

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

1 AGREEMENT

2 **33981**

3 THIS AGREEMENT is made and entered, in duplicate, as of August 25, 2015
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting held on August 18, 2015, by and between the LONG
6 BEACH PUBLIC TRANSPORTATION COMPANY, a California nonprofit corporation
7 ("Long Beach Transit"), with offices located at 1963 East Anaheim Street, Long Beach,
8 California 90813, and the CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, City is a designated recipient of Proposition A Local Return
10 ("Prop. A") funds from the Los Angeles County Metropolitan Transportation Authority
11 ("MTA"); and

12 Whereas, the applicable laws and regulations require that Prop A funds be
13 used only for public transit purposes and projects; and

14 WHEREAS, Long Beach Transit desires to use a portion of these funds for
15 authorized public transit purposes and projects; and

16 WHEREAS, City desires that Long Beach Transit perform these public transit
17 purposes and projects and Long Beach Transit is willing to do so;

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

20 1. SCOPE OF WORK OR SERVICES.

21 A. Contingent upon full compliance by Long Beach Transit with
22 the requirement of Section 2 below, City shall make available to Long Beach Transit
23 an amount not to exceed Five Million One Hundred Ninety Thousand Six Hundred
24 Three Dollars (\$5,190,603) in the City's Prop. A funds to be disbursed in quarterly
25 installments, plus an amount not to exceed Six Hundred Ninety Thousand Six
26 Hundred Three Dollars (\$690,603) for cost recovery related to security services
27 provided by City to Long Beach Transit.

28 B. No later than fifteen (15) days following the end of each

1 calendar quarter, Long Beach Transit shall submit a request for reimbursement of
2 its actual costs of operations and its capital outlays incurred during that quarter,
3 together with: (1) supporting documentation evidencing proof of those costs and
4 outlays, and (2) a report of Prop. A funds held by it at the end of that quarter. Long
5 Beach Transit shall submit the request, documentation and report to City's
6 Department of Public Works, Traffic Engineering Division. City will not pay any
7 reimbursement to Long Beach Transit unless and until Long Beach Transit complies
8 with Section 1.B (1) and (2).

9 2. PRICE AND PAYMENT.

10 A. Long Beach Transit shall obtain funds or shall execute a written
11 agreement to receive funds from each neighboring jurisdiction served by Long
12 Beach Transit. The amount of each jurisdiction's contribution shall be based on a
13 "per passenger" operating subsidy rate equal to the Prop. A "per passenger"
14 operating subsidy rate established for City. City's Prop. A "per passenger" operating
15 subsidy rate shall be computed as the average annual Prop. A funds from the City
16 applied to offset operating expenses incurred by Long Beach Transit, current year
17 estimated and previous two (2) years actual, divided by the average annual ridership
18 for City, current year estimated and previous two (2) years actual. The resulting
19 operating subsidy rate multiplied by each jurisdiction's average annual ridership,
20 current year estimated and previous two years actual, shall equal each jurisdiction's
21 proportionate contribution for that fiscal year.

22 B. In lieu of compliance with Section 2.A., Long Beach Transit
23 shall furnish evidence to the Director that it has withdrawn service from any
24 neighboring jurisdiction or that it will withdraw service within one hundred fifty (150)
25 calendar days.

26 C. Long Beach Transit shall submit to the Director evidence
27 satisfactory to City that Long Beach Transit has fully complied with the conditions
28 set forth in Section 2.A. or 2.B. hereof for all neighboring jurisdictions served by

1 Long Beach Transit. After acceptance of this evidence by City, City shall make
2 available to Long Beach Transit the Prop. A funds described in Section 1 which have
3 been received by City from MTA.

4 3. RULES AND REGULATIONS. Long Beach Transit shall comply with
5 all applicable laws, rules and regulations pertaining to Prop. A funds, including the
6 guidelines and other procedures adopted by MTA. Long Beach Transit shall use the Prop.
7 A funds, including any interest on the funds, to carry out public transit purposes and
8 projects which have been authorized and approved by MTA. Long Beach Transit shall
9 maintain such accounting records as will clearly and separately identify all funds received
10 under this Agreement, including all interest and related cash disbursements. Long Beach
11 Transit shall maintain such additional records relating to the use of these funds as may be
12 required by City in order to satisfy necessary fiscal, performance, compliance reporting,
13 and audit requirements. Long Beach Transit shall make expenditures from these funds
14 only for purposes and projects approved by MTA. Long Beach Transit shall maintain a
15 blanket honesty bond in an amount of not less than One Million Dollars (\$1,000,000)
16 insuring against any loss which may result from the dishonesty or fraudulent acts of its
17 officers, directors or employees. Such bond shall include a loss payee endorsement
18 naming City, its officials and employees as an additional obligee with respect to Prop. A
19 funds.

20 4. TERM. The term of this Agreement shall commence at midnight on
21 July 1, 2015 and shall terminate at 11:59 p.m. on June 30, 2016. Either party shall have
22 the right to terminate this Agreement at any time, with or without cause, by giving thirty (30)
23 days prior notice of termination to the other party. Any Prop. A funds, including interest on
24 these funds, which have not been obligated as of the effective date of termination shall be
25 immediately returned to City.

26 5. RECORDKEEPING. Long Beach Transit shall keep or cause to be
27 kept accurate and complete records, books of account, and other similar records pertaining
28 to the funds it receives pursuant to this Agreement. These books and records shall be kept

1 in accordance with generally accepted accounting principles. City and MTA shall have
2 access to these books and records at all reasonable times for the purpose of inspecting
3 and copying them. When Long Beach Transit receives correspondence or reports from or
4 sends correspondence or reports to MTA, then Long Beach Transit shall promptly send
5 copies of that correspondence and those reports to City's City Manager and to the Director.
6 Long Beach Transit shall provide to the Director all other reports, documents and
7 information requested or required by the City or MTA within three (3) days after receiving
8 a written request, unless the written request extends the time.

9 6. USE. The expenditure of Prop. A funds is subject to submission to
10 MTA of a description of intended use of the funds. Long Beach Transit shall submit to the
11 Director, for City's written approval, a program of proposed projects and expenditures from
12 Prop. A funds given to Long Beach Transit under this Agreement. Subsequent to approval
13 by City, Long Beach Transit shall obtain approval from MTA of all proposed projects and
14 expenditures from Prop. A funds. Long Beach Transit shall reimburse or repay to City the
15 amount of any unauthorized or inappropriate expenditures of Prop. A funds received by
16 Long Beach Transit under this Agreement.

17 7. COSTS. Long Beach Transit shall pay its own costs and expenses
18 for legal, auditing, engineering, consulting, environmental documentation, or any other
19 services or costs relating to the use or expenditure of Prop. A funds, or to enforcement or
20 interpretation of this Agreement.

21 8. INDEMNITY. Long Beach Transit shall indemnify and hold harmless
22 the City, its Boards, Commissions, and their officials, employees and agents (collectively
23 in this Section "City") from and against any and all liability, claims, demands, damage,
24 causes of action, proceedings, penalties, fines, loss, costs, and expenses (including
25 attorney's fees, court costs, and expert and witness fees)(collectively "Claims" or
26 individually "Claim"). Claims include allegations and include by way of example but are not
27 limited to: Claims for property damage, personal injury or death arising in whole or in part
28 from any negligent act or omission of Long Beach Transit, its officers, employees, agents,

1 sub-consultants, or anyone under Long Beach Transit's control (collectively "Indemnitor");
2 Long Beach Transit's breach of this Agreement; misrepresentation; willful misconduct; and
3 Claims by any employee of Indemnitor relating in any way to worker's compensation.
4 Independent of the duty to indemnify and as a free-standing duty on the part of Long Beach
5 Transit, Long Beach Transit shall defend City and shall continue such defense until the
6 Claim is resolved, whether by settlement, judgment or otherwise. Long Beach Transit shall
7 notify the City of any Claim within ten (10) days. Likewise, City shall notify Long Beach
8 Transit of any Claim, shall tender the defense of the Claim to Long Beach Transit, and shall
9 assist Long Beach Transit, as may be reasonably requested, in the defense.

10 9. INDEPENDENT CONTRACTOR. In its performance of this
11 Agreement, Long Beach Transit is not acting and shall not act as an employee, agent or
12 joint venturer with City. Long Beach Transit acknowledges and agrees that City will not
13 withhold taxes of any kind from funds transferred under this Agreement, will not obtain
14 workers' compensation or pay unemployment insurance to, for or on behalf of Long Beach
15 Transit, and will not provide any of the usual and customary rights, benefits, or privileges
16 of City employees to Long Beach Transit. Long Beach Transit shall not represent itself to
17 be an agent of City and shall instruct its officers, employees and agents that they shall not
18 represent themselves to be officers, employees or agents of City. Long Beach Transit shall
19 not have any authority to bind City for any purpose at any time.

20 10. INSURANCE.
21 A. Long Beach Transit shall procure and maintain the following
22 insurance at Long Beach Transit's sole expense for the duration of this Agreement
23 from insurance companies authorized to write insurance in the State of California or
24 from nonadmitted insurers that are on California's List of Eligible Surplus Lines
25 Insurers (LESLI) and that have a minimum rating of or equivalent to A:VIII by A.M.
26 Best Company:

27 i. Comprehensive general and automobile liability
28 insurance that names the City, its officials, employees, and agents as

1 additional insureds with respect to liability arising from activities performed
2 by or on behalf of Long Beach Transit with limits not less than Ten Million
3 Dollars (\$10,000,000) per occurrence. This insurance shall be primary
4 insurance with respect to the City, shall contain a cross liability endorsement,
5 and shall be endorsed to waive the insurers' rights of subrogation against the
6 City, its officials, employees, and agents.

7 ii. Workers' compensation in accordance with California's
8 Workers' Compensation and Insurance Act, endorsed, as applicable, to
9 include coverage pursuant to the United States Longshoremen and Harbor
10 Workers' Compensation Act and Jones' Act, and employer's liability
11 insurance with limits not less than One Million Dollars (\$1,000,000) per injury
12 or occupational disease. The policy shall be endorsed by the insurer to waive
13 the insurer's rights of subrogation against the City, its officials, employees,
14 and agents.

15 iii. Commercial crime insurance including a minimum of
16 One Million Dollars (\$1,000,000) blanket honesty protection on all officers
17 and employees of Long Beach Transit. The City shall be named an additional
18 insured and obligee as its interests may appear.

19 iv. Any other insurance that may be required by state and
20 federal regulatory authorities.

21 v. "All Risk" property insurance, including debris removal,
22 extra expense, business interruption and boiler and machinery coverage, in
23 an amount to cover the full replacement value of all buildings and structures
24 constructed on City's property by or on behalf of Long Beach Transit. City
25 shall be named as an insured under a standard loss payee endorsement to
26 the policy.

27 vi. "All Risk" property insurance, including debris removal
28 and builders risk coverage during the course of construction, in an amount

1 sufficient to cover the full replacement value of buildings and structural
2 improvements constructed or erected on City's property by or on behalf of
3 Long Beach Transit. City shall be named as an additional insured under a
4 standard loss payable endorsement, as its interests may appear.

5 vii. "All Risk" property insurance in an amount sufficient to
6 cover the full replacement value or maximum probable loss value of Long
7 Beach Transit's personal property and equipment, including Long Beach
8 Transit's fleet of buses and public transit vehicles, whether owned, leased,
9 or in the care, custody, or control of the Long Beach Transit. City shall be
10 named as an additional insured under a standard loss payable endorsement,
11 as its interests may appear.

12 B. Long Beach Transit shall procure and maintain or cause to be
13 procured or maintained the insurance required in Section 10(A) by Long Beach
14 Transit's on-site contractors, subcontractors, lessees, or permittees of Long Beach
15 Transit, as may be applicable to their respective operations, subject to the following
16 amendments.

17 i. Long Beach Transit's public transportation contractors
18 and subcontractors shall provide Commercial General Liability (CGL) and
19 Commercial Automobile Liability (CA) insurance as required under Section
20 17(A)(i) in an amount not less than One Million Dollars \$1,000,000 per
21 occurrence and Two Million Dollars (\$2,000,000) general aggregate [One
22 Million Dollars (\$1,000,000) combined single limits for auto] (or the coverage
23 and minimum limits as required by the California Public Utilities Code). For
24 public marine transit providers, protection and indemnity insurance with limits
25 of not less than One Million Dollars per occurrence (\$1,000,000) may be
26 substituted for the CGL and CA coverage and limits. This insurance shall be
27 endorsed to include the City, its officials, employees, and agents as additional
28 insureds and to waive the insurer's rights of subrogation against the City, its

1 officials, employees, and agents. All other applicable insurance
2 requirements under Section 17(A), with the exception of crime and property
3 insurance, apply.

4 ii. If development or construction is undertaken by the
5 Long Beach Transit, additional coverages may be required from Long Beach
6 Transit's contractors and subcontractors by the City, including but not limited
7 to coverage for explosion, collapse, and underground (XCU) hazards,
8 environmental impairment liability, design professionals' liability, and
9 construction management errors and omissions liability.

10 C. If Long Beach Transit fails to procure or maintain this insurance,
11 City may, at its option, procure and maintain such insurance on behalf of Long
12 Beach Transit and City, at Long Beach Transit's sole expense. The failure to
13 procure or maintain insurance shall be determined by City's Risk Manager or
14 designee, at City's sole discretion.

15 If City exercises its option to purchase this insurance, then Long
16 Beach Transit shall reimburse City for the cost of such insurance no later than fifteen
17 (15) calendar days after the date of City's invoice. Any amount not received by City
18 within the 15-day period is subject to interest at 2% per month accruing from the
19 sixteenth calendar day after the invoice date, compounded monthly.

20 D. Long Beach Transit shall provide to City all policy information
21 requested by City and make available to City all books, records and other
22 information relating to such insurance, during normal business hours.

23 E. On execution of this Agreement, Long Beach Transit shall
24 deliver to City the certificates of insurance and endorsements, including the
25 certificates and endorsements of any of Long Beach Transit's contractors,
26 subcontractors, permittees, or lessees, for approval as to sufficiency and form. The
27 certificates and endorsements for each insurance policy shall contain the original
28 signatures of persons authorized by that insurer to bind coverage on its behalf. Long

1 Beach Transit shall provide to City copies of certificates of insurance and
2 endorsements for renewal policies during the term of this Agreement within thirty
3 (30) days after policy expiration. City reserves the right to require complete certified
4 copies of all said policies at any time.

5 F. All insurance shall be separately endorsed to require at least
6 thirty (30) days prior written notice of cancellation [ten (10) days if cancellation is for
7 nonpayment of premium], nonrenewal, or reduction in coverage or limits (other than
8 reduction of limits due to claims paid) and provide that coverage shall be primary
9 and not contributing to any other insurance or self-insurance maintained by the City,
10 its officials, employees, and agents.

11 G. Any self-insurance program, self-insured retention or
12 deductible must be approved separately in writing by City's Risk Manager or
13 designee and shall protect the City, its officials, employees, and agents in the same
14 manner and to the same extent as they would have been protected had the policy
15 or policies not contained such retention or deductible provisions.

16 H. With respect to damage to property, City and Long Beach
17 Transit hereby waive all rights of subrogation, one against the other, but only to the
18 extent that collectible commercial insurance is available for said damage.

19 I. Not more frequently than every three (3) years or when there is
20 any new construction or development by Long Beach Transit on premises owned
21 by the City or when there is any assignment, transfer, or subcontract approved by
22 City in accordance with this Agreement, Long Beach Transit shall amend its
23 insurance coverages as required by City's Risk Manager or designee if, in the
24 opinion of City's Risk Manager or designee, the amount, scope, or types of these
25 coverages are not adequate. Such amendments may include, but are not limited
26 to, coverage for earthquake, flood, and terrorism if available from responsible
27 insurance companies at reasonable cost. Determination of "responsible insurance
28 companies" and "reasonable cost" are at the sole discretion of City's Risk Manager

1 or designee. On an annual basis, the Long Beach Transit may request in writing
2 annual, one-time reductions in the scope or limits of insurance if coverage is not
3 available from responsible insurance companies at reasonable cost at the discretion
4 of City's Risk Manager or designee.

5 J. The insurance required herein shall not be deemed to limit
6 Long Beach Transit's liability under this Agreement. The procuring of insurance
7 shall not be construed as a limitation on liability or as full performance of the
8 indemnification and hold harmless provisions of this Agreement. City makes no
9 representation that the limits or forms of coverage of insurance specified herein are
10 adequate to cover Long Beach Transit's liability or obligations under this Agreement.

11 K. Any modification or waiver of these insurance requirements
12 shall be made only with the written approval of the City's Risk Manager or designee.

13 11. ASSIGNMENT AND SUBCONTRACTING. Long Beach Transit shall
14 not delegate its duties or assign or transfer its rights under this Agreement, or any interest
15 in this Agreement, or any portion of this Agreement without the prior written consent of
16 City's City Manager. Any attempted assignment, transfer, or delegation shall be void and
17 any assignee, transferee, or delegate shall acquire no interest or right by reason of such
18 attempted assignment or delegation. Any such attempted assignment or delegation shall
19 be void.

20 12. NOTICES. Any notice given under this Agreement by either party
21 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
22 class, postage prepaid, addressed to Long Beach Transit at its address first stated above,
23 and to City at 333 West Ocean Boulevard, Long Beach, California 90802 Attention: City
24 Manager with a courtesy copy to the attention of the Director of Public Works at the same
25 address. Notice of change of address shall be given in the same manner as stated for other
26 notices. Notice shall be deemed given on the date deposited in the mail or on the date
27 personal delivery is made, whichever occurs first.

28 13. ENTIRE AGREEMENT. This Agreement constitutes the entire

1 understanding between the parties pertaining to the subject matter in the Agreement and
2 supersedes all prior negotiations, understandings, and agreements, oral or written, with
3 respect to that subject matter.

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

13 15. LAW. This Agreement shall be governed by and construed pursuant
14 to the laws of the State of California.

15 16. AMENDMENT. This Agreement shall not be amended, nor any
16 provision or breach waived, except by a writing authorized and signed by the parties which
17 expressly refers to this Agreement.

18 17. WAIVER. The acceptance of any service or the payment of any
19 money by City shall not operate as a waiver of any provision of this Agreement or of any
20 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
21 Agreement shall not constitute a waiver of any other or subsequent breach of this
22 Agreement.

23 18. CONTINUATION. Termination or expiration of this Agreement shall
24 not terminate the rights or liabilities of either party which rights or liabilities accrued or
25 existed during the term of the Agreement and prior to its termination or expiration.

26 19. If any term, provision or condition of this Agreement is found to be
27 invalid, ineffective, void, or unenforceable for any reason by a court of competent
28 jurisdiction, then the remaining terms, provisions and conditions shall remain in full force

1 and effect.

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

4 LONG BEACH PUBLIC
5 TRANSPORTATION COMPANY, a
6 California nonprofit corporation

7 August 31, 2015

By K. McDonald
Name KENNETH MCDONALD.
Title PRESIDENT & CEO

9 August 31, 2015

By L. Patton
Name LISA PATTON
Title VP FINANCE

11 "Long Beach Transit"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 Sept. 14, 2015

By R. Bell EXECUTED PURSUANT
City Manager TO SECTION 301 OF
THE CITY CHARTER.

Assistant City Manager

16 "City"

17 This Agreement is approved as to form on Sept 10, 2015.

18 CHARLES PARKIN, City Attorney

19 By Charles Parkin
20 Deputy
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