRACTOR and with the LTA's approval, anytime on or before the date specified herein and as follows:

9.3.1. LTA may extend the service provided by CONTRACTOR under this AGREEMENT for up to three option periods of one-year duration by providing written notice to CONTRACTOR.

9.3.2. The option term rates shall be as set forth in EXHIBIT B to this AGREEMENT.

9.3.3. LTA shall provide written notice to CONTRACTOR on or before February 1, 2015 for the initial option term, and on or before February 1st of each subsequent year for the remaining option terms. It is mutually understood and agreed that all work performed and services provided under the exercised option shall be in strict compliance with all of the requirements of this AGREEMENT as such may be amended from time to time by mutual agreement.

9.3.4. CONTRACTOR shall reply by March 1st, 2015, and on or before March 1st of each subsequent year for the remaining option terms, in response to the LTA's request to mutually extend this AGREEMENT.

It is mutually understood and agreed that LTA is under no obligation whatsoever to exercise this option and that no representations have been made by LTA committing it to such exercise of this option, and that LTA may procure any such option requirements elsewhere. Such option exercise may be by amendment hereto or by issuance of a new AGREEMENT.

10. TERMINATION

10.1. Either LTA or CONTRACTOR may terminate this AGREEMENT for one or more of the following reasons:

10.1.1. For convenience: LTA may terminate this AGREEMENT in whole or in part, at any time, for its convenience and for any reason, by giving CONTRACTOR thirty (30) days written notice thereof.

10.1.2. For insufficient funding: LTA may terminate this AGREEMENT upon thirty (30) days written notice to CONTRACTOR that insufficient funding is available to fund this AGREEMENT.

10.1.3. For Material Breach: LTA may terminate this AGREEMENT upon ten (10) days (hereinafter "cure period") written notice by mail or by personal service of a material default or breach in performance of any of the terms and conditions of this AGREEMENT to be kept, done or performed by CONTRACTOR, if CONTRACTOR fails, neglects or refuses for the stated cure period to remedy said defaults, or to initiate remedy of said faults should the cure thereof require a period in excess of the cure period. Should the cure period expire without remedy of said defaults or initiation of such remedy by CONTRACTOR, the LTA may, without further notice and without suit or other proceedings, cancel this AGREEMENT. The interpretation of whether a breach or default has occurred and the appropriateness or sufficiency of CONTRACTOR's remedy may be subject to resolution as set forth in Paragraph 10.3. of this AGREEMENT.

10.1.4. For Bankruptcy: Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of CONTRACTOR or (b) a general assignment by CONTRACTOR for the benefit of creditors, or (c) any action taken by or suffered by CONTRACTOR under any insolvency or bankruptcy act shall constitute a breach of the AGREEMENT by CONTRACTOR and shall at the option of LTA terminate this AGREEMENT.

10.1.5. For nonpayment by LTA: In the event LTA is delinquent in paying CONTRACTOR by more than fifteen (15) calendar days after LTA has received a statement by certified mail of the delinquency from CONTRACTOR, then CONTRACTOR may serve, by certified mail, a notice of its intent to suspend operations at least seven (7) calendar days subsequent to the receipt of such notice of intention by LTA. If LTA does not correct the delinquency within said seven-day period or if the parties do not agree to arbitrate the dispute under the provisions of this AGREEMENT, then CONTRACTOR may suspend operations without further notice or penalty on the date indicated by the notice.

10.1.6. By mutual agreement: This AGREEMENT may also be terminated at any time upon mutual agreement of both parties.

10.1.7. For Non-Performance By CONTRACTOR: If at anytime and in any performance category CONTRACTOR's performance falls below Grade F in the quarterly report, CONTRACTOR will be deemed to be out of compliance with the AGREEMENT and will receive notification of said status. Grade F performance in any category may be grounds for contract termination for non-performance. In the event of two consecutive quarters (or three (3) nonconsecutive quarters within a twelve (12) month period) of Grade F performance in one or more categories, then LTA may pursue contract cancellation.

10.2. Compensation Upon Termination

Should the LTA terminate this AGREEMENT, in whole or in part, by written notice to CONTRACTOR when it is in the Government's best interest, CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to the LTA to be paid the CONTRACTOR. If CONTRACTOR has any property in its possession belonging to the LTA, CONTRACTOR will account for the same, and dispose of it in the manner the LTA directs.

Should this AGREEMENT be terminated by the CONTRACTOR, LTA shall be liable costs and fees as specified in EXHIBIT B of this AGREEMENT accrued to date of termination.

10.3. LTA Remedies On Breach

Notwithstanding anything to the contrary herein, it is understood and agreed that in the event of failure by CONTRACTOR to perform services required by this AGREEMENT, in addition to all other remedies, penalties and damages provided by law, the LTA may provide such services, and deduct the cost of doing so from the amounts due or to become due to the CONTRACTOR. The costs to be deducted shall be the actual costs to LTA to provide such services, or the amounts specified in EXHIBIT B to this AGREEMENT, whichever is greater.

10.4. Transition to Future Contractor

For up to sixty (60) days before and after the effective date of the termination or expiration of this AGREEMENT, CONTRACTOR shall provide to either the LTA or any future CONTRACTOR selected by LTA, CONTRACTOR'S full cooperation in the transition to the successor CONTRACTOR. This shall include, as a minimum, consultation regarding labor and management issues (including a delineation of wages and benefits by employee category), access to non-confidential personnel files and to maintenance records.

CONTRACTOR shall release all telephone numbers and any sequential rollover numbers required by LTA to the new operator. CONTRACTOR shall provide its best professional effort to assure a smooth transition from CONTRACTOR'S services to the new provider's services, and shall cooperate fully with the LTA and the new provider to this end.

11. ADMINISTRATION

11.1. Control

CONTRACTOR shall render all services under this AGREEMENT in a manner consistent with the policies of the LTA. Modification of existing policies or adoption of new policies during the term of this AGREEMENT that affect CONTRACTOR's performance of services shall be treated as changes pursuant to Section 6 of this AGREEMENT.

CONTRACTOR shall advise LTA of matters of importance, such as the condition of vehicles, bus route time conflicts, any and all matters the CONTRACTOR feels are safety related, and make recommendations when appropriate; however, final authority shall rest with the LTA. Notwithstanding this provision, CONTRACTOR remains responsible for any consequences resulting from CONTRACTOR'S actions or inaction as provided in this AGREEMENT or otherwise provided by law.

LTA shall not interfere with the management of CONTRACTOR'S normal business affairs and shall not attempt to directly discipline or terminate CONTRACTOR'S employees. LTA may advise CONTRACTOR of any employee's inadequate performance that has a negative effect on the service being provided, and CONTRACTOR shall take prompt action to remedy the situation. Notwithstanding the above restriction, LTA may demand removal of any CONTRACTOR employee from the LTA's project by providing written notice to CONTRACTOR.

11.2. Shortages and Delays

In the event that LTA fails to provide or delays provision of items as herein described, in the quantity and size required, then CONTRACTOR shall not be responsible for any delays or resulting decline in the quality of service.

11.3. Substitutions and Replacement of Proposed Personnel

In the event that CONTRACTOR substitutes or replaces any personnel interviewed during the Request for Proposals process without consulting LTA, LTA shall assess a ten percent (10%) penalty of the estimated total cost of the first year of operations.

11.4. Force Majeure

Neither party shall be held responsible for losses, delays, failure to perform, nor excess costs caused by events beyond the control of such party. Such events may include, but are not restricted to, the following: acts of God, fire, epidemics, earthquake, flood or other natural disaster; strikes, war or civil disorder, road closures; unavailability of fuel.

CONTRACTOR shall not be entitled to compensation for any service, the performance of which is excused by this paragraph.

In the event that CONTRACTOR is unable to provide the services indicated due to any cause, CONTRACTOR shall make reasonable attempts to notify the public including notification to local radio stations, and if appropriate, local newspapers and television stations.

Whenever CONTRACTOR has knowledge that any actual or potential force majeure may delay or prevent performance of the AGREEMENT, CONTRACTOR, on a timely basis, shall notify LTA of the fact, and thereafter shall report to LTA all relevant information then known to CONTRACTOR, and shall continue to so report.

11.5. Emergency and Disaster Procedures

In the event of a major emergency such as an earthquake, dam failure, or man-made catastrophe, CONTRACTOR shall make transportation and communication resources available to the degree possible for emergency assistance. If the normal line of direct authority is broken, and for the period while it is broken, CONTRACTOR shall make best use of transportation resources to the degree possible following the direction of the appropriate

authority under the circumstances, such as the police, Red Cross, or National Guard. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. CONTRACTOR shall be reimbursed in accordance with EXHIBIT B to this AGREEMENT, or if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable, and prompt reimbursement of CONTRACTOR'S actual costs. Reimbursement for such major emergency services shall be over and above the Maximum Obligation described in EXHIBIT B to this AGREEMENT.

11.5.1. CONTRACTOR shall provide enough potable water and non-perishable food items for its employees for five (5) days to be used in case of an emergency and disaster. Supply items shall be assessed annually for deformed and expired items. Potable water shall be replaced annually. In addition to the aforementioned items, the following shall also be included:

- Cups
- Plates
- Utensils
- Two (2) manual can openers
- Toilet paper
- Cookware (if needed)

11.5.2. CONTRACTOR shall store the items in clearly labeled, sturdy containers in an area that is readily accessible by the CONTRACTOR.

11.6. Dispute Resolution and Attorney Fees

Any dispute over a decision by LTA staff under this AGREEMENT (including, but not limited to any assessments assessed pursuant to EXHIBIT A to this AGREEMENT, or any determination whether a collision or other incident is a "Preventable Accident"), except decisions of the LTA Executive Director, shall be appealable in writing to LTA within five (5) business days of the decision. In connection with any such appeal, CONTRACTOR shall be afforded an opportunity to offer written evidence to the LTA Executive Director and to meet with the LTA Executive Director (and such other LTA staff persons as LTA Executive Director may determine) regarding the issues presented in the appeal. The LTA shall issue a decision in writing within five (5) business days of the receipt of the written evidence or of the date of the meeting, as the case may be. The decisions of the LTA Executive Director on such appeals and any other matter under this AGREEMENT shall be final and shall not be appealable to LTA except as provided in this Paragraph.

11.6.1. Continuing Duty. Pending final resolution of a dispute under this Section, CONTRACTOR shall proceed diligently with performance in accordance with this AGREEMENT and the recommended decision of the LTA Executive Director.

11.6.2. Attorneys' Fees. If any action at law or in equity is brought on account of any breach of this AGREEMENT, or to enforce or interpret the AGREEMENT or any provision hereof, the prevailing party in such action shall be entitled to recover from the other party its attorneys' fees and costs of suit, the amount of which shall be fixed by the court and made a part of any judgment rendered.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

LTA:

By: _____

Date: _____

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By: _____

Shirley L. Murphy, Deputy County Counsel

Date: _____

CONTRACTOR:

By: _____

Date: _____

Federal Tax ID Number: _____

94-228033

EXHIBIT A – SCOPE OF SERVICES

1. RESPONSIBILITIES AND DUTIES OF THE LTA FOR SPECIALIZED TRANSPORTATION OPERATIONS

The San Benito County Local Transportation Authority (LTA) shall perform the following duties and accept the following responsibilities with respect to Specialized Transportation (ST) operations. To the extent reasonable and feasible, CONTRACTOR shall assist the LTA in this regard.

1.1. System Planning and Administration

The LTA shall be responsible for all planning activities, preparation of planning documents, budgets, grant applications and related documentation, and other such activities relative to overall system administration.

1.2. Liaison with Local Jurisdictions, Citizens Groups

The LTA shall be responsible for coordinating project activities with local and regional governmental jurisdictions, agencies, and citizens' groups.

1.3. Notification - Potential Interference with Transit System Operations

The LTA shall make a reasonable effort to notify CONTRACTOR in advance of any road closures, detours, parades or other such events within the jurisdiction of local agencies that may interfere with the ST operations or require deviations from established routes or schedules. CONTRACTOR and the LTA shall mutually agree upon such deviations.

1.4. Advertising and Promotion

The LTA shall prepare, place, schedule and pay for all advertising and promotional materials designed to inform the public of ST operations and to promote ridership. CONTRACTOR shall assist and cooperate with marketing and promotional events or activities.

1.5. LTA Vehicles and Equipment; Maintenance and Repair

The LTA shall provide to CONTRACTOR the vehicles and equipment set forth in Paragraph 3.1 of this Exhibit. These vehicles and equipment shall be used only for activity directly related to the ST program covered by this AGREEMENT, unless otherwise authorized, in writing, by the LTA.

The LTA shall maintain and repair the specified vehicles, including attached communications systems, and other specified equipment. CONTRACTOR shall be responsible for daily vehicle servicing as described in Paragraph 3.2 of this Exhibit and for all damage to equipment excluding normal wear and tear. CONTRACTOR shall promptly report all vehicle defects to the LTA's maintenance staff.

In the event the LTA determines driver operating practices cause a pattern of component failure or accelerated wear, the LTA will confer with CONTRACTOR to develop a corrective training program or other corrective action.

1.6. Radio Communications System

The LTA shall provide and maintain a two-way radio communications system, which shall be used by CONTRACTOR solely for communications related to ST operations. The LTA shall

provide and maintain license(s) as required for the radio system. CONTRACTOR shall comply with all applicable federal statutes and regulations in connection with radio system use.

1.7. ST Operations Headquarters

ST Operations Headquarters is provided and maintained by CONTRACTOR at 300 West Street in Hollister, California, 95023. The LTA shall provide parking for ST operators and ST dedicated vehicles at an operations headquarters facility located at 3240 Southside Road, Hollister, California, 95023.

CONTRACTOR may propose an alternative site for employee parking and ST dedicated vehicle parking, subject to LTA's prior approval"

1.8. Operating Policies and Procedures

The LTA shall establish all operating policies and procedures for the operation of ST services.

2. DUTIES AND RESPONSIBILITIES OF THE SPECIALIZED TRANSPORTATION CONTRACTOR

CONTRACTOR shall perform the duties and accept the responsibilities set forth below in connection with its operation of ST. The omission of a duty or responsibility from the following shall not relieve CONTRACTOR of its obligation to perform such duty or accept such responsibility, so long as it is usual, customary and generally accepted within the public transportation industry as being an integral element of operating specialized transportation services of a kind and character such as ST services.

2.1. General ST Operations

CONTRACTOR shall provide the necessary management, technical and operating services for the operation of the ST services as specified by the LTA. CONTRACTOR shall assist and cooperate with the LTA in meeting the objectives of providing quality transportation services. CONTRACTOR shall perform close liaison activities, coordination and cooperation with the LTA on matters related to operations, monitoring, reporting and service performance measurements. CONTRACTOR shall furnish all equipment and services required in the operation and management of ST services unless specifically identified to be contributed by the LTA.

2.2. Out-of-County Non-Emergency Medical Transportation Services (OOCMT)

OOCMT services will be provided as "door-through-door services" for individuals that meet the following criteria:

- Live in San Benito County
- Who require medical services not provided in San Benito County
- Who have no other transportation available

CONTRACTOR shall schedule trips for OCCMT service at least one week in advance and accept subscription service reservations. If OOCMT clients request escort service to the registration lobby, ST Operators may be expected to provide basic English-Spanish translation. However, such services are limited to only the registration area.

2.3. Senior Lunch Transportation Program (SLTP)

SLTP services shall be provided as "door-through-door services" for individuals that meet the following criteria:

- Live within the designated areas
- Who are at least 60 years of age

CONTRACTOR shall accept telephone requests made 24 hours in advance and up to 14 days in advance. CONTRACTOR shall accept subscription service reservations. However, the level of subscription service provided shall not exceed fifty percent (50%) of the total number of trips available during a service day.

2.4. Medical Shopping Assistance Program (MSAP)

MSAP services shall be provided as "door-through-door services" for individuals that meet the following criteria:

- Live in San Benito County
- Who are at least 60 years of age or disabled
- Who require escort services

CONTRACTOR shall accept telephone requests made 48 hours in advance and up to 14 days in advance. CONTRACTOR shall accept "subscription service" reservations (i.e. provision of repetitive trips over an extended period of time without requiring that individuals call to request reservations for each trip). However, the level of subscription service provided shall not exceed fifty percent (50%) of the total number of trips available during a service day.

CONTRACTOR shall be responsible for developing a certification process with the LTA. Once the certification process is developed, CONTRACTOR shall conduct the disability certification process for the MSAP service.

2.5. Fuel

CONTRACTOR shall be responsible for all fuel directly related to the operation of ST services. CONTRACTOR shall record all fueling activities by fuel type and submit a summary of such activities on the monthly report.

2.6. Service Standards

CONTRACTOR shall strive at all times to provide service in a manner that will maximize productivity and at the same time emphasize quality customer service. Recognizing that the goals of productivity and service quality may conflict at times, the following standards are intended to be reasonably attainable by CONTRACTOR, fair to the customer and consistent with the LTA's expectations.

2.6.1. ST Base Performance Standards

CONTRACTOR shall comply with the minimum performance standards described below:

- 2.6.1.1. **Safety – Accidents:** CONTRACTOR shall perform operator training and safety so as not to exceed more than 2.4 accidents per 100,000 vehicle miles. Accidents include vehicle collisions that occur on CONTRACTOR's

property. An accident is defined as any contact between the bus and another object except the road.

- 2.6.1.2. Customer Service – Complaints: CONTRACTOR shall perform operations and customer service so as not to exceed 15 valid complaints per 100,000 boardings. Complaints exclude service requests, compliments, and information requests.
- 2.6.1.3. Operations – On Time Performance: CONTRACTOR shall perform operations so as to maintain a minimum standard of “on-time bus trips” of over ninety percent (90%) on a monthly basis. CONTRACTOR will devise a statistically significant method to measure on-time performance. LTA will review the method and if deemed appropriate, approve it. CONTRACTOR shall submit the On-time Performance reports for each of the services on a monthly basis with the monthly operations report.
- 2.6.1.4. Operations – Passengers per Hour: CONTRACTOR shall perform operations so as to ensure a minimum monthly average of 2.50 passengers per vehicle revenue hour ST service-wide.
- 2.6.1.5. Operations – On-Board Service Evaluations: CONTRACTOR shall, in cooperation with the LTA, develop a comprehensive service evaluation program to be implemented based on a statistically sound method and implemented by both parties. CONTRACTOR must achieve scores of not less than 80 in order to meet the minimum performance standard.
- 2.6.1.6. Operations – Service Hours: In no event shall the total monthly vehicle revenue hours billed to the LTA for ST services exceed 640 hours. Of the 640 hours, a minimum of 380 hours shall be dedicated to OOCMT operations, a minimum of 120 hours shall be dedicated to SLTP services, and a minimum 100 hours shall be dedicated to MSAP services.
- 2.6.1.7. In no event will the total monthly vehicle revenue hours billed to the LTA for ST services exceed 640 without the LTA’s prior written authorization.
- 2.6.1.8. Maintenance – Fleet Inspections: CONTRACTOR is responsible for reporting vehicle condition to the LTA maintenance staff. Subsequently, CONTRACTOR bears a responsibility to report vehicle defects and assure compliance in pre-trip inspections and care of assigned vehicles. Fleet inspections will be conducted monthly by the LTA. The LTA will inspect two buses per month to be selected randomly among buses that have recently gone through a Preventive Maintenance Inspection. The LTA will select the buses to be inspected. The LTA will assess the condition of each bus based on the following categories: Unreported Defects, Safety, and Cosmetic. The inspection results will be compiled in such a way as to arrive at a numerical score. CONTRACTOR must achieve scores of not less than 80 in order to meet the minimum performance standard.

- 2.6.1.9. Customer Service - Complaint Follow-Up: CONTRACTOR shall ensure all complaints are resolved in a timely manner and to the customer's satisfaction (subject to reasonableness). To measure this performance standard, a random selection of complainants will be contacted at a minimum of every other month and asked to answer several quantitatively based questions designed to measure CONTRACTOR's administration of the complaint resolution process. The survey design will be subject to agreement between the LTA and CONTRACTOR. CONTRACTOR must achieve scores of not less than 80 in order to meet the minimum performance standard. CONTRACTOR is encouraged to make every effort to ensure legitimate complaint generated issues are incorporated into a training format (for example, classes, memos, meetings) that will allow the organization to learn from mistakes and to reinforce positive standards of conduct and operations.

CONTRACTOR and the LTA shall periodically meet to evaluate performance of the system based upon these standards. If a standard is not fulfilling the intended purpose, it shall be adjusted based upon recommendations made by CONTRACTOR with concurrence and final decision by the LTA. Should the LTA determine that CONTRACTOR's performance has contributed to CONTRACTOR's failure to achieve these standards, CONTRACTOR shall take all reasonable actions requested by the LTA to correct deficiencies in performance. Should deficiencies persist, the LTA may take whatever additional action is necessitated by the circumstances and provided for in this AGREEMENT of which this Scope of Work is a part.

2.6.2. Out-of-County Non-Emergency Medical Transportation Standards:

- 2.6.2.1. Productivity Standard: Passengers per Vehicle Revenue Hour: 1.2 or greater.
- 2.6.2.2. Reservation Reliability: Ninety-five percent (95%) of reservation trips will be completed within plus or minus 15 minutes from the recorded reservation time.
- 2.6.2.3. Service Refusals: No more than one service request will be refused per service day due to inability to respond at the requested reservation time. There will be no pattern of service refusals with respect to reservation requests.
- 2.6.2.4. No-Show Ratio: On average, less than 3 percent of scheduled trips will be no-shows.

2.6.3. Senior Lunch Transportation Program Standards:

- 2.6.3.1. Productivity Standard: Passengers per Vehicle Revenue Hour: 5.50 or greater.

- 2.6.3.2. Ride Time (the elapsed time between passenger pickup and drop off): 100 percent of passengers dropped off within 120 minutes.
- 2.6.3.3. Reservation Reliability: Ninety-five percent (95%) of reservation trips will be completed within plus or minus 15 minutes from the recorded reservation time.
- 2.6.3.4. Service Refusals: No more than three service request will be refused per service day due to inability to respond at the requested reservation time. There will be no pattern of service refusals with respect to reservation requests.
- 2.6.3.5. No-Show Ratio: On average, less than 3 percent of scheduled trips will be no-shows.

2.6.4. Medical Shopping Assistance Program Standards:

- 2.6.4.1. Productivity Standard: Passengers per Vehicle Revenue Hour: 1.0 or greater.
- 2.6.4.2. Demand-Response Wait Time (elapsed time between a "real time" demand response service request and passenger pickup):
 - a. 50 percent of passengers will be picked up within 15 minutes; and
 - b. 100 percent of passengers will be picked up within 30 minutes.
- 2.6.4.3. Ride Time (the elapsed time between passenger pickup and drop off):
 - a. 90 percent of passengers dropped off within 30 minutes; and
 - b. 100 percent of passengers dropped off within 60 minutes.
- 2.6.4.4. Reservation Reliability: Ninety-five percent (95%) of reservation trips will be completed within plus or minus 15 minutes from the recorded reservation time.
- 2.6.4.5. Service Refusals: No more than one service request will be refused per service day due to inability to respond at the requested reservation time. There will be no pattern of service refusals with respect to reservation requests.
- 2.6.4.6. No-Show Ratio: On average, less than 3 percent of scheduled trips will be no-shows.

2.7. Equal Employment Opportunity

During the performance of the contract, CONTRACTOR agrees to the following:

- a. CONTRACTOR shall comply with all the requirements, where applicable, of the California Fair Employment Practices Commission and provisions of, when applicable, all Federal, State of California, and San Benito County laws and ordinances related to employment practices.
- b. CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, gender, age, handicap, national origin, or ancestry, except when such a condition is a bona fide occupational qualification reasonably necessary for the normal operations of CONTRACTOR. CONTRACTOR agrees to post in conspicuous places, visible to both employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- c. CONTRACTOR, in all solicitations or advertisements for employees, placed by, or on behalf of CONTRACTOR, shall state that CONTRACTOR is an equal opportunity employer.

2.8. Operations Personnel

CONTRACTOR shall provide all management, supervision, training, drivers, dispatchers, clerks, service workers, telephone information operators, and such other personnel necessary to responsibly operate ST services.

For purposes of this AGREEMENT, the terms "employee(s)" and "personnel" shall include individuals employed by subcontractors that perform any of ST vehicle operations or related functions.

2.9. Operations Management

CONTRACTOR shall provide operations management at a level and capability sufficient to oversee its functions and employees.

CONTRACTOR shall designate and provide the services of a Project Manager, subject to the approval of the LTA, who shall provide overall management and supervision of the ST service under the terms of this AGREEMENT. The Project Manager must have a minimum of five years of experience in demand response transportation operations including at least three years' supervisory experience. A bachelor's degree in a related field from an accredited four-year college may substitute for two years of transportation experience and one year of supervisory experience.

The Project Manager shall work cooperatively with the LTA in matters relating to service quality, providing operational and other data as described in this Scope of Work, responding to comments from the LTA, passengers, and the general public; and responding to specific requests for other assistance as the need arises. The Project Manager shall be on duty at the ST operations headquarters.

The Project Manager designated for this project will not be replaced without the prior written consent of the LTA. Should the services of the Project Manager become no longer available to CONTRACTOR, the resumé and qualifications of not less than three (3) qualified candidates shall be submitted to the LTA for approval as soon as possible, but in no event later than thirty (30) calendar days prior to the departure of the incumbent Project Manager. The LTA may require an interview of the proposed candidate(s) before an acceptance or rejection decision is made.

At all times, the Project Manager or other employee pre-designated and identified to the LTA to act for the Project Manager, shall be available either by phone or in person to make decisions regarding day-to-day ST operations, including emergency situations, or to provide coordination as necessary, and shall be authorized to act on behalf of CONTRACTOR regarding all matters pertaining to this Scope of Work.

2.10. Employee Selection and Supervision

CONTRACTOR shall be responsible for the employment and supervision of all employees necessary to perform ST operations. CONTRACTOR's responsibilities shall include employee recruitment, screening, selection, training, supervision, employee relations, evaluations, retraining and termination.

CONTRACTOR shall use appropriate screening and selection criteria in order to employ operations personnel. CONTRACTOR shall perform employment, DMV and criminal background checks, pre-employment drug screens and physicals of all employees associated with this AGREEMENT and shall undertake the steps necessary to assure all such employees perform their duties in a safe, legal, courteous, and professional manner at all times.

CONTRACTOR shall make all reasonable efforts to ensure that employees having contact with the public in the course of the performance of their duties are of good moral character. Any such employee who is convicted of a felony or of a crime involving moral turpitude during the time of his/her employment shall not be permitted to continue to hold a position of employment involving contact with the general public.

CONTRACTOR shall develop, implement and maintain an employee alcohol and substance abuse testing program, subject to LTA approval, for all employees in safety-sensitive positions including personnel engaged in the operation, servicing and control of ST vehicles and equipment. Said program will comply with all applicable requirements as established by the FTA or by other federal or state agencies, including regulations promulgated to implement the Omnibus Transportation Employee Testing Act of 1991, as it may be amended from time-to-time.

CONTRACTOR shall at all times comply, and shall require subcontractors to comply, with applicable state and federal employment laws, including Section 1735 of the California Labor Code and Title VI of the Civil Rights Act of 1964, as amended.

CONTRACTOR will fully cooperate with the LTA in meeting the legal requirements of the labor protective provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609) and the Section 13(c) Agreements and side letters currently in

force and certified by the United States Department of Labor. Changes, including changes in service and any other changes which may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 13(c) protections granted to employees. CONTRACTOR shall defend and indemnify the LTA from any and all claims and losses due to the 13(c) consequences of changes not requested by the LTA resulting in Section 13(c) grievances, claims and/or liability.

Nothing in this section shall be construed by either CONTRACTOR or the LTA to be in conflict with the language and intent of Article 4, Independent Contractor, of the AGREEMENT of which this Scope of Work is a part.

2.11. Bilingual (English/Spanish) Personnel

CONTRACTOR shall make every effort to recruit bilingual (English/Spanish) personnel for driver, dispatcher, telephone operator, and supervisory positions. A minimum of fifty percent (50%) of operations personnel shall be bilingual and bilingual personnel shall be available during all ST operating hours to receive telephone calls from the public and to provide translation for ST service personnel and passengers.

2.12. Training of Drivers and Operations Personnel

CONTRACTOR shall develop, implement and maintain a formal training and retraining program that shall be subject to review and approval by the LTA. An outline of the training program, including periodic updates, shall be on file in the offices of the LTA. All drivers, dispatchers, telephone information personnel, and supervisors shall participate in the program.

CONTRACTOR shall implement and maintain a specific training and retraining program for all drivers. The program must provide a fixed minimum number of hours of training for new employees, including classroom instruction, behind the wheel training under supervision of a certified instructor, and in-service training. The program shall include, but not necessarily be limited to, instruction covering applicable laws and regulations and defensive driving practices, disabled passenger assistance techniques, accident/incident procedures, radio procedures, ST operating policies and procedures, employee work rules, vehicle safety inspection, equipment care, fueling and maintenance, customer relations and passenger conduct. Drivers shall be trained to operate all types of buses, wheelchair lifts and securement systems, and other equipment that they may be expected to use in performing ST services.

All drivers shall be certified as having completed CONTRACTOR's formal training course for new drivers as approved by the LTA, and be licensed with a valid California Class B operator's license with appropriate endorsements or certification(s) and medical card. Drivers of transit buses shall possess a Transit Bus Certificate as issued by the State of California Department of Motor Vehicles, pursuant to Section 12804.6 of the California Vehicle Code. Drivers of paratransit vehicles shall possess a California General Public Paratransit Vehicle certificate. Drivers shall meet all applicable requirements as established by the California Highway Patrol.

CONTRACTOR shall prepare and furnish to the LTA for approval and to all drivers, dispatchers, telephone operators, and supervisors a Driver's Manual. Contents of the Driver's Manual shall include the following subject areas: fundamentals of customer service; driver's

rules; accident/incident policies; radio policies and procedures; fog and inclement weather policy; vehicle inspection, care and maintenance policy and procedures, reporting procedure and pertinent sample forms.

Dispatchers, telephone operators, supervisors and any other personnel who may from time-to-time be assigned to telephone information or reservation lines shall be trained in customer service, customer relations skills, telephone manners, accident/incident procedures, fares, bus and demand response schedules and services, information referrals, ADA regulations regarding trip reservations, San Benito County Express reservation procedures, and operating policies. Operations control personnel assigned to San Benito County Express scheduling and vehicle dispatching duties shall have a detailed knowledge of applicable procedures and professional techniques.

CONTRACTOR shall implement within ninety (90) days after the start of the contract term a Spanish-language keyword/key-phrase training and proficiency testing program to assist all operating personnel to learn simple phrases to assist them in communicating fares and directions to Spanish-speaking transit riders.

2.13. ST Driver's Responsibilities

ST Drivers will, when requested by the LTA, distribute notices to passengers or otherwise render assistance with the ST customer relations, promotion, marketing, monitoring and supervisory functions. ST Drivers will collect appropriate fares and donations, as determined by the LTA. ST Drivers will verify cash and token fares deposited in the farebox, but will not carry revenue. ST Drivers will record ridership counts by passenger category and boarding location in accordance with procedures approved by the LTA.

ST Drivers shall have available at all times during operation of any bus an accurate time piece with active second hand (or digital equivalent), set each day to conform to local telephone system time.

2.14. ST Uniforms

ST drivers shall be in uniform at all times while in service or otherwise on duty. At all times ST drivers shall wear a badge that identifies the driver with name, employee number, or both. CONTRACTOR shall provide driver's uniforms to its employees. The design, type and logo of the uniforms shall be subject to the LTA's advance approval. ST Drivers shall be required to maintain a neat and clean appearance at all times while on duty.

2.15. Safety Program

CONTRACTOR shall assume full responsibility for assuring that the safety of passengers and operations personnel, and the LTA's vehicles and equipment, are maintained at the highest possible level throughout the term of this AGREEMENT. CONTRACTOR shall comply with all applicable California Highway Patrol and OSHA requirements, and shall furnish the LTA with copies of annual CHP vehicle/equipment inspections and CHP safety compliance reports, including pull notices.

CONTRACTOR shall develop, implement and maintain, in full compliance with California Law, a formal safety and accident prevention program including periodic safety meetings,

participation in safety organizations, safety incentives offered by CONTRACTOR to drivers and other employees, and participation in risk management activities under the auspices of CONTRACTOR's insurance carrier or other organization. CONTRACTOR shall provide a copy of said Safety Program and subsequent program updates to the LTA.

CONTRACTOR shall participate in the State of California Department of Motor Vehicles "Driver Pull Notice Program" for appropriate monitoring of employee driver license activity. CONTRACTOR will require all drivers, control room personnel, and supervisors to participate in the safety program.

2.16. Accident, Incident, and Complaint Procedures

CONTRACTOR shall develop, implement and maintain formal procedures, subject to LTA review and approval, to respond to accidents, incidents, service interruptions, and complaints. Such occurrences to be addressed include, but are not necessarily limited to, vehicle accidents, passenger injuries, passenger disturbances, in service vehicle failures, lift failures of buses in service, fixed-route buses operating more than ten minutes behind schedule, and demand response vehicles operating more than thirty minutes behind schedule based on reservation times.

CONTRACTOR shall be required to provide specific information to the LTA on all out-of-ordinary incidents arising during the service. Such incidents shall include, but not be limited to, onboard incidents, vehicular accidents, and disputes with or among passengers. CONTRACTOR shall notify the LTA immediately after becoming aware of the incidents. Notification shall address the incident, how it was handled and resolved. Unless otherwise requested, written documentation of such notification shall be submitted on a monthly basis. Operators are required to notify Dispatch of any illegal actions on the bus immediately. Dispatch must immediately notify the Police Department of the jurisdiction in which the incident or accident took place.

All traffic accidents involving the LTA vehicles, irrespective of injury, shall be reported to the Highway Patrol, local police or sheriff, as appropriate, and then to the LTA. CONTRACTOR will request that the law enforcement agency respond to investigate the accident. CONTRACTOR will supply the LTA with copies of all accident and incident reports.

The LTA shall be notified in writing by CONTRACTOR of all accidents and incidents resulting in loss or damage to ST property as soon as possible, but in all cases within 24 hours. In cases involving injury, CONTRACTOR shall notify the LTA immediately after the incident occurs.

2.17. Vehicle Control and Scheduling

CONTRACTOR shall implement and maintain an effective vehicle control system to maintain radio or telephone contact with all vehicles in service so as to provide supervision and guidance to vehicle operators, and respond to mechanical breakdowns, accidents and incidents in a timely and responsible manner consistent with industry practice.

CONTRACTOR shall utilize a systematic method to schedule and transport ST passengers. The scheduling method shall integrate all demand for service into efficient vehicle tours that maximize productivity and assure service quality at levels prescribed in this Scope of Work.

2.18. Operations Headquarters

CONTRACTOR shall be responsible for acquiring an operations headquarters that shall provide office space for the Project Manager and Dispatch staff. The office space shall be ADA accessible and be located within the City of Hollister. The office space shall be located near a CE Fixed Route.

CONTRACTOR shall provide and maintain operations and control room furnishings and equipment required to provide ST services. CONTRACTOR shall provide and maintain computers, telephones, phone lines, maps, information boards, official time clock, desks, tables, chairs, and other office equipment as may be appropriate.

CONTRACTOR shall be responsible for providing janitorial services for CONTRACTOR occupied areas. These services will be performed at a minimum of twice a week. CONTRACTOR shall also be responsible for providing cleaning and maintenance supplies for janitorial services.

2.19. Telephone Reservation and Information System

CONTRACTOR shall utilize ST telephone lines solely to respond to incoming calls from ST patrons for the purposes of requesting service information and demand response service or reservations. These phone lines shall be exclusively dedicated to the ST reservation and information system. CONTRACTOR shall advise the LTA if call volume appears to exceed phone line capacity to respond to incoming calls with a minimum of busy signals. CONTRACTOR shall coordinate with the LTA annually or more frequently, if necessary, to monitor and evaluate call volume and the need for additional phone lines.

CONTRACTOR shall install and maintain at CONTRACTOR's expense, separate telephone line(s) for business office, facsimile, internet or other calls. CONTRACTOR shall make special efforts to respond to telephone service and information requests from hearing-impaired ST patrons. CONTRACTOR may provide TDD equipment for communications with hearing-impaired patrons, or use the California Relay Service.

2.20. Fares and Fare Collection

All fares of any kind or character to be paid by ST patrons shall be established by the LTA. CONTRACTOR shall assure each patron pays the appropriate fare prior to being provided transportation service. All cash fares will be paid by patrons in the exact amount due for their appropriate fare classification. Fares shall be deposited by patrons into the fareboxes provided by the LTA in each vehicle. CONTRACTOR will collect or otherwise process, in the manner directed by the LTA, all non-cash fares (vouchers, transfers, passes and the like). All fares collected are the sole property of the LTA.

CONTRACTOR shall count and keep fares under appropriate security, and shall reconcile fare revenues to passenger activity. All fare accounting shall be in accordance with procedures to be proposed by CONTRACTOR and subject to LTA approval. At least three times a week, or more frequently, CONTRACTOR shall deposit fare revenue at a banking institution as directed by the LTA. Reports on the revenues collected and deposited shall be provided to the LTA on a weekly basis. The LTA reserves the right to audit fare revenue collection and accounting at reasonable times without prior notification to CONTRACTOR.

In the event a farebox requires repair or replacement, CONTRACTOR will immediately have the LTA repair and/or exchange the broken farebox to ensure that regular service is not interrupted. Any transfer of revenue will be done in a secure fashion in accordance with CONTRACTOR's policies and procedures. All incidents of farebox malfunction shall be reported to the LTA within 24 hours.

2.21. Books, Record, Reports, and Inspection

CONTRACTOR shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for the LTA under this AGREEMENT on file for at least three (3) years following the date of final payment to CONTRACTOR by the LTA. Original documents or certified copies shall be maintained locally at a place that shall be subject to the LTA's approval. Any duly authorized representative(s) of the LTA shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during CONTRACTOR's usual and customary business hours. Further, any duly authorized representative(s) of the LTA shall be permitted to observe and inspect any or all of CONTRACTOR's facilities and activities during CONTRACTOR's usual and customary business hours for the purposes of evaluating and judging the nature and extent of CONTRACTOR's compliance with the provisions of this AGREEMENT. In such instances, the LTA's representative(s) shall not interfere with or disrupt such activities.

CONTRACTOR shall collect, record, and report to the LTA on a monthly basis all accounting data for the ST operation in accordance with Section 99243 of the California Public Utilities Code, as is now in force or may hereafter be amended. All worksheets and detail information used to prepare these reports shall be available upon request.

CONTRACTOR shall collect, record, and report all operational data required by the LTA in a format approved by the LTA. Such data shall include, but not be limited to, data required under Section 99247 of the California Public Utilities Code, as is now in force or may hereafter be amended, passenger count data by fare and demographic category, vehicle hours, vehicle miles, vehicle revenue hours, vehicle revenue miles, passengers per hour, wheelchair boardings, missed trips, accidents and incidents, complaints and compliments, demand service requests refused, and passenger no-shows.

Information concerning vehicle activity shall be collected daily on the demand response driver's log, route driver's report, dispatch log, and/or other forms as developed by CONTRACTOR and approved by the LTA, and shall be summarized daily on the Daily Operations Summary. Daily vehicle activity data shall include by individual vehicle the number of passengers, wheelchair boardings, pick-up and drop-off times for demand response, mileage, and revenue. Dispatch records must show times for receipt of service requests, pick up assignment made, actual pick up, variance between promised and actual pick up times, actual drop off time, and total time between pick up and drop off.

The Daily Operations Summary shall be compiled into weekly, monthly, quarterly and annual reports; and shall provide data according to the individual routes, modes and total system. Individual totals shall be provided for peak hour services, weekdays, and, if needed, evenings, Saturdays and Sundays.

In addition to statistical data, Monthly Reports shall summarize the employee safety program and training activities, employee turnover, and other information as may be requested from time to time.

Project Manager shall compile and submit monthly reports, which shall be submitted to the LTA no later than the tenth (10) calendar day of the following month, comprised of the following:

- Transmittal Letter
- Ridership
- Revenue Service Hours
- Revenue Service Miles
- Fares Collected
- Number of Service Days
- Lift-Assisted Trips
- Turn Downs
- No Shows
- Cancellations
- Employee Hours
- Monthly Fuel Usage
- Summary of Ride Checks
- Summary of Accidents
- Summary of Incidents
- Summary of Demand Response Wait Time
- Summary of Ride Time
- Summary of Road Calls

2.22. System Promotion

CONTRACTOR shall not be responsible to undertake or fund any advertising or promotional activities on behalf of the LTA. CONTRACTOR shall, however, cooperate with the LTA in any such activities initiated by the LTA by making available needed equipment and personnel at no cost or expense to the LTA. CONTRACTOR also shall dispense the LTA information publications, respond to patron requests for information, act as a liaison and provider of system promotion information with and to community agencies and groups, and do all other things requested by the LTA to assist and support the LTA's advertising and public information efforts. CONTRACTOR is required to ensure that sufficient quantities of passenger information materials are maintained, and appropriately organized and displayed on each revenue vehicle at all times.

2.23. System Recommendations

CONTRACTOR shall continually monitor ST operations, facilities and equipment and shall, from time-to-time and as warranted, advise the LTA and make recommendations to it upon observed deficiencies and needed improvements. The LTA shall retain all authority, however, to make determinations and to take action on such recommendations.

2.24. Route Planning and Schedule Coordination

CONTRACTOR will provide the LTA with information to contribute to short and long range planning and will collect data and perform miscellaneous surveys to be used in assimilating

information needed to successfully monitor the service and clients and to respond to any and all reporting requirements. CONTRACTOR will assist transit planning staff at the LTA in service planning. Contributions may include mileage, vehicle, and any other resource requirements needed to implement new or modified service. This information may be used in budget preparation, planning, and in making transit presentations to the LTA, city, county, state, and federal agencies.

2.25. Holiday Service

Service will not be provided on New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day after, or Christmas Day, unless otherwise directed by the LTA to CONTRACTOR in writing at least 30 days prior to the required day of service.

2.26. Service Interruption

In the event of a service interruption of any kind, CONTRACTOR shall ensure that appropriate action is taken to mitigate the situation. In general, it is at CONTRACTOR's discretion how to mitigate such events.

CONTRACTOR shall provide a contingency plan in the event of a work stoppage by employees and/or in the event of lack of operators, supervisors, or maintenance personnel, in order to maintain and provide on-time bus service and acceptable performance standards to the LTA. This plan is due to the LTA no later than ninety days from the execution of this contract request.

CONTRACTOR will inform the LTA regarding any route problems, delays, detours, or vehicle breakdowns. Incidents/accidents that cause a major service interruption, severe injuries, or media attention must be reported to the LTA immediately. All service interruptions or detours as well when normal routing or service is resumed must be reported to the LTA.

3. CONTRACTOR DUTIES AND RESPONSIBILITIES ON LTA-OWNED VEHICLES

CONTRACTOR shall perform the duties and accept the responsibilities set forth below in connection with use of the LTA vehicles and equipment.

3.1. LTA Vehicles and Equipment

By execution of this AGREEMENT for management and operations services, CONTRACTOR shall acknowledge receipt of the vehicles and equipment listed in this section, and that each and every item has been received in good working condition. In the event the LTA provides the CONTRACTOR with additional buses and/or equipment at future times, this section shall be amended in the manner provided for amendments to the contract and the CONTRACTOR shall acknowledge receipt of such additional items upon their delivery to the CONTRACTOR. Upon termination of the contract, the CONTRACTOR shall return all the LTA-owned equipment absent any damage, less reasonable wear and tear.

All LTA provided vehicles and equipment shall be used by the CONTRACTOR to perform the services in EXHIBIT A to this AGREEMENT. Use of LTA vehicles and equipment that is not directly related to passenger pickups and emergency road-calls is strictly prohibited.

CONTRACTOR shall comply with all applicable federal statutes and regulations in connection with radio system use.

SPECIALIZED TRANSPORTATION VEHICLES

Last 5 VIN	Year / Make	Capacity	Fuel Type
95097	2003 Chevrolet Venture	5A/1WC	Gasoline
01408	2008 Ford Starcraft	12A/2WC	Gasoline
38515	2008 Chevrolet Uplander	5A/1WC	Gasoline
53004	2004 Ford Braun Transporter	6A/1WC	Diesel
84647	2008 Glaval	16A/2WC	Gasoline

SPECIALIZED TRANSPORTATION RADIO SYSTEM

Quantity	Description
One (1)	Motorola Radius M1225

3.2. Daily Vehicle Inspection and Servicing

CONTRACTOR shall perform daily vehicle servicing on all LTA vehicles used in revenue service. Daily vehicle servicing will include, but not be limited to, fueling; checking and, if necessary, adding engine oil and/or coolant; farebox vault pulling and replacement; wheelchair lift check; brake check; light and flasher check; interior sweeping and dusting; graffiti removal, exterior and interior visual inspection; and driver's report of vehicle safety, reliability, or performance defects, including climate control mechanisms. CONTRACTOR shall develop, implement and maintain a written checklist, which shall be subject to the LTA's approval, of items included in the daily servicing of each vehicle. The checklist will be utilized and kept on file for the LTA's and California Highway Patrol's review. This checklist requirement may incorporate or supplement CHP required driver's pre-trip safety inspections.

In addition to the checklist, CONTRACTOR shall complete and submit a work order to the LTA's maintenance staff describing vehicle defects requiring fleet maintenance inspection or repair. CONTRACTOR must report directly to the LTA to ensure that defects noted in driver vehicle inspections are being repaired and not deferred for an unreasonable length of time. Preventative maintenance and vehicle repairs are performed by the LTA mechanics. CONTRACTOR is responsible for reported vehicle conditions requiring repairs to the LTA mechanics in compliance with required General Maintenance Standards.

3.3. Vehicle Cleaning

CONTRACTOR shall maintain LTA vehicles in a clean and neat condition at all times. A bus cleaning and washing log shall be maintained and furnished to the LTA on a monthly basis. The interior of all vehicles shall be kept free of litter and debris to the maximum practicable extent throughout the operating day. Vehicles shall be swept and dusted daily. Interior panels, windows, and upholstery shall be cleaned of marks as necessary. The interiors of all vehicles shall be thoroughly washed at least twice per week (or more often to maintain a clean, sanitary interior), including all windows, seats, floor, stanchions and grab rails. All foreign matter such as gum, grease, dirt and graffiti shall be removed from interior surfaces

during the interior cleaning process. Any damage to seat upholstery shall be immediately repaired or reported to the LTA maintenance staff upon discovery.

Exteriors of all LTA vehicles shall be washed as required to maintain a clean, inviting appearance and in no event less than once per week. Exterior washing shall include bus body, all windows and wheels. Rubber or vinyl exterior components such as tires, bumper fascia, fender skirts and door edge guards shall be cleaned and treated with a preservative at least once per month, or as necessary to maintain an attractive appearance. Graffiti shall be removed as soon as is practical after it is detected, and in no case shall a vehicle be returned to service prior to the graffiti being removed. Buses shall be kept free of vermin and insects at all times. CONTRACTOR shall exterminate all vermin and insects from all vehicles immediately upon their discovery, utilizing safe and non-hazardous materials.

CONTRACTOR shall promptly report all vehicle defects to LTA's maintenance staff upon discovery.

3.4. Vehicle and Equipment Repair Due to Collision, Vandalism, or Abuse

CONTRACTOR shall be responsible for the cost of all repairs to the LTA vehicles and equipment to correct loss or damage due to collision, vandalism, theft, or abuse. The cost of repairs shall include all parts, labor, vehicle transportation or towing, and other costs associated with completing necessary repairs.

All repairs to LTA vehicles shall be performed by the LTA fleet maintenance staff or by other vendors and suppliers designated by the LTA, except that CONTRACTOR may make minor cosmetic repairs in a workman-like manner which would normally be performed during cleaning and detailing of a vehicle.

CONTRACTOR shall promptly report vehicle damage to the LTA fleet maintenance staff. Should the LTA determine unreported vehicle or equipment damage is the responsibility of CONTRACTOR, it shall notify the Project Manager or other designated on-site CONTRACTOR representative. As soon as is practicable, but in all cases within 24 hours after notification, CONTRACTOR representative shall review the damage. The LTA shall then complete the work, document the repair or replacement on a work order, and CONTRACTOR shall be responsible for the cost of repairs in accordance with the provisions of the AGREEMENT of which Part III, Section E is part.

3.5. Roadcalls

The LTA fleet maintenance staff will respond to roadcalls to assist with disabled vehicles upon request by CONTRACTOR. CONTRACTOR shall adhere to the following procedures in making roadcalls:

- a. The Driver notifies the Dispatch Office of the location and problem(s) with the vehicle. The driver shall make every attempt to park the vehicle in a safe location that does not block pedestrian or vehicle traffic.
- b. Dispatch notifies the LTA maintenance staff and forwards the information. A backup vehicle should be dispatched to continue the affected route service.

- c. The LTA maintenance staff will go on-site to assess the situation. Maintenance will determine if the vehicle can be repaired on-site or if it should be towed into the yard. Under no circumstances should a vehicle be left unattended.
- d. In the event LTA maintenance staff is unavailable when first contacted, the dispatcher shall repeat attempts to contact staff up to 90 minutes prior to the scheduled closing of the dispatch office.
- e. If LTA maintenance staff is still unavailable 90 minutes prior to the close of dispatch, the dispatcher on duty shall request towing service to return the vehicle to the LTA's maintenance facility at 3240 Southside Road, Hollister, California 95023. The dispatcher shall also notify the LTA of this course of action.

A vehicle shall not be left unattended overnight unless specific authorization is given by the LTA staff. In the event that a vehicle will be left unattended, dispatch is responsible for notifying law enforcement in the area the vehicle will be left. The driver is responsible for ensuring the vehicle is secured and all valuables have been removed.

After-Hours Roadcalls: When a situation occurs outside of standard Maintenance and Administration work hours (Monday through Friday, 7:30 a.m. to 5:00 p.m.), the Dispatcher is authorized to contact LTA staff at home if necessary. Maintenance staff has a cell phone, which should be the first method attempted for contact. If no response is gained, Dispatch may call the home telephone number. The dispatcher may also contact LTA's Transit Manager and seek direction in this situation.

If the roadcall is determined by the LTA to be caused by collision, vandalism, abuse, or CONTRACTOR employee error, then the cost of the roadcall shall be deducted from payment to CONTRACTOR in accordance with the provisions of the contract.

3.6. Vehicle Delivery and Towing

CONTRACTOR shall provide the delivery of vehicles to the LTA-designated suppliers for repair and servicing as requested by the LTA maintenance staff. CONTRACTOR shall deliver vehicles as quickly as practicable, but, in any case, within five (5) working days following any LTA request. Except when delivery is required to repair damage as described in EXHIBIT A of this AGREEMENT, CONTRACTOR shall be entitled to reimbursement for vehicle delivery services at the rate specified in the contract.

The LTA maintenance staff shall authorize all towing of LTA vehicles, except that towing may be performed by the most expedient source at the direction of law enforcement or when otherwise necessary to eliminate a potential hazard.

3.7. Vehicle Fueling

CONTRACTOR and all of its employees shall adhere to any and all accounting, administrative and operating procedures required by the LTA in connection with all fueling operations. CONTRACTOR shall record all fueling activities by fuel type and submit a summary of such activities on the monthly report.

EXHIBIT B – COMPENSATION FOR SERVICES; PAYMENT SCHEDULE

LTA agrees to pay CONTRACTOR for the performance of services set forth in this AGREEMENT as follows:

1. PAYMENT

1.1. Price Formula

For services rendered as set forth in EXHIBIT A to this AGREEMENT, payment shall be based on the firm fixed hourly rate per vehicle revenue service hour for the following periods:

Contract Year	Length of Period	Hourly Rate per Vehicle Revenue Hour
1	Jan. 1, 2011 – Dec. 31, 2011	\$ 26.25
2	Jan. 1, 2012 – Dec. 31, 2012	\$ 27.04
3	Jan. 1, 2013 – Dec. 31, 2013	\$ 27.85
4	Jan. 1, 2014 – Dec. 31, 2014	\$ 28.69
5	Jan. 1, 2015 – Dec. 31, 2015	\$ 29.55

1.2. Vehicle Revenue Service Hour

Vehicle revenue service hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers.

1.2.1. OOCMT, SLTP, and MSAP vehicle revenue service hours are definite as the time from when a vehicle picks up its first passenger of the day or scheduled service period through the time the vehicle drops off its last passenger of the day or scheduled service period.

1.2.2. For all modes of operations, vehicle revenue service hours shall specifically exclude time for travel to and from storage facilities, downtime for roadcalls, road tests, fueling, vehicle inspections, driver training and driver rest or meal breaks. Fixed Hourly Rate costs elements are detailed in EXHIBIT E to this AGREEMENT and are incorporated herein by reference.

1.3. Vehicle Delivery Expense Reimbursements

LTA shall reimburse CONTRACTOR for actual labor expenses, at the rate contained in Paragraph 1.1 of this Exhibit, incurred to deliver vehicles to LTA-designated suppliers for repair and servicing, as requested by LTA maintenance staff. No reimbursement shall be paid if vehicle delivery is necessary to correct loss or damage that is determined by LTA to be due to collision, vandalism, theft, or abuse.

1.4. Invoice; Payment

CONTRACTOR shall submit to LTA on or before the 1st day of July, an invoice to advance payment for the months of July and August. For July and August ST operations, CONTRACTOR shall submit the information provided hereafter noting that payment was made in July. On or before the 10th day of each month, CONTRACTOR shall submit an invoice to the LTA, Attention: Transportation Planner. Said invoice shall itemize CONTRACTOR'S full and complete performance hereunder for the previous monthly period. Invoices shall be in such form and shall incorporate such supporting documentation as the LTA

may from time to time require. At a minimum, CONTRACTOR shall provide the following itemization for each invoice submitted:

- a. Vehicle Revenue Hour Charges shall be directly traceable by LTA to ST as identified in Exhibit A to this AGREEMENT, or revisions thereto, and operator trip sheets.
- b. Other Charges for which prior written authorization has been provided by LTA, but not covered in the Fixed Monthly Rate or Fixed Vehicle Revenue Hour, shall be billed monthly with charges directly traceable to receipts, bills, etc., copies of which shall be attached to the invoice.

All payments by LTA shall be made in arrears after the service has been provided. LTA shall pay all reasonable and allowable items in CONTRACTOR'S invoice within 30 days following receipt of such invoice. If LTA disputes any item on an invoice for a reasonable cause, LTA may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONTRACTOR within thirty (30) working days after receipt of invoice by LTA.

1.5. Deduction of Payment: Vehicle and Equipment Damages

CONTRACTOR shall be responsible for the cost of all repairs to LTA vehicles and equipment to correct loss or damage due to collision, vandalism, theft, or abuse. Cost of repairs shall include all parts, labor, vehicle transportation or towing, and other costs associated with completing necessary repairs. When LTA determines that vehicle or equipment loss or damage is the responsibility of CONTRACTOR, LTA shall notify CONTRACTOR as provided under Paragraph 3.4 of EXHIBIT A to this AGREEMENT, and will direct CONTRACTOR to expeditiously effect the repairs. Alternatively, LTA may complete the repairs or have the repairs completed by a third party, and the cost of said repairs shall be deducted from payments due CONTRACTOR.

1.6. Liquidated Damages

CONTRACTOR and LTA acknowledge and agree that LTA may suffer substantial damage in the event CONTRACTOR acts or fails to act in the manner set forth in following items a. through h. of Paragraph 1.6.10. of EXHIBIT B. The amount of the damage is difficult, if not impossible, to ascertain, due to the nature of this AGREEMENT and the nature of such damages. Accordingly, the parties hereto have determined to establish the provision of this Section as LTA's compensation for damages for such acts or failures to act, and not as a penalty, and further agree that such damages are reasonable.

Any liquidated damages assessed and received as described herein shall not constrain LTA from receiving additional recompense where said damages can be proven, nor shall payment of any liquidated damage in itself absolve or find the CONTRACTOR of being in material breach of the contract.

- 1.6.1. Prior to the assessment of any liquidated damages; the CONTRACTOR shall be notified in writing of the violation.

- 1.6.2. CONTRACTOR shall be given an opportunity to respond to LTA staff within five (5) business days of notice.
- 1.6.3. All appeals of this nature shall be submitted in writing. Disputes arising concerning the intended assessment of any liquidated damages, which are not resolved by mutual agreement of the parties authorized representatives, shall be decided by the LTA Executive Director or his/her designee. LTA shall not assess liquidated damages to events beyond the reasonable control of CONTRACTOR.
- 1.6.4. Should it be determined that liquidated damages are to be imposed, the LTA may deduct the amounts owed in U.S. dollars from CONTRACTOR's unpaid invoice(s) for service rendered.
- 1.6.5. Should any entity assess liquidated damages to LTA for actions, inactions, or omissions of the CONTRACTOR or its agents, the liquidated damages assessed to the CONTRACTOR shall be equal to U.S. dollars to that suffered by LTA.
- 1.6.6. Any liquidated damages of sub-standard productivity shall be assessed to the CONTRACTOR on a quarterly basis for the previous quarter.
- 1.6.7. Liquidated damages will not be assessed sooner than three months after the initiation of services under this AGREEMENT.
- 1.6.8. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated complaint. Where appropriate, determination of liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident.
- 1.6.9. The maximum limit of liquidated damages assessed to the CONTRACTOR shall not exceed one thousand dollars (\$1,000) per month.
- 1.6.10. By accepting the terms and conditions of the AGREEMENT, the CONTRACTOR agrees to the following liquidated damages. The liquidated damages shall not be compounded nor shall more than one form of liquidated damages be imposed per incident. LTA may assess liquidated damages as follows for CONTRACTOR'S act(s) or failure(s) to act:
 - a. One Hundred Dollars (\$100) per incident for each day that: a vehicle or vehicles in revenue service are not maintained in a clean condition, in accordance with contract standards.
 - b. Five Hundred Dollars (\$500) per incident for each day, beginning on the sixth day, that CONTRACTOR fails to deliver an operable vehicle for repair and/or servicing following a written request by LTA maintenance staff.

- c. One Thousand Dollars (\$1,000) per incident for each occurrence that:
(1) a wheelchair becomes unfastened from its tie down(s) while being transported, or (2) a wheelchair is not fastened by tie-down(s) while being transported.
- d. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety percent (90%) or better for ST, based on the standards set forth in Paragraph 2.6.1.3. of EXHIBIT A to this AGREEMENT.
- e. Five Hundred Dollars (\$500) per quarter that CONTRACTOR fails to obtain an on-time performance level of ninety-five percent (95%) or better for Reservation Reliability, based on the standards set forth EXHIBIT A.
- f. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to submit a monthly report after the specified due date in Paragraph 2.21. of EXHIBIT A to this AGREEMENT.
- g. Fifty Dollars (\$50) per calendar day that CONTRACTOR fails to maintain the transit facilities set forth in Paragraph 3.3. of EXHIBIT A to this AGREEMENT.
- h. One Hundred Dollars (\$100) per vehicle code violation during annual California Highway Patrol Vehicle (CHP) Safety Compliance Inspection.

Liquidated damages will not be assessed sooner than three months after the initiation of services under this AGREEMENT. Liquidated damages will be assessed after observation of the incident by LTA, one of its authorized monitors, or after a fully investigated and validated complaint. LTA will deduct liquidated damages from payment of CONTRACTOR invoice. Where appropriate, determination of liquidated damages shall be based on sampling methods mutually agreed to by LTA and CONTRACTOR.

The determination of whether or not to assess liquidated damages shall be at the sole discretion of the LTA. LTA 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.

2. MAXIMUM OBLIGATION

Notwithstanding any provisions of this AGREEMENT to the contrary, LTA and CONTRACTOR mutually agree that LTA'S maximum cumulative obligation is limited to \$1,070,431, including amounts payable to CONTRACTOR for leases, materials, and costs arising from or due to, termination of this AGREEMENT. It is the intent of the parties hereto that said maximum obligation shall be sufficient to compensate CONTRACTOR for services performed for five years, and that said maximum obligation may have to be amended if CONTRACTOR provides services for LTA subsequent to that time period.

In the event that the maximum cumulative obligation provided hereinabove is reached, CONTRACTOR shall have no obligation to perform any additional work under this AGREEMENT and, any work performed or expenditures incurred by CONTRACTOR over and above the cumulative obligation amount specified above shall be the sole risk of CONTRACTOR.

In the event that LTA does not intend to amend this maximum obligation amount, LTA shall so notify CONTRACTOR by written notice at least one month before the maximum obligation amount specified herein is estimated to be reached. For purposes of amending this AGREEMENT to provide for additional funding of the maximum obligation amount specified hereinabove, only the Board of Directors of the LTA shall have authority to obligate LTA.

3. OPERATING REVENUES

All operating revenues collected by CONTRACTOR are the property of LTA. For the purposes of this AGREEMENT, operating revenues shall include but not necessarily be limited to farebox receipts and pass sales revenue. CONTRACTOR shall be responsible for handling farebox receipts and pass sales revenues in the manner discussed in Paragraph 2.20. of EXHIBIT A to this AGREEMENT, and as necessary for LTA to meet the requirements of State and Federal funding sources.

EXHIBIT C – GENERAL PROVISIONS

1. INDEMNIFICATION

CONTRACTOR shall indemnify and hold harmless the LTA, the City of Hollister, the City of San Juan Bautista, San Benito County, and the Council of San Benito County Governments, and their officials, officers, agents, employees, volunteers and assigns from and against any and all claims, damages, losses, costs, liability, and expense for death, personal injury, and property damage, such claims, damages, loss, costs, liability and expense arising out of or alleging to arise out of, or resulting in whole or in part, directly or indirectly, from work or operations under this contract, but not limited to the acts, errors, omissions, negligence and willful misconduct of CONTRACTOR, CONTRACTOR'S officers, employees, agents, and subcontractors, except to the extent that such claims, damages, losses, costs, liability, and/or expenses are the result of the sole negligence or willful misconduct of the LTA, the City of Hollister, the City of San Juan Bautista, San Benito County, and/or the Council of San Benito County Governments.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

2. CONFLICT OF INTEREST

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. CONTRACTOR further covenants that, in the performance of this AGREEMENT, no subcontractor or person having such an interest shall be used or employed. CONTRACTOR certifies that no one who has or will have any financial interest under this AGREEMENT is an officer or employee of LTA.

2.1. Conflict of Transportation Interests

CONTRACTOR shall not divert any revenues, passengers or other business from LTA to any other transportation operation of CONTRACTOR.

2.2. Conflicting Use

CONTRACTOR shall not use any vehicle, equipment, personnel or other facilities, which are dedicated to LTA for performing services under this AGREEMENT for any use whatsoever other than provided for in this AGREEMENT without the prior written approval of LTA.

2.3. Interest of Members of or Delegates to Congress

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this AGREEMENT or to any benefit arising therefrom.

3. TITLE TO DOCUMENTS; COPYRIGHT

All reports and other materials collected or produced by CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of LTA, and shall not be subject to any copyright claimed by CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for

administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of LTA, is prohibited.

4. INDEPENDENT CONTRACTOR

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to LTA and not officers or employees of LTA. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of LTA. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to LTA that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

5. AUDIT; RETENTION OF RECORDS

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to authorized representatives of LTA, the U.S. Department of Transportation, and the Comptroller General of the United States and California State Controller's Office representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by LTA, its authorized representative, or officials of the State of California.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to ensure the maintenance of the records beyond the initial three year period shall arise only if LTA notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

6. COMPLIANCE WITH ENVIRONMENTAL STANDARDS

CONTRACTOR shall comply with the provisions of the Clean Air Act, as amended (42 U.S.C. §1857 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), and implementing regulations, and all state laws and local ordinances with respect to transit operations and operation of the facilities involved in the AGREEMENT for which Federal assistance is given. CONTRACTOR shall report violations to the LTA, the Federal Transit Administration, and to the U. S. Environmental Protection Agency Assistant Administrator for Enforcement.

7. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this AGREEMENT, CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, religion, color, sex, ancestry, or national origin. CONTRACTOR shall take affirmative actions to ensure that applicants are

employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

8. NONDISCRIMINATION - TITLE VI CIVIL RIGHTS ACT OF 1964

During the performance of this contract, CONTRACTOR, for itself, its assignees and successors in interest (hereinafter referred to as the "CONTRACTOR") agrees as follows:

- 8.1. Compliance with Regulations: The CONTRACTOR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this contract.
- 8.2. Nondiscrimination: The CONTRACTOR, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 8.3. Solicitations for Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed or for procurements of materials or leases of equipment, each potential supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 8.4. Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LTA or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the LTA, or set forth what efforts it has made to obtain the information.
- 8.5. Sanctions for Noncompliance: In the event of the CONTRACTOR'S noncompliance with nondiscrimination provisions of this contract, the LTA shall impose contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to withholding of payments to the CONTRACTOR under the contract until the CONTRACTOR complies, and/or cancellation, termination, or suspension of the contract, in whole or in part.

- 8.6. **Incorporation of Provisions:** The CONTRACTOR shall include the provisions of Paragraph (8.1) through (8.6) of this Exhibit in every procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any procurement as the LTA or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a supplier as a result of such direction, the CONTRACTOR may request the LTA, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

9. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE), as defined in 49 C.F.R. Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 C.F.R. Part 23 applies to this AGREEMENT.

The CONTRACTOR shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the performance of the AGREEMENT. The requirements of 49 C.F.R. Part 23 and the LTA's Disadvantaged Business Enterprise (DBE) policy are incorporated into this AGREEMENT by reference. Failure by the CONTRACTOR to carry out these requirements is a material breach of the AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy, as the LTA deems appropriate.

CONTRACTOR shall cooperate fully with LTA in meeting any of LTA'S commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises. CONTRACTOR shall keep records of DBE participation in all activities carried out pursuant to this AGREEMENT, and shall report to LTA all such participation and efforts made to encourage DBE participation as required by LTA.

10. COMPLIANCE WITH LAWS, RULES, REGULATIONS

All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal, state, or local statutes, and any rules or regulations promulgated thereunder, including but not limited to, those relative to Civil Rights, Equal Employment Opportunity, Disadvantaged Business Enterprise, and Labor Protection. CONTRACTOR is subject to the provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. §1609) and the Section 13(c) Agreements and side letters currently in force and certified by the United States Department of Labor. Changes, including changes in service and any other changes which may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 13(c) protections granted to employees. CONTRACTOR shall defend and indemnify the LTA from any and all claims and losses due to the 13(c) consequences of changes not requested by the LTA that result in Section 13(c) grievances, claims and/or liability. CONTRACTOR is subject to any labor protection provisions incorporated into the contract for Federal Transit Act, Section 5311 federal assistance between LTA and the California Department of Transportation. These provisions require that the project "be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass transportation industry within the service area of the project".

CONTRACTOR shall pay all taxes required to be paid by it by any applicable federal, state, or local statute. Further, CONTRACTOR shall secure, on its own behalf, or on behalf of LTA if requested, any and all licenses, permits, certificates and inspections required by law, excluding general-public paratransit vehicle inspections. CONTRACTOR shall assure that all of its employees operating CE vehicles possess a valid, current Class B California Driver License with appropriate endorsements. Further, CONTRACTOR shall participate in the Driver's Pull Notice Program as required by Section 1808.1 of the California Vehicle Code.

11. BANKRUPTCY

CONTRACTOR shall immediately notify LTA in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

12. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES

Except as specifically authorized herein, no rights under this AGREEMENT may be assigned and no duties under this AGREEMENT may be delegated by CONTRACTOR without the prior written consent of LTA, and any attempted assignment or delegation without such consent shall be void.

13. NEGOTIATED CONTRACT

This AGREEMENT has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this AGREEMENT within the meaning of California Civil Code Section 1654.

14. SEVERABILITY

Should any provision herein be found or deemed to be invalid, this AGREEMENT shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this AGREEMENT are declared to be severable.

15. ENTIRE CONTRACT

This contract is the entire AGREEMENT of the parties. There are no understandings or agreements pertaining to this AGREEMENT except as are expressly stated in writing in this AGREEMENT or in any document attached hereto or incorporated herein by reference.

16. TIME IS OF THE ESSENCE

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

17. RESPONSIBILITY OF AGREEMENT ADMINISTRATORS

All matters concerning this AGREEMENT which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective AGREEMENT administrators or to the party's employee specified, in writing, by the AGREEMENT administrator. A party may, in its sole discretion, change its designation of its AGREEMENT administrator and shall promptly give written notice to the other party of any such change.

18. MATERIALITY

The parties consider each and every term, covenant, and provision of this AGREEMENT to be material and reasonable.

19. WAIVER

Waiver by either party of a breach of any covenant of this AGREEMENT will not be construed to be a continuing waiver of any subsequent breach. LTA's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this AGREEMENT. The parties shall not waive any provisions of this AGREEMENT unless the waiver is in writing and signed by all parties.

20. AUTHORITY AND CAPACITY

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this AGREEMENT.

21. BINDING ON SUCCESSORS

All of the conditions, covenants and terms contained herein shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this AGREEMENT.

22. CUMULATION OF REMEDIES

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

23. INDEPENDENT ADVICE

Each party hereby represents and warrants that in executing this AGREEMENT it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this AGREEMENT and the rights and duties arising out of this AGREEMENT, or that such party willingly foregoes any such consultation.

24. NO RELIANCE ON REPRESENTATIONS

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this AGREEMENT may turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

25. REDUCTION OF CONSIDERATION

CONTRACTOR agrees that LTA shall have the right to deduct from any payments specified in Paragraph 1.3, Paragraph 1.5. and Paragraph 1.6. of EXHIBIT B to this AGREEMENT any amount owed to LTA by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this AGREEMENT. For purposes of this paragraph, obligations arising prior to, or after, the execution of this AGREEMENT may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If LTA exercises the right to reduce the consideration specified in Paragraph 1.3, Paragraph 1.5. and Paragraph 1.6. of EXHIBIT B to this AGREEMENT, LTA, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

26. COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one AGREEMENT.

27. HEADINGS:

The headings or titles to sections of the AGREEMENT are not part of the AGREEMENT and shall have no effect upon the construction or interpretation of any part of the AGREEMENT.

28. SALE OR TRANSFER

CONTRACTOR agrees that it will not sell, assign or transfer, in whole or in part, any right, title or interest it possesses by reason of this AGREEMENT to any other person or entity without first obtaining the written consent of the LTA to such sale, assignment, or transfer. In the event of any violation of this Section, LTA may immediately terminate this AGREEMENT.

29. NOTICE

All notices hereunder and communications with respect to this AGREEMENT shall be effected upon the mailing thereof by registered or certified mail return receipt requested and addressed to the parties' AGREEMENT administrators, who shall be the persons named below:

CONTRACTOR: Pauline Valdivia
Executive Director
Jovenes de Antaño
300 West Street
Hollister, CA 95023

LTA: Lisa Reheinheimer
Executive Director
San Benito County Local Transportation Authority
330 Tres Pinos Road, Suite C7
Hollister, CA 95023

Notices will be deemed given on:

- (a) The day the notice is personally delivered to the AGREEMENT administrator or the office of the party's AGREEMENT administrator; or

- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's AGREEMENT administrator as indicated in this contract, with first-class postage fully prepaid; or
 - (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified above, provided that an original of such notice is deposited in the United States mail, addressed to a party's AGREEMENT administrator as indicated in this AGREEMENT, on the same day as the facsimile transmission is made.
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EXHIBIT D – FEDERAL CLAUSES

CONTRACTOR understands that Federal laws, regulations, policies, and related administrative practices applicable to this AGREEMENT the date the contract was executed may be modified from time to time. CONTRACTOR agrees the prevailing Federal requirements will govern the administration of this contract at any particular time, except if there is sufficient evidence in the contract of a contrary intent. Such contrary intent might be evidenced by express language of this contract or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this contract. Likewise, new Federal laws, regulations, policies, and administrative practices may be established after the date the contract has been executed and may apply.

1. ENERGY CONSERVATION

CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

2. ACCESS TO RECORDS

Upon request, CONTRACTOR agrees to permit, and require its Subcontractors to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, to inspect all Contract work, materials, payrolls, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its Subcontractors pertaining to the AGREEMENT.

CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. CONTRACTOR agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than three (3) years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case CONTRACTOR agrees to maintain same until the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

3. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement, between the LTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

4. NO OBLIGATION BY THE FEDERAL GOVERNMENT.

- 4.1. The LTA and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the LTA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- 4.2. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

5. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

- 5.1. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the contract, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.
- 5.2. CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.
- 5.3. CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

6. CIVIL RIGHTS

The following requirements apply to the contract:

- 6.1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 6.2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the contract:

- 6.2.1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the performance of the Contract. CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- 6.2.2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- 6.2.3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- 6.3. CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7. ACCESS TO RECORDS

The following access to records requirements apply to this AGREEMENT:

- 7.1. The Comptroller General of the United States or any of his or her authorized representatives shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 C.F.R. §633.17 to provide the FTA Administrator or his or her authorized

representatives including any PMO Contractor access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§5307, 5309 or 5311.

7.2. CONTRACTOR agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than three (3) years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case CONTRACTOR agrees to maintain same until the LTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR §18.36(i)(11).

7.3. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

8. DISADVANTAGED BUSINESS ENTERPRISE

CONTRACTOR agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in its performance of the Contract:

8.1. CONTRACTOR agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. §101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

8.2. CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. CONTRACTOR agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. CONTRACTOR's DBE program, as required by 49 C.F.R. Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the Contract. Implementation of this DBE program as a legal obligation, and failure to carry out its terms shall be treated as a violation of the Contract. Upon notification to CONTRACTOR of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. §1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§3801 et seq.

9. INCORPORATION OF FTA 4220.1D TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions

contained in this Contract. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any LTA request, which would cause the LTA to be in violation of the FTA terms and conditions.

10. APPLICATION OF FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

10.1. Federal Laws and Regulations. Federal law or laws authorizing Contract approval control Contract implementation. CONTRACTOR acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Contract on the date the authorized FTA official signs the Master Agreement or other awarding agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when CONTRACTOR executes the Master Agreement or other awarding agreement, and might apply to such agreement. CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of the Contract at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition, Requirement, or Provision or Condition of Award, a change to an FTA directive, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a specific provision of the Master Agreement. To accommodate changing Federal requirements, CONTRACTOR agrees to include notice in each agreement with each Subcontractor and each third party Contractor participating in the Contract that Federal requirements may change and the changed requirements will apply to the Contract as required, unless the Federal Government determines otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by FTA.

10.2. State, Territorial, and Local Law. Except when a Federal statute or regulation pre-empts State, local, or territorial law, no provision of the Master Agreement or Contract shall require CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law. Thus, if any provision or compliance with any provision of the Master Agreement or Contract violates State, territorial, or local law, or would require CONTRACTOR to violate State, territorial, or local law, CONTRACTOR agrees to notify FTA immediately in writing. Should this occur, FTA and CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, terminate the Contract expeditiously.

11. COVENANT AGAINST CONTINGENT FEES

Bonus or Commission. CONTRACTOR affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Contract.

12. PROHIBITION ON GRATUITIES

12.1. Code of Ethics. CONTRACTOR agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or sub-agreements supported by Federal assistance. This code or standards of conduct shall provide that the CONTRACTOR's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential CONTRACTOR or Subcontractor. CONTRACTOR may establish

minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. This code or standards of conduct shall also prohibit CONTRACTOR's officers, employees, board members, or agents from using their positions in a manner that constitutes a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by CONTRACTOR's officers, employees, board members, or their agents, or by CONTRACTOR, any Subcontractors, or their officers, employees, board members, or agents.

12.2. **Personal Conflicts of Interest.** CONTRACTOR's code or standards of conduct shall prohibit CONTRACTOR employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or sub-agreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise if an employee, officer, board member, or agent, including any member of his or her immediate family, partner or organization, employs, or intends to employ, any of the above.

12.3. **Organizational Conflicts of Interest.** CONTRACTOR's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub-agreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party Contractor or Subcontractor or impair its objectivity in performing the contract work.

13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

CONTRACTOR agrees to comply, and ensures the compliance of each third party Contractor and each Subcontractor under the Contract, with the following federal employee protection requirements for contract employees, and/or with applicable California wage and hours laws, whichever statutory scheme imposes the higher standard and/or imposes the higher penalty for violation:

13.1. **Overtime requirements -** No CONTRACTOR or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

13.2. **Violation; liability for unpaid wages; assessments -** In the event of any violation of the clause set forth in paragraph (1) of this section CONTRACTOR and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and Subcontractor shall be liable to the United States for assessments. Such assessments shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth

in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- 13.3. Withholding for unpaid wages and assessments —CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or Subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or Subcontractor for unpaid wages and assessments as provided in the clause set forth in paragraph (2) of this section.
- 13.4. Subcontracts - CONTRACTOR or Subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this section.
- 13.5. Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by CONTRACTOR during the course of the Contract work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits, CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORs employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

14. ENVIRONMENTAL REQUIREMENTS

CONTRACTOR recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Contract. Some, but not all, of the major Federal laws that may affect the Contract include: the Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. and scattered sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and

Liability Act, as amended, 42 U.S.C. §§9601 et seq. CONTRACTOR also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Contract. Thus, CONTRACTOR agrees to comply, and assures the compliance of each Subcontractor and each third party Contractor, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and CONTRACTOR. CONTRACTOR agrees that those laws and regulations do not constitute CONTRACTOR's entire obligation to meet all Federal environmental and resource conservation requirements.

14.1. Clean Air

14.1.1. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. CONTRACTOR agrees to report each violation to the LTA, and understands and agrees that the LTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

14.1.2. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14.2. Clean Water

14.2.1. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to the LTA and understands and agrees that the LTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

14.2.2. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

To the extent applicable, CONTRACTOR agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

16. LOBBYING RESTRICTIONS

CONTRACTOR agrees to:

16.1. Refrain from using Federal assistance funds to support lobbying,

- 16.2. Comply, and assure the compliance of each third party Contractor at any tier and each Subcontractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. §1352.
- 16.3. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

17. DEBARMENT AND SUSPENSION

CONTRACTOR agrees to comply, and assures the compliance of each third party Contractor and Subcontractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. §6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29.

18. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS.

CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

- 18.1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A §5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. §5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. §5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- 18.2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. §5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. §5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, CONTRACTOR agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state.

CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- 18.3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. §5311, CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- 18.4. CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

19. SUBSTANCE ABUSE

CONTRACTOR agrees to comply with the following Federal substance abuse regulations:

- 19.1. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§702 et seq.
- 19.2. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State oversight agency of California, or the LTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Part 655 before each February 15th, to submit quarterly Management Information System (MIS) reports, and to submit annual MIS reports before February 15 to the LTA, 330 Tres Pinos Road, Suite C7, Hollister, California, 95023. To certify compliance CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

20. CHARTER BUS REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. §5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

21. SCHOOL BUS REQUIREMENTS

Pursuant to 69 U.S.C. §5323(f) and 49 CFR Part 605, Contractors and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

22. PRIVACY ACT

The following requirements apply to CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- 22.1. CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- 22.2. CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

23. TERMINATION

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of CONTRACTOR.

- 23.1. Termination for Convenience (General Provision). The LTA may terminate the contract, in whole or in part, at any time by written notice to CONTRACTOR when it is in the Government's best interest. CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to the LTA to be paid the CONTRACTOR. If CONTRACTOR has any property in its possession belonging to the LTA, CONTRACTOR will account for the same, and dispose of it in the manner the LTA directs.
- 23.2. Termination for Default [Breach or Cause] (General Provision). If CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, CONTRACTOR fails to perform in the manner called for in the

contract, or if CONTRACTOR fails to comply with any other provisions of the contract, the LTA may terminate the contract for default. Termination shall be effected by serving a notice of termination on CONTRACTOR setting forth the manner in which CONTRACTOR is in default. CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the LTA that CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of CONTRACTOR, the LTA, after setting up a new delivery of performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- 23.3. Opportunity to Cure (General Provision). The LTA in its sole discretion may, in the case of a termination for breach or default, allow CONTRACTOR an appropriately short period of time, as determined by the circumstances surrounding the breach or default, in which to cure the breach or default. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If, upon receipt of the LTA's written notice setting forth the nature of said breach or default, CONTRACTOR fails to remedy to the LTA's satisfaction the breach or default of any of the terms, covenants, or conditions of the Contract within the number of days specified in the LTA's written notice, the LTA shall have the right to terminate the Contract without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude the LTA from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

- 23.4. Waiver of Remedies for any Breach. In the event that the LTA elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by the LTA shall not limit the LTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of the Contract.
- 23.5. Termination for Convenience (Professional or Transit Service Contracts). The LTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the LTA shall be liable only for payment under the payment provisions of the contract for services rendered before the effective date of termination.
- 23.6. Termination for Default (Supplies and Service). If CONTRACTOR fails to deliver supplies or to perform the services within the time specified in the contract or any extension or if CONTRACTOR fails to comply with any other provisions of the contract, the LTA may terminate the contract for default. The LTA shall terminate by delivering to CONTRACTOR a Notice of Termination specifying the nature of the default. CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in the contract.

If, after termination for failure to fulfill contract obligations, it is determined that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the LTA.

- 23.7. Termination for Default (Transportation Services). If CONTRACTOR fails to pick up the commodities or to perform the services, including delivery services, within the time specified in the contract or any extension, or if CONTRACTOR fails to comply with any other provisions of the contract, the LTA may terminate the contract for default. The LTA shall terminate by delivering to CONTRACTOR a Notice of Termination specifying the nature of default. CONTRACTOR will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract.

If the contract is terminated while CONTRACTOR has possession of LTA goods, CONTRACTOR shall, upon direction of the LTA, protect and preserve the goods until surrendered to the LTA or its agent. CONTRACTOR and LTA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the LTA.

- 23.8. Termination for Default (Construction). If CONTRACTOR refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in the contract or any extension, or fails to complete the work within this time, or if CONTRACTOR fails to comply with any other provisions of the contract, the LTA may terminate this contract for default. The LTA shall terminate by delivering to CONTRACTOR a Notice of Termination specifying the nature of the default. In this event, the LTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. CONTRACTOR and its sureties shall be liable for any damage to the LTA resulting from CONTRACTOR's refusal or failure to complete the work within the specified time, whether or not CONTRACTOR's right to proceed with the work is terminated. This liability includes any increased costs incurred by the LTA in completing the work.

- 23.9. CONTRACTOR's right to proceed shall not be terminated nor CONTRACTOR charged with damages under this clause if-

- a. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Examples of such causes include: acts of God, acts of the LTA, acts of another Contractor in the performance of a contract with the LTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. CONTRACTOR, within [10] days from the beginning of any delay, notifies the LTA in writing of the causes of delay. If in the judgment of the LTA, the delay

is excusable, the time for completing the work shall be extended. The judgment of the LTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of CONTRACTOR's right to proceed, it is determined that CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the LTA.

- 23.10. Termination for Convenience or Default (Architect and Engineering). The LTA may terminate the contract in whole or in part, for the LTA's convenience or because of the failure of CONTRACTOR to fulfill the contract obligations. The LTA shall terminate by delivering to CONTRACTOR a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, CONTRACTOR shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing the contract, whether completed or in process.

If the termination is for the convenience of the LTA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of CONTRACTOR to fulfill the contract obligations, the LTA may complete the work by contract or otherwise and CONTRACTOR shall be liable for any additional cost incurred by the LTA.

If, after termination for failure to fulfill contract obligations, it is determined that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the LTA.

- 23.11. Termination for Convenience or Default (Cost-Type Contracts). The LTA may terminate the contract, or any portion of it, by serving a notice of termination on CONTRACTOR. The notice shall state whether the termination is for convenience of the LTA or for the default of CONTRACTOR. If the termination is for default, the notice shall state the manner in which CONTRACTOR has failed to perform the requirements of the contract. CONTRACTOR shall account for any property in its possession paid for from funds received from the LTA, or property supplied to CONTRACTOR by the LTA. If the termination is for default, the LTA may fix the fee, if the contract provides for a fee, to be paid CONTRACTOR in proportion to the value, if any, of work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to the LTA and the parties shall negotiate the termination settlement to be paid CONTRACTOR.

If the termination is for the convenience of the LTA, CONTRACTOR shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the LTA determines that CONTRACTOR has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of CONTRACTOR, the LTA, after setting up a new work schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

24. BREACH AND DISPUTE RESOLUTION

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

- 24.1. Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the LTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, CONTRACTOR mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon CONTRACTOR and CONTRACTOR shall abide by the decision.
- 24.2. Performance During Dispute - Unless otherwise directed by the LTA, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.
- 24.3. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- 24.4. Remedies - Unless the contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the LTA and CONTRACTOR arising out of or relating to the agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California, in and for the County of San Benito.
- 24.5. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the LTA or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor

shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

EXHIBIT E – PROPOSAL
