

1 AGREEMENT

2 **30259**

3 THIS AGREEMENT is made and entered, in duplicate, as of August 17,  
4 2007 for reference purposes only, pursuant to a minute order adopted by the City Council  
5 of the City of Long Beach at its meeting on April 3, 2007, by and between EMPIRE  
6 TRANSPORTATION, INC., a California corporation, with a place of business at 8800  
7 Park Street, Bellflower, California 90706 ("Contractor"), and the CITY OF LONG BEACH,  
8 a municipal corporation ("City").

9 WHEREAS, City requires transportation shuttle services for specified clients  
10 seeking services at the Center for Families and Youth and the Multi-Service Center  
11 ("Project"); and

12 WHEREAS, City has selected Contractor in accordance with City's  
13 administrative procedures; and

14 WHEREAS, City desires to have Contractor perform these specialized  
15 services, and Contractor is willing and able to do so on the terms and conditions in this  
16 Agreement;

17 NOW, THEREFORE, in consideration of the mutual terms, covenants, and  
18 conditions in this Agreement, the parties agree as follows:

19 1. SCOPE OF WORK OR SERVICES.

20 A. Contractor shall provide transportation shuttle services for specified  
21 clients to and from the Center for Families and Youth and the Multi-Service Center, in  
22 accordance with the standards of the profession, and City shall pay for these services in  
23 the manner described below, not to exceed \$110,000.

24 B. City shall pay to Contractor \$47.50 per hour for the services  
25 described in Section 1.A. above. Contractor has requested to receive regular payments.  
26 City shall pay Contractor in due course of payments following receipt from Contractor and  
27 approval by City of invoices showing the services or task performed, the time expended  
28 (if billing is hourly), and the name of the Project. Contractor shall certify on the invoices

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 that Contractor has performed the services in full conformance with this Agreement and  
2 is entitled to receive payment.

3           2.     TERM. The term of this Agreement shall commence at midnight on  
4 August 20, 2007, and shall terminate at 11:59 p.m. on August 19, 2008, unless sooner  
5 terminated as provided in this Agreement, or unless the services or the Project is  
6 completed sooner.

7           3.     INDEPENDENT CONTRACTOR. In performing its services,  
8 Contractor is and shall act as an independent contractor and not an employee,  
9 representative or agent of City. Contractor shall have control of Contractor's work and  
10 the manner in which it is performed. Contractor shall be free to contract for similar  
11 services to be performed for others during this Agreement. Contractor acknowledges  
12 and agrees that (a) City will not withhold taxes of any kind from Contractor's  
13 compensation; (b) City will not secure workers' compensation or pay unemployment  
14 insurance to, for or on Contractor's behalf; and (c) City will not provide and Contractor is  
15 not entitled to any of the usual and customary rights, benefits or privileges of City  
16 employees. Contractor expressly warrants that neither Contractor nor any of Contractor's  
17 employees or agents shall represent themselves to be employees or agents of City.

18           4.     INSURANCE.

19           A.     As a condition precedent to the effectiveness of this Agreement,  
20 Contractor shall procure and maintain, at Contractor's expense for the duration of this  
21 Agreement, from insurance companies that are admitted to write insurance in California  
22 and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-  
23 admitted insurance companies subject to Section 1763 of the California Insurance Code  
24 and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following  
25 insurance:

26                     (a) Commercial general liability insurance (equivalent in scope to  
27                     ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
28                     \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This

1 coverage shall include but not be limited to broad form contractual liability,  
2 cross liability, independent contractors liability, and products and  
3 completed operations liability. City, its boards and commissions, and their  
4 officials, employees and agents shall be named as additional insureds by  
5 endorsement (on City's endorsement form or on an endorsement  
6 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and  
7 this insurance shall contain no special limitations on the scope of  
8 protection given to City, its boards and commissions, and their officials,  
9 employees and agents. This policy shall be endorsed to state that the  
10 insurer waives its right of subrogation against City, its boards and  
11 commissions, and their officials, employees and agents.

12 (b) Workers' Compensation insurance as required by the California  
13 Labor Code and employer's liability insurance in an amount not less than  
14 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
15 its right of subrogation against City, its boards and commissions, and their  
16 officials, employees and agents.

17 (c) Professional liability or errors and omissions insurance in an  
18 amount not less than \$1,000,000 per claim.

19 (d) Commercial automobile liability insurance (equivalent in scope  
20 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
21 amount not less than \$500,000 combined single limit per accident.

22 B. Any self-insurance program, self-insured retention, or deductible  
23 must be separately approved in writing by City's Risk Manager or designee and shall  
24 protect City, its officials, employees and agents in the same manner and to the same  
25 extent as they would have been protected had the policy or policies not contained  
26 retention or deductible provisions.

27 C. Each insurance policy shall be endorsed to state that coverage shall  
28 not be reduced, non-renewed or canceled except after thirty (30) days prior written notice

1 to City, shall be primary and not contributing to any other insurance or self-insurance  
2 maintained by City, and shall be endorsed to state that coverage maintained by City shall  
3 be excess to and shall not contribute to insurance or self-insurance maintained by  
4 Contractor. Contractor shall notify City in writing within five (5) days after any insurance  
5 has been voided by the insurer or cancelled by the insured.

6 D. If this coverage is written on a "claims made" basis, it must provide  
7 for an extended reporting period of not less than one hundred eighty (180) days,  
8 commencing on the date this Agreement expires or is terminated, unless Contractor  
9 guarantees that Contractor will provide to City evidence of uninterrupted, continuing  
10 coverage for a period of not less than three (3) years, commencing on the date this  
11 Agreement expires or is terminated.

12 E. Contractor shall require that all subcontractors that Contractor uses  
13 in the performance of these services maintain insurance in compliance with this Section  
14 unless otherwise agreed in writing by City's Risk Manager or designee.

15 F. Prior to the start of performance, Contractor shall deliver to City  
16 certificates of insurance and the endorsements for approval as to sufficiency and form. In  
17 addition, Contractor shall, within thirty (30) days prior to expiration of the insurance,  
18 furnish to City certificates of insurance and endorsements evidencing renewal of the  
19 insurance. City reserves the right to require complete certified copies of all policies of  
20 Contractor and Contractor's subcontractors, at any time. Contractor shall make available  
21 to City's Risk Manager or designee all books, records and other information relating to  
22 this insurance, during normal business hours.

23 G. Any modification or waiver of these insurance requirements shall  
24 only be made with the approval of City's Risk Manager or designee. Not more frequently  
25 than once a year, City's Risk Manager or designee may require that Contractor,  
26 Contractor's subcontractors change the amount, scope or types of coverages required in  
27 this Section if, in his or her sole opinion, the amount, scope or types of coverages are not  
28 adequate.

1 H. The procuring or existence of insurance shall not be construed or  
2 deemed as a limitation on liability relating to Contractor's performance or as full  
3 performance of or compliance with the indemnification provisions of this Agreement.

4 5. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
5 contemplates the personal services of Contractor and Contractor's employees, and the  
6 parties acknowledge that a substantial inducement to City for entering this Agreement  
7 was and is the professional reputation and competence of Contractor and Contractor's  
8 employees. Contractor shall not assign its rights or delegate its duties under this  
9 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
10 approval of City, except that Contractor may with the prior approval of the City Manager  
11 of City, assign any moneys due or to become due Contractor under this Agreement. Any  
12 attempted assignment or delegation shall be void, and any assignee or delegate shall  
13 acquire no right or interest by reason of an attempted assignment or delegation.  
14 Furthermore, Contractor shall not subcontract any portion of its performance without the  
15 prior approval of the City Manager or designee, or substitute an approved subcontractor  
16 without approval prior to the substitution. Nothing stated in this Section shall prevent  
17 Contractor from employing as many employees as Contractor deems necessary for  
18 performance of this Agreement.

19 6. CONFLICT OF INTEREST. Contractor, by executing this  
20 Agreement, certifies that, at the time Contractor executes this Agreement and for its  
21 duration, Contractor does not and will not perform services for any other client which  
22 would create a conflict, whether monetary or otherwise, as between the interests of City  
23 and the interests of that other client. And, Contractor shall obtain similar certifications  
24 from Contractor's employees and subcontractors.

25 7. TERMINATION. City shall have the right to terminate this  
26 Agreement for any reason or no reason at any time by giving Contractor thirty (30) days  
27 prior notice.

28 8. AMENDMENT. This Agreement shall not be amended, nor any

1 provision or breach waived, except in writing signed by the parties which expressly refers  
2 to this Agreement.

3           9.     LAW. This Agreement shall be governed by and construed pursuant  
4 to the laws of the State of California (except those provisions of California law pertaining  
5 to conflicts of laws). Contractor shall comply with all laws, ordinances, rules and  
6 regulations of and obtain all permits, licenses and certificates required by all federal, state  
7 and local governmental authorities.

8           10.    ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
9 constitutes the entire understanding between the parties and supersedes all other  
10 agreements, oral or written, with respect to the subject matter in this Agreement.

11           11.    INDEMNITY. Contractor shall, with respect to services performed in  
12 connection with this Agreement, indemnify and hold harmless City, its Boards,  
13 Commissions, and their officials, employees and agents (collectively in this Section,  
14 "City") from and against any and all liability, claims, demands, damage, loss, causes of  
15 action, proceedings, penalties, costs and expenses (including attorney's fees, court  
16 costs, and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims  
17 include allegations and include by way of example but are not limited to: Claims for  
18 property damage, personal injury or death arising in whole or in part from any negligent  
19 act or omission of Contractor, its officers, employees, agents, sub-Contractors or anyone  
20 under Contractor's control (collectively "Indemnitor"); willful misconduct;  
21 misrepresentation; and Claims by any employee of Indemnitor relating in any way to  
22 worker's compensation. Independent of the duty to indemnify and as a free-standing  
23 duty on the part of Contractor, Contractor shall defend City and shall continue this  
24 defense until the Claim is resolved, whether by settlement, judgment or otherwise. No  
25 finding or judgment of negligence, fault, breach or the like on the part of Indemnitor shall  
26 be required for the duty to defend to arise. Contractor shall notify City of any Claim within  
27 ten (10) days. Likewise, City shall notify Contractor of any Claim, shall tender the  
28 defense of the Claim to Contractor, and shall assist Contractor, as may be reasonably

1 requested, in the defense.

2 12. AMBIGUITY. In the event of any conflict or ambiguity between this  
3 Agreement and any Exhibit, the provisions of this Agreement shall govern.

4 13. COSTS. If there is any legal proceeding between the parties to  
5 enforce or interpret this Agreement or to protect or establish any rights or remedies under  
6 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

7 14. NONDISCRIMINATION. In connection with performance of this  
8 Agreement and subject to applicable rules and regulations, Contractor shall not  
9 discriminate against any employee or applicant for employment because of race, religion,  
10 national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap or  
11 disability. Contractor shall ensure that applicants are employed, and that employees are  
12 treated during their employment, without regard to these bases. These actions shall  
13 include, but not be limited to, the following: employment, upgrading, demotion or transfer;  
14 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of  
15 compensation; and selection for training, including apprenticeship.

16 15. NOTICES. Any notice or approval required by this Agreement shall  
17 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
18 postage prepaid, addressed to Contractor at the address first stated above, and to City at  
19 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager. Notice of  
20 change of address shall be given in the same manner as stated for other notices. Notice  
21 shall be deemed given on the date deposited in the mail or on the date personal delivery  
22 is made, whichever occurs first.

23 16. COVENANT AGAINST CONTINGENT FEES. Contractor warrants  
24 that Contractor has not employed or retained any entity or person to solicit or obtain this  
25 Agreement and that Contractor has not paid or agreed to pay any entity or person any  
26 fee, commission or other monies based on or from the award of this Agreement. If  
27 Contractor breaches this warranty, City shall have the right to terminate this Agreement  
28 immediately or, in its discretion, to deduct from payments due under this Agreement or

1 otherwise recover the full amount of the fee, commission or other monies.

2           17. WAIVER. The acceptance of any services or the payment of any  
3 money by City shall not operate as a waiver of any provision of this Agreement or of any  
4 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
5 Agreement shall not constitute a waiver of any other or subsequent breach of this  
6 Agreement.

7           18. CONTINUATION. Termination or expiration of this Agreement shall  
8 not affect rights or liabilities of the parties which accrued pursuant to Sections 6, 7, 11, 13  
9 and 21 prior to termination or expiration of this Agreement.

10           19. TAX REPORTING. As required by federal and state law, City is  
11 obligated to and will report the payment of compensation to Contractor on Form 1099-  
12 Misc. Contractor shall be solely responsible for payment of all federal and state taxes  
13 resulting from payments under this Agreement. Contractor's Employer Identification  
14 Number is [REDACTED]

15           20. ADVERTISING. Contractor shall not use the name of City, its  
16 officials or employees in any advertising or solicitation for business or as a reference,  
17 without the prior approval of the City Manager or designee.

18           21. AUDIT. City shall have the right at all reasonable times during the  
19 term of this Agreement and for a period of five (5) years after termination or expiration of  
20 this Agreement to examine, audit, inspect, review, extract information from and copy all  
21 books, records, accounts and other documents of Contractor relating to this Agreement.

22           22. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
23 designed to or entered for the purpose of creating any benefit or right for any person or  
24 entity of any kind that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

EMPIRE TRANSPORTATION, INC., a California corporation

Aug 29, 2007

By [Signature]

Miguel Oliver  
(Type or Print Name)

Aug 29, 2007

By [Signature]

Ismael Aguirre  
(Type or Print Name)

"Contractor"

CITY OF LONG BEACH, a municipal corporation

September 14, 2007

By Christine J. Shippey  
Assistant  
City Manager

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

"City"

This Agreement is approved as to form on 9/6, 2007.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Deputy

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664