



# CITY OF HUNTINGTON BEACH

## Memorandum

**TO:** City Council

**FROM:** Chau Vu, Director of Public Works

**CC:** Travis Hopkins, Assistant City Manager  
Robin Estanislau, City Clerk

**DATE:** December 19, 2023

**SUBJECT:** **Supplemental Communication for Item #20 (Approve two-year service agreement for downtown shuttle service provider Circuit Transit, Inc. for a not to exceed amount of \$1,535,426) on the 12/19/2023 City Council Agenda**

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Staff and Circuit propose two revisions to the proposed, two year service agreement with Circuit that has been placed on the 12/19/2023 Agenda under Item #20.

1. Clarifications to the annual contract adjustments
2. The addition of a severability clause

Please see attached for the revised agreement.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 12/19/2023

Agenda Item No.: 20 (23-1059)

**SERVICE AGREEMENT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
CIRCUIT TRANSIT, INC.  
FOR  
ON-DEMAND SHUTTLE SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter called "City" and Circuit Transit, Inc., hereinafter referred to as "Contractor".

**Recitals**

- A. The City desires to provide all-electric, on-demand shuttle services for residents and visitors within the city's downtown area; and
- B. City desires to retain a Contractor having special skill and knowledge in the operation of all-electric, on-demand shuttle services; and
- C. Contract represents that Contractor is able and willing to provide such services to the City; and
- D. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional firm in the field.

Contractor has been selected to perform these services pursuant to Huntington Beach Municipal Code Chapter 3.02.

**NOW, THEREFORE**, it is agreed by the City and Contractor as follows:

**1. SCOPE OF SERVICES**

Contractor will provide all services as described in Exhibits "A", "B", "C", and "D", which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "Project."

Contractor hereby designates Daniel Kramer, who shall represent it and be its sole contact and agent in all consultations with City during the performance of this Agreement.

**2. CITY STAFF ASSISTANCE AND PARTY DESIGNEES**

The City designates Chau Vu as the Project Manager for this Agreement. The City will provide written notice to the Contractor should there be a subsequent Project Manager change. The Project Manager will be the Contractor's principal point of contact at the City regarding any matters relating to this Agreement, will provide all general direction to the

Contractor regarding performance, and will provide guidance regarding the City's goals and policies. The Project Manager is not authorized to waive or modify any material scope of work changes or terms of the Agreement.

City shall assign a staff coordinator to work directly with Contractor in the performance of this Agreement.

The Contractor designates Daniel Kramer as the Contractor Representative for this Agreement. The Contractor will provide written notice to the City should there be a subsequent Contractor Representative change. The City has the right to assume that the Contractor Representative has full authority to act for the Contractor on all matters arising under or relating to this Agreement.

### **3. COMPENSATION**

a. City agrees to pay, and Contractor agrees to accept as total payment for its services, the rates and charges identified in Exhibit "C" with a sum not to exceed One Million Five Hundred Thirty-Five thousand four hundred twenty-six (\$1,535,426) during the term of this Agreement after credit for fare and advertising revenue has been applied. In the event the expected cost for services under this agreement are projected to exceed the above amount, City Council may direct staff to execute an amendment extending this agreement or the City may terminate this agreement upon thirty (30) days written notice of termination.

b. This agreement is partially funded by grants to fund this project. In the event any anticipated grant funds related to this project do not materialize, the City may terminate this agreement upon thirty (30) days written notice of termination.

c. Payment by the City will be made for the actual services performed less the agreed monthly revenue owed to the City per this agreement. Contractor will submit monthly invoices with documentation showing the actual times and hours worked by the shuttle drivers, hours of actual operation, revenue vehicle hours, number of active shuttle drivers, average number of vehicles active per day at one time, total boardings, boardings per revenue vehicle hour, operating costs, net operating costs (costs less fares), reimbursement per net operating costs, total monthly advertising revenue received and contracted for, reimbursement per boarding, and cost per boarding. This documentation must satisfy both the City representative and the Orange County Transit Authority for the purposes of their grant. In addition, each monthly invoice will explicitly identify revenue service hours (RVH), and define how RVH are calculated, as well as provide advertising revenue with backup documentation showing payments made by advertising vendors (this would include the invoice from Circuit as well as a copy of the vendor's payment with encoding strip redacted). Failure to comply with these requirements will result in non-payment of the invoice and potentially lead to the cancellation of the contract itself as these requirements are required by the funding sources of this contract.

d. Payment by City shall be made within thirty (30) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

e. Upon request from the City, the cost for any additional service hours or vehicles shall be provided by Contractor to the City. The City shall only be obligated to pay the cost for the use of additional service hours or vehicles, and Contractor shall only be obligated to provide additional service hours or supply the additional vehicles, upon the execution of a written authorization executed by both parties. Any additional services performed for the City by Contractor outside of the Scope of Services to be provided, which may be mutually agreed upon by the Parties from time to time and billed on an hourly basis, will be provided in a separate invoice to the City and paid by the City to the Contractor on a monthly basis. The cost per vehicle service hour is based on rates in Exhibit B.

f. Contract shall sell space on the exterior or interior of the vehicles for the display of commercial advertising with the goal of raising revenue to partially finance the cost of the services performed under this Agreement as set forth in Exhibit C. Documentation of all advertising revenue will be sent to the City every 30 days with Circuit's monthly invoice. Failure to do so may result in a breach of the agreement by the Contractor.

g. Contractor shall charge a transportation fee of up to \$2 per ride per person. City shall be entitled to a net revenue share of the transportation fees received from passengers of the Project. Contractor shall pay City eighty percent (80%) net revenue of the transportation fees and retain the remaining twenty (20%). Net revenue shall mean the gross transportation fees received less all other costs and expenses, including but not limited to credit card merchant fees and processing fees, incurred by Contractor in connection with providing the Project services. Contractor shall keep all necessary records showing fees, costs, expenses, or any other costs subtracted from the gross revenue and provide documentation with payment to the City. Contractor shall deliver to the City the split of Net Revenue every thirty (30) days after the commencement of the agreement. Contractor will deliver all documentation and information with its monthly invoice. Failure by the Contractor to timely document and credit the transportation fee may result in a breach of the agreement by the Contractor.

h. The City acknowledges that any adjustment that alters service area and/or service hours under this Agreement may result in an updated Exhibit C.

#### **4. TERM**

Time is of the essence of the Agreement. The services of the Contractor are to commence on January 1, 2024 or as soon as practicable after the execution of this Agreement by City (the "Commencement Date") and terminate January 1, 2026, unless terminated earlier in accordance with provisions of this Agreement. Contract may be

extended for two (2) one-year periods if mutually agreed to in writing by both parties. The City shall notify the Contractor of its intent to exercise its extension option sixty (60) days prior to end of the then existing term.

The Contractor will be allowed an annual contract adjustment in year two. Should the City elect to extend the term of this Agreement, the Contractor will be allowed annual contract adjustments in years three and four. Contract adjustments shall be equivalent to the lower of 3.5 percent or the year-to-year percentage change of the Los Angeles-Riverside-Orange County Consumer Price Index for all Urban Consumers (CPI-U). Annual adjustments will go into effect on the eve of each contract anniversary date.

In the event the Commencement Date precedes the Effective Date, Contractor shall be bound by all terms and conditions as provided herein.

## **5. EXTRA WORK**

In the event City Requires additional services not included in the Exhibits or changes the scope of services described in Exhibits, Contractor will undertake such work only after receiving written authorization from the City. Additional compensation for such extra work shall only be allowed with the prior written approval of the City.

## **6. INDEPENDENT CONTRACTOR**

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

## **7. INSURANCE**

a. **Workers' Compensation and Employer's Liability Insurance.** Pursuant to California Labor Code Section 1861, Contractor acknowledges awareness of Section 3700 *et seq.* of this Code, which requires every employer to be insured against liability for workers' compensation; Contractor covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

Contractor shall obtain and furnish to City workers' compensation and employer's liability insurance in an amount of not less than the State statutory limits.

Contractor shall require all subcontractors to provide such workers' compensation and employer's liability insurance for all of the subcontractors' employees. Contractor shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation and employer's liability insurance and Contractor shall similarly require all subcontractors to waive subrogation.

**b. General Liability Insurance.** In addition to the workers' compensation and employer's liability insurance and Contractor's covenant to defend, hold harmless and indemnify City, Contractor shall obtain and furnish to City, a policy of general public liability insurance, including motor vehicle coverage covering the Project/Service. This policy shall indemnify Contractor, its officers, employees and agents while acting within the scope of their duties, against any and all claims arising out or in connection with the Project/Service, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000) for this Project/Service. This policy shall name City, its officers, elected and appointed officials, employees, agents, and volunteers (the "Additionally Insured Parties") as Additional Insureds and shall specifically provide that any other insurance coverage which may be applicable to the Project/Service shall be deemed excess coverage and that Contractor's insurance shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available for the Additionally Insured Parties.

Any available insurance proceeds in excess of the minimum coverage amount specified herein shall be available to the Additionally Insured Parties. All coverage available to Contractor shall also be available to the Additionally Insured Parties. If the Contractor maintains higher limits than the minimum requirement, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor.

Under no circumstances shall above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage. Contractors shall be responsible for causing all Subcontractors to maintain the same types and limits of insurance coverage as that required by Contractor by this Agreement.

**c. Automotive Liability Coverage.** The Contractor shall maintain automotive liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence. There shall be a separate "additional insured endorsement" page listing both the policy number and naming the "City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers" as additional insured on the endorsement.

**d. Certificates of Insurance; Additional Insured Endorsements.** Prior to commencing performance of the work hereunder, Contractor shall furnish to City certificates of insurance subject to approval of the City's Attorney evidencing the foregoing insurance coverages as required by this Agreement; the certificates shall:

1. provide the name and policy number of each carrier and policy;
2. state that the policy is currently in force; and
3. promise to provide that such policies will not be canceled or modified without thirty (30) days' prior written notice of City.

Contractor shall maintain the foregoing insurance coverages in force at all times during the term of this Agreement with the City.

The requirement for carrying the foregoing insurance coverages shall not derogate from the Contractor's defense, hold harmless and indemnification obligations as set forth under this Agreement. City or its representative shall at all times have the right to demand the original or a copy of all the policies of insurance. Contractor shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

Contractor shall provide a separate copy of the additional insured endorsement to each of Contractor's insurance policies, naming the Additionally Insured Parties as Additional Insureds to the City Attorney for approval prior to any payment hereunder. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Contractor shall require all Subcontractors to name Contractor, its officers, employees and agents, and the Additionally Insured Parties as Additional Insureds, using ISO form number CG2030380413 or coverage at least as broad. Contractor shall verify that every Subcontractor's policy endorsement complies with the requirements set forth herein.

## **8. INDEMNIFICATION**

Contractor hereby agrees to protect, defend, indemnify and hold harmless City, its officers elected and appointed officials, employees, agents and volunteers from any and all, claims, damages, losses, expenses, judgments, demands, defense costs, and consequential damage or liability of any kind or nature, however caused to anyone, including clients and other members of the public, including those resulting in or from death or injury. This includes death or injury arising directly or indirectly out of the obligations or operations herein undertaken by Contractor, caused in whole or in part by any negligent act, omission, or intentional act of the Contractor, caused in whole or in part by any negligent act, omission, or intentional act of the Contractor, any subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence or willful misconduct, except where caused by the willful misconduct of the City. Contractor will conduct all defenses at its sole cost and expense and City shall approve selection of Contractor's counsel. This indemnity shall apply to all claims and

liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

## **9. CONFIDENTIALITY**

If Contractor receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Contractor agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Contractor disclosed in a publicly available source; (c) is in rightful possession of the Contractor without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Contractor without reference to information disclosed by the City.

Contractor recognizes that in the performance of its duties under this Agreement, it must conduct its activities in a manner designed to protect information of a sensitive nature from improper use or disclosure. Contractor warrants that it will use reasonable recruiting, training and supervising employees and in otherwise performing its duties hereunder to achieve this result

## **10. CONFLICT OF INTEREST CLAUSE**

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

## **11. NOTICES**

Any Notices, certificates, or other communications hereunder shall be given either by personal delivery to Contractor's agent (as designated in this agreement) or to the City as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Services, to the addresses below.

To Contractor:  
Circuit Transit Inc.  
501 East Las Olas Blvd  
Fort Lauderdale, FL 33301  
Attn: Daniel Kramer  
Phone: 562-252-6680

Email: daniel@ridecircuit.com

To City:  
City of Huntington Beach  
Attn: Transportation Manager  
P.O. Box 190, 2000 Main Street  
Huntington Beach, CA 92648

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

## **12. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, that terms and conditions hereof, shall not bind or obligate Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

## **13. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Contractors retained by City.

#### **14. TERMINATION**

This Agreement may be terminated for cause (including, but not limited to, the failure to perform any term of this agreement timely and the lack of any anticipated grant funds) by the City upon thirty (30) days written notice of termination or for convenience upon (60) days written notice of termination by the City. In such event, Contractor shall be entitled to receive and the City shall pay Contractor compensation for all services performed by Contractor prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, City may require Contractor to deliver all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Contractor consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

#### **15. DISPOSITION OF PLANS, ESTIMATES, AND OTHER DOCUMENTS**

Contractor agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to the City, and the Contractor shall turn these materials over to the City upon expiration or termination of this Agreement or upon Project completion whichever shall occur first. These materials may be used by the City as it sees fit. Contractor is aware and understands that all documents may be subject to the California Public Records Act.

#### **16. USE BY OTHER GOVERNMENT ENTITIES**

A governing body or its authorized representative and the State of California may join or use the contracts of local governments located within or outside this State with the authorization of the contracting vendor. Contractor will participate in cooperative procurement and shall provide the services as provided under this Agreement. The services stated in this Agreement reflect the City's pricing and usage only. A public agency wishing to utilize the services will execute its own contract with the Contractor for its requirements. Participating governmental agencies may utilize the City's contracts through cooperative procurement if the contract is determined by the participating governmental agency to have been awarded in compliance with their bidding requirements and there is no statutory provision prohibiting such service. Contractor understands and agrees that participation by other governmental agencies in the State of California is discretionary on the part of that governmental agency. In the event Contractor allows another governmental entity to join the Contract, any interruption, delay, or reduction of services provided for the City due to the addition of the other governmental entity shall be deemed a breach by the Contractor. In the event Contractor allows another governmental entity to join the Contract, it is

expressly understood that the City shall in no way be liable for the obligations of the joining governmental entity.

#### **17. DISCRIMINATION**

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

#### **18. JURISDICTION – VENUE**

This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be government and construed in accordance with the laws of the State of California. This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

#### **19. PROFESSIONAL LICENSES**

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Huntington Beach and all other governmental agencies. Contractor shall notify the City immediately and in writing of her inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

#### **20. CITY EMPLOYEES AND OFFICIALS**

Contractor shall employ no City official nor any regular City Employee in the work performed pursuant to this Agreement. No Officer or employee of City shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

#### **21. CONSENT**

When City's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transactions or event.

## **22. MODIFICATION**

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

## **23. INTERPRETATION OF THIS AGREEMENT**

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal, or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here.

## **24. IMMIGRATION**

Contractor shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

## **25. LEGAL SERVICES SUBCONTRACTING PROHIBITED**

Contractor and City agree that City is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. Contractor understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for City; and City shall not be liable for payment of any legal services expressly incurred by Contractor.

## **26. ATTORNEY'S FEES**

In the event suit is brought by either party to construe, interpret, and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

## **27. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by, unenforceable, or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**28. ENTIRETY**

The parties acknowledge and agree that they are entering into this agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel before executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements, or warranties, oral or otherwise.

**29. SIGNATORIES**

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

**30. SURVIVAL**

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

**31. GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

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

CONSULTANT,  
CIRCUIT TRANSIT, INC.

CITY OF HUNTINGTON BEACH, a  
municipal corporation of the State of  
California

By: \_\_\_\_\_

\_\_\_\_\_

Mayor

print name

ITS: (circle one) Chairman/President/Vice  
President

\_\_\_\_\_

City Clerk

AND

INITIATED AND APPROVED:

By: \_\_\_\_\_

\_\_\_\_\_

Director of Public Works

print name


ITS: (circle one) Secretary/Chief Financial  
Officer/Asst. Secretary - Treasurer

REVIEWED AND APPROVED:

\_\_\_\_\_

City Manager

APPROVED AS TO FORM:

 \_\_\_\_\_

City Attorney



## EXHIBIT "A"

### A. **STATEMENT OF WORK:** *(Narrative of work to be performed)*

Contractor will work with the City to operate an all-electric, on-demand, shared shuttle service ("Shuttle Service") for the designated service area. The operation of the Shuttle System is limited to the boundaries of the Downtown Huntington Beach (DTHB) (see zone map however, in the future the Shuttle System may expand beyond these boundaries. The Shuttle Service will serve downtown residents, workers and visitors by providing a convenient and efficient mobility option to circulate throughout downtown. A demand- response system provides point-to-point transit from any one point within the DTHB boundary to any other point within the DTHB boundary, and is available to the user upon demand.

### B. **CONTRACTOR'S DUTIES AND RESPONSIBILITIES:**

1. Operate the on-demand Shuttle Service within the defined coverage area and hours of operation as set forth in this agreement and in the City's Request for Proposals.

2. Provide a user mobile application for the service and provide monthly operating reports in a format approved by the City. Monthly operating reports of the previous month must be provided by the 15<sup>th</sup> of the following month. Failure to do so without prior notice and agreement of all parties may be considered a breach by the Contractor.

3. Contractor will provide the City with breakdown of hours and trip data as supporting documentation for payment each month. This documentation will include the actual times and hours worked by the shuttle drivers, hours of actual operation, revenue vehicle hours, number of active shuttle drivers, average number of vehicles active per day at one time, total boardings, boardings per revenue vehicle hour, operating costs, net operating costs (costs less fares), reimbursement per net operating costs, total monthly advertising revenue received and contracted for, reimbursement per boarding, and cost per boarding. This documentation must satisfy both the City representative and the Orange County Transit Authority for the purposes of their grant. Failure to do so without prior notice and agreement of all parties may be considered a breach by the Contractor.

4. Contractor will provide the following in a data report on a monthly basis:

- i) Number of Riders on monthly basis and heat maps for pickup and drop-off;
- ii) Number of Rides on a monthly basis;
- iii) Average wait time from request through the mobile app until arrival by the vehicle on a monthly basis;
- iv) Average trip duration on a monthly basis;

5. Contractor to provide a minimum of 5 GEM E6 - 2018 and newer vehicles; and make available for use an ADA vehicle on standby.

6. An operator may add vehicles/service hours to its fleet, upon request to and approval by the City, when the operator demonstrates with utilization data that average weekly response time exceeds 20 minutes per trip. In the evaluation of requests for vehicle/service hours increases or decrease determinations, the criteria includes market needs, the number of vehicles deployed in the City, device utilization, operator performance, public safety, seasonal and environmental conditions, special events, and other criteria.

Contractor shall be responsible for the operations of the Shuttle Service in accordance with:

1. Applicable federal, state, and local laws and regulations.
2. Necessary driver qualifications such as license verification and driver safety training.
3. Equipment operating instructions issued by the OEM (original equipment manufacturer).
4. The Passenger Service Policies below. The Passenger Service Policies as may be amended from time to time.

Contractor, at Contractor's sole expense, may employ persons other than Contractor's employees to perform supplemental passenger assistance, marketing, information functions, passenger counts, or other similar duties. Contractor's employment of other persons for these duties does not relieve the Contractor from performing these duties.

#### Passenger Service Policies

Contractor shall set uniform dress standards for all service employees. Employee uniforms will be green Circuit polos and driver's choice of bottoms. Uniform standards shall be subject to the City's approval.

#### **Training**

Contractor will establish and provide continuing training programs for all service employees who are working on the City of Huntington Beach Shuttle system. At a minimum, training shall include ADA lift and secure training, sensitivity training, and defensive driver training.

#### **Vehicle Breakdown**

Contractor shall provide an additional vehicle in the event of a vehicle breakdown. The maximum response time from the time of a vehicle breakdown until the arrival of a replacement vehicle shall be twenty (20) minutes plus two (2) minutes per mile from the Contractor's garage to the location of the breakdown.

Contractor, at Contractor's sole expense, in the event of a vehicle breakdown may provide alternate transportation through the use of licensed taxicab service. Use of this option shall not alter the maximum response time for replacement service stated above.

### **Vehicle Operators**

Contractor shall supply properly licensed and qualified personnel to operate vehicles meeting the following minimum requirements:

- Fluent in speaking, writing and understanding English
- Shall not have, within the last three (3) years:
  - a. One or more Driving While Intoxicated (DWI) or Driving Under the Influence (DUI) convictions.
  - b. Any conviction or plea of nolo contendere in a competent court of jurisdiction recognized by the State of California for leaving the scene of an accident.
  - c. Two (2) or more chargeable accidents.
  - d. Two (2) or more moving violations

### **Code of Conduct**

All employees shall avoid conduct unbecoming an employee. Contractor shall set personnel policies prohibiting such actions. Examples of conduct unbecoming an employee include, but are not limited to, the following:

- Any instance of use of language that is obscene, risqué or religiously, ethnically or sexually demeaning, or making light of physical or mental disability, regardless of whether it is directed at a customer or another employee.
- Any instance of belligerent or malicious behavior toward a customer or another employee.
- Littering on rolling stock, station areas or any other City system property.
- Eating in the presence of passengers or within vehicles, except when on break.
- Smoking in the presence of passengers.
- Willful failure to assist customers.
- Willful destruction or damage to any City property.
- Violation of uniform dress standards.
- Reckless or unsafe driving.

### **Employees and Sub-Contractors**

All personnel provided by CONTRACTOR and Contractor's sub-Contractors involved in any aspect of the Operator Services shall be employees or Contractors of CONTRACTOR or its sub-contractors and not of the City. All such employees and sub-Contractors shall be subject to the direction, supervision and control of the Contractor

and not the City.

## **Operations and Management Supervision**

In addition to the rights and obligations stated elsewhere in this RFP, the City shall have oversight of Contractor's performance including:

- **Monitoring:** Monitoring the records, facilities, personnel, timetable adherence and equipment developed or used by Contractor in the performance of its obligations under this Agreement.
- **Inspection and Removal:** Inspecting any equipment at any time, and remove from service any equipment, which in the City's sole discretion, is in an unacceptable condition.
- **Temporary Service Adjustment:** At the City's sole discretion, the City may direct Contractor to cease operation with sixty (60) days notice, or alter service area and/or service hours under this Agreement with advance 30-day notice.
- **Employee Removal:** At the City's sole discretion, the City may direct Contractor to remove any service employee for conduct unbecoming an employee as stated herein.

## **State and Federal Rules and Regulations**

All vehicles providing services under this Agreement shall meet all applicable State and Federal rules and regulations as may be modified from time to time.

## **Vehicle Rejection**

The City's Transportation Manager, at his sole authority, may notify Contractor to remove any primary vehicle from service for non-compliance with the vehicle requirements of this Agreement. Contractor shall replace said primary vehicle with a City approved vehicle within ten (10) business days. A suitable replacement vehicle will be placed in service to avoid interruption in service.

## **Vehicle Maintenance Plan and Practice**

Contractor at its sole cost and expense, shall be responsible for developing and adhering to a vehicle maintenance plan in conformance with OEM guidelines and industry practices.

## **Daily Repairs**

The passenger amenities and safety appliances listed below shall be functionally inspected each calendar day on all vehicles which are dispatched for Shuttle Service

and/or extra service. Defects shall be remedied as an integral part of the inspection process prior to dispatch.

- General illumination lights
- Headlights
- Indicator lamps
- Warning lamps
- Upholstery condition
- Seat frames
- Windshield wipers
- Emergency lights
- Signage
- Safety appliances
- Wheelchair lift/ramp function
- Wheelchair securing devices

Under no circumstance shall a vehicle be dispatched for Shuttle Service and/or extra service with any amenity or safety defect.

A record of all such inspections shall be maintained by the Contractor and be made available to the City at the City's Transportation Manager's request.

### **Cleaning Standards**

All vehicles shall have had a minimum of a daily interior cleaning when made available to the City for service.

At least once weekly, primary vehicles used to provide shuttle service under this Agreement must receive a detailed cleaning. Weekly cleaning, at a minimum, must include the following:

- Exterior Wash
- Interior windows cleaned
- Mopping of non-carpeted floors with clean water and appropriate cleaning solution
- Vacuuming of carpeted floors, if applicable
- Wiping down of non-upholstered seats with clean water and appropriate cleaning solution
- Vacuuming of upholstered seats, if applicable.

End of Passenger Service Polices

### **Reporting and Recordkeeping Requirements**

The Contractor shall maintain complete and accurate records of all operator services and other Agreement activities carried out during the Agreement period.

Contractor shall maintain records of all maintenance of primary vehicles.

The Contractor must supply the following reports to the City as the City requests. The format of these reports shall be developed by the Contractor and subject to the review and written approval of the City.

**Immediately:**

- Loss of life, injuries, stoppage or major disruption of service.
- Any order imposed by a competent regulatory authority which prevents the continuation of service.

**Daily:**

- **CONTRACTOR** technology will record number of passengers transported on each trip and daily total
- **CONTRACTOR** shall provide all daily trip reports for each Shuttle Service route for the previous month.
- **CONTRACTOR** shall provide a service summary for each Shuttle Service. This summary report will include:
  - Total Passengers transported each day.
  - Total monthly passengers.
  - Total revenue miles by each day
  - Total monthly revenue miles
  - Ridership by hour by day for all days of operations in an excel spreadsheet format.
  - City cost per ride or City cost by month.

**C. CITY'S DUTIES AND RESPONSIBILITIES:**

City will make its best effort to provide storage of shuttle vehicles as a cost savings to the program. However, the City will not be responsible for security or be liable for any damages.

**D. WORK PROGRAM/PROJECT SCHEDULE:**

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Hours of operation: Mon-Sat 12pm-10pm, Sunday 10am-9pm (can be modified)

# **EXHIBIT "B"** **OPERATING SCHEDULE**

	Regular Operation (May 2024 onward)	Low Season (January – March 2024)
Vehicles	7 GEMs	4 GEMs
ADA Vehicles	1 Standby ADA GEM	1 Standby ADA GEM
Months	21	3
Service Hours/Day	10.7	10.7
Days Per Week	7	7
Vehicle Hours Per Week	369-455	205

# EXHIBIT "C"

## PRICING

GEM	
Hours of Operations / week	Vehicle cost / Hour of Operation
40-45	\$ 59.47
46-50	\$ 54.86
51-55	\$ 51.85
56-60	\$ 49.38
61-65	\$ 47.31
66-70	\$ 45.56
71-75	\$ 42.99
76-80	\$ 42.75
81-85	\$ 41.60
86-90	\$ 40.59
91-95	\$ 39.68
96+	\$ 38.88

Standby ADA Costs	
GEM	\$4,280/month
Van	\$6,280/month

# EXHIBIT "D"

## ADVERTISEMENT SALES SERVICES

(a) Contractor shall sell space on the exterior or interior of the vehicles for the display of commercial advertising with the goal of raising revenue to partially finance the cost of the services performed under this Agreement. Contractor agrees to provide the City with a copy of all advertising revenue contracts it executes with businesses, as well as providing an accounting of all advertising revenue in a report to accompany each biweekly invoice.

(b) Contractor will pay to the City 50% of Net Advertising Revenue received by the Contractor in connection with all (i) exterior advertising sales; (ii) interior video advertising sales; (iii) event marketing campaign sales; and (iv) marketing efforts for advertising sales (collectively, the "Advertisement Sales Services" and the advertisements so sold, the "Advertisements"). Net Advertising Revenue means the gross advertising revenue received less all other costs and expenses, including but not limited to advertisement design and production costs, incurred by Contractor in connection with providing the Advertisement Sales Services.

(c) Contractor shall determine the methods, details, and means for performing the Advertising Sales Services. Contractor will not accept advertising content that includes or is related to the below categories without the prior written approval from the City.

1. Discriminates against a person or section of the community on account of race, sex, age, sexual preference, religion, disability, sexual orientation or political belief.
2. Contains strong or obscene language.
3. Contains sexual or reproductive material,
4. Promotes or opposes "adult entertainment" strip clubs and/or the sale of pornographic materials.
5. Promotes the sale or distribution of firearms.
6. Promotes the sale or distribution of alcoholic beverages or tobacco products.
7. Contravenes any applicable law.

(d) Contractor shall invoice each such advertiser for amounts owed for Advertisement Sales Services. Contractor shall provide a service credit in the amount of 50% of Net Advertising Revenue to the City on the following monthly invoice submitted to the City after receipt by Contractor of the amounts due from each advertiser. Contractor's obligation to submit invoices for amounts owed for Advertisement Sales Services shall be satisfied as to any advertiser by the delivery to such advertiser of three invoices reflecting the amount owed over a ninety (90) day period, whether or not invoiced funds are actually received by Contractor. Contractor invoices shall provide a detailed breakdown in the invoice which includes documentation delineating the gross advertising revenues, itemization of all other costs and expenses, advertiser contracts etc. Failure to do so timely, may be considered a material breach of this agreement by the Contractor.