



1 City retains for MTA's fiscal year 2009-2010 (7/1/09-6/30/10); and (3) seventy  
2 percent (70%) of City's Prop. A funds received from MTA plus an amount not to  
3 exceed \$359,535 of the remaining thirty percent (30%) of City's Prop. A funds  
4 which the City retains for MTA's fiscal year 2010-2011 (7/1/10-6/30/11); or (4) the  
5 total MTA approved budget for the City, whichever is less. Long Beach Transit  
6 shall receive Prop. A funds from City in accordance with the provisions of Section  
7 1.C. below.

8 City shall have the right to adjust payments made to Long Beach Transit at  
9 the end of each twelve-month period during the term of this Agreement and, if City has  
10 paid funds in excess of the total MTA approved budget, then Long Beach Transit shall  
11 immediately repay the excess within fifteen (15) days after receipt of notice from the City  
12 regarding the overpayment or, at the City's sole option, Long Beach Transit shall provide  
13 additional services or public transportation projects to benefit the City, equal in value to  
14 the overpayment by the City.

15 B. The City shall accrue seventy percent (70%) of three (3)  
16 months of actual Prop. A allocations on September 30 each year and adjust  
17 accounts payable to Long Beach Transit on June 30 each year to actual  
18 entitlement.

19 C. No later than fifteen (15) days following the end of each  
20 calendar quarter, Long Beach Transit shall submit a request for reimbursement of  
21 its actual costs of operations and its capital outlays incurred during that quarter,  
22 together with: (1) supporting documentation evidencing proof of those costs and  
23 outlays, and (2) a report of Prop. A funds held by it at the end of that quarter.  
24 Long Beach Transit shall submit the request, documentation and report to City's  
25 Department of Financial Management, Grants Accounting Division, with a copy to  
26 the City's Director of Public Works ("Director"). City will not pay any  
27 reimbursement to Long Beach Transit unless and until Long Beach Transit  
28 complies with Section 1.C (1) and (2).

1                   2.

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

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

18                  C.       Long Beach Transit shall submit to the Director evidence  
19 satisfactory to City that Long Beach Transit has fully complied with the conditions  
20 set forth in Section 2.A. or 2.B. hereof for all neighboring jurisdictions served by  
21 Long Beach Transit. After acceptance of this evidence by City, City shall make  
22 available to Long Beach Transit the Prop. A funds described in Section 1 which  
23 have been received by City from MTA.

24                  3.       Long Beach Transit shall comply with all applicable laws, rules and  
25 regulations pertaining to Prop. A funds, including the guidelines and other procedures  
26 adopted by MTA. Long Beach Transit shall use the Prop. A funds, including any interest  
27 on the funds, to carry out public transit purposes and projects which have been  
28 authorized and approved by MTA. Long Beach Transit shall maintain such accounting

1 records as will clearly and separately identify all funds received under this Agreement,  
2 including all interest and related cash disbursements. Long Beach Transit shall maintain  
3 such additional records relating to the use of these funds as may be required by City in  
4 order to satisfy necessary fiscal, performance, compliance reporting, and audit  
5 requirements. Long Beach Transit shall make expenditures from these funds only for  
6 purposes and projects approved by MTA. Long Beach Transit shall maintain a blanket  
7 honesty bond in an amount of not less than One Million Dollars (\$1,000,000) insuring  
8 against any loss which may result from the dishonesty or fraudulent acts of its officers,  
9 directors or employees. Such bond shall include a loss payee endorsement naming City,  
10 its officials and employees as an additional obligee with respect to Prop. A funds.

11           4.     The term of this Agreement shall commence at midnight on July 1,  
12 2008 and shall terminate at 11:59 p.m. on June 30, 2011. Either party shall have the  
13 right to terminate this Agreement at any time, with or without cause, by giving thirty (30)  
14 days prior notice of termination to the other party. Any Prop. A funds, including interest  
15 on these funds, which have not been obligated as of the effective date of termination  
16 shall be immediately returned to City.

17           5.     Long Beach Transit shall keep or cause to be kept accurate and  
18 complete records, books of account, and other similar records pertaining to the funds it  
19 receives pursuant to this Agreement. These books and records shall be kept in  
20 accordance with generally accepted accounting principles. City and MTA shall have  
21 access to these books and records at all reasonable times for the purpose of inspecting  
22 and copying them. When Long Beach Transit receives correspondence or reports from  
23 or sends correspondence or reports to MTA, then Long Beach Transit shall promptly  
24 send copies of that correspondence and those reports to City's City Manager and to the  
25 Director. Long Beach Transit shall provide to the Director all other reports, documents  
26 and information requested or required by the City or MTA within three (3) days after  
27 receiving a written request, unless the written request extends the time.

28           6.     The expenditure of Prop. A funds is subject to submission to MTA of

1 a description of intended use of the funds. Long Beach Transit shall submit to the  
2 Director, for City's written approval, a program of proposed projects and expenditures  
3 from Prop. A funds given to Long Beach Transit under this Agreement. Subsequent to  
4 approval by City, Long Beach Transit shall obtain approval from MTA of all proposed  
5 projects and expenditures from Prop. A funds. Long Beach Transit shall reimburse or  
6 repay to City the amount of any unauthorized or inappropriate expenditures of Prop. A  
7 funds received by Long Beach Transit under this Agreement.

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

12 8. Long Beach Transit shall indemnify and hold harmless the City, its  
13 Boards, Commissions, and their officials, employees and agents (collectively in this  
14 Section "City") from and against any and all liability, claims, demands, damage, causes of  
15 action, proceedings, penalties, fines, loss, costs, and expenses (including attorney's fees,  
16 court costs, and expert and witness fees)(collectively "Claims" or individually "Claim").  
17 Claims include allegations and include by way of example but are not limited to: Claims  
18 for property damage, personal injury or death arising in whole or in part from any  
19 negligent act or omission of Long Beach Transit, its officers, employees, agents, sub-  
20 consultants, or anyone under Long Beach Transit's control (collectively "Indemnitor");  
21 Long Beach Transit's breach of this Agreement; misrepresentation; willful misconduct;  
22 and Claims by any employee of Indemnitor relating in any way to worker's compensation.  
23 Independent of the duty to indemnify and as a free-standing duty on the part of Long  
24 Beach Transit, Long Beach Transit shall defend City and shall continue such defense  
25 until the Claim is resolved, whether by settlement, judgment or otherwise. Long Beach  
26 Transit shall notify the City of any Claim within ten (10) days. Likewise, City shall notify  
27 Long Beach Transit of any Claim, shall tender the defense of the Claim to Long Beach  
28 Transit, and shall assist Long Beach Transit, as may be reasonably requested, in the

1 defense.

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

12           10.

13           A. Long Beach Transit shall procure and maintain the following  
14 insurance at Long Beach Transit's sole expense for the duration of this Agreement  
15 from insurance companies authorized to write insurance in the State of California  
16 or from nonadmitted insurers that are on California's List of Eligible Surplus Lines  
17 Insurers (LESLI) and that have a minimum rating of or equivalent to A:VIII by A.M.  
18 Best Company:

19           i. Comprehensive general and automobile liability  
20 insurance that names the City, its officials, employees, and agents as  
21 additional insureds with respect to liability arising from activities performed  
22 by or on behalf of Long Beach Transit with limits not less than Ten Million  
23 Dollars (\$10,000,000) per occurrence. This insurance shall be primary  
24 insurance with respect to the City, shall contain a cross liability  
25 endorsement, and shall be endorsed to waive the insurers' rights of  
26 subrogation against the City, its officials, employees, and agents.

27           ii. Workers' compensation in accordance with California's  
28 Workers' Compensation and Insurance Act, endorsed, as applicable, to

1 include coverage pursuant to the United States Longshoremen and Harbor  
2 Workers' Compensation Act and Jones' Act, and employer's liability  
3 insurance with limits not less than One Million Dollars (\$1,000,000) per  
4 injury or occupational disease. The policy shall be endorsed by the insurer  
5 to waive the insurer's rights of subrogation against the City, its officials,  
6 employees, and agents.

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

11 iv. Any other insurance that may be required by state and  
12 federal regulatory authorities.

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

19 vi. "All Risk" property insurance, including debris removal  
20 and builders risk coverage during the course of construction, in an amount  
21 sufficient to cover the full replacement value of buildings and structural  
22 improvements constructed or erected on City's property by or on behalf of  
23 Long Beach Transit. City shall be named as an additional insured under a  
24 standard loss payable endorsement, as its interests may appear.

25 vii. "All Risk" property insurance in an amount sufficient to  
26 cover the full replacement value or maximum probable loss value of Long  
27 Beach Transit's personal property and equipment, including Long Beach  
28 Transit's fleet of buses and public transit vehicles, whether owned, leased,

1 or in the care, custody, or control of the Long Beach Transit. City shall be  
2 named as an additional insured under a standard loss payable  
3 endorsement, as its interests may appear.

4 B. Long Beach Transit shall procure and maintain or cause to be  
5 procured or maintained the insurance required in Section 17(A) by Long Beach  
6 Transit's on-site contractors, subcontractors, lessees, or permittees of Long Beach  
7 Transit, as may be applicable to their respective operations, subject to the  
8 following amendments.

9 i. Long Beach Transit's public transportation contractors  
10 and subcontractors shall provide Commercial General Liability (CGL) and  
11 Commercial Automobile Liability (CA) insurance as required under Section  
12 17(A)(i) in an amount not less than One Million Dollars \$1,000,000 per  
13 occurrence and Two Million Dollars ( \$2,000,000) general aggregate [One  
14 Million Dollars (\$1,000,000) combined single limits for auto] (or the  
15 coverage and minimum limits as required by the California Public Utilities  
16 Code). For public marine transit providers, protection and indemnity  
17 insurance with limits of not less than One Million Dollars per occurrence  
18 (\$1,000,000) may be substituted for the CGL and CA coverage and limits.  
19 This insurance shall be endorsed to include the City, its officials,  
20 employees, and agents as additional insureds and to waive the insurer's  
21 rights of subrogation against the City, its officials, employees, and agents.  
22 All other applicable insurance requirements under Section 17(A), with the  
23 exception of crime and property insurance, apply.

24 ii. If development or construction is undertaken by the  
25 Long Beach Transit, additional coverages may be required from Long  
26 Beach Transit's contractors and subcontractors by the City, including but  
27 not limited to coverage for explosion, collapse, and underground (XCU)  
28 hazards, environmental impairment liability, design professionals' liability,

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and construction management errors and omissions liability.

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

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

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

E. On execution of this Agreement, Long Beach Transit shall deliver to City the certificates of insurance and endorsements, including the certificates and endorsements of any of Long Beach Transit's contractors, subcontractors, permittees, or lessees, for approval as to sufficiency and form. The certificates and endorsements for each insurance policy shall contain the original signatures of persons authorized by that insurer to bind coverage on its behalf. Long Beach Transit shall provide to City copies of certificates of insurance and endorsements for renewal policies during the term of this Agreement within thirty (30) days after policy expiration. City reserves the right to require complete certified copies of all said policies at any time.

F. All insurance shall be separately endorsed to require at least thirty (30) days prior written notice of cancellation [ten (10) days if cancellation is for nonpayment of premium], nonrenewal, or reduction in coverage or limits (other than reduction of limits due to claims paid) and provide that coverage shall be

1 primary and not contributing to any other insurance or self-insurance maintained  
2 by the City, its officials, employees, and agents.

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

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

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

26 J. The insurance required herein shall not be deemed to limit  
27 Long Beach Transit's liability under this Agreement. The procuring of insurance  
28 shall not be construed as a limitation on liability or as full performance of the

1 indemnification and hold harmless provisions of this Agreement. City makes no  
2 representation that the limits or forms of coverage of insurance specified herein  
3 are adequate to cover Long Beach Transit's liability or obligations under this  
4 Agreement.

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

8 11. Long Beach Transit shall not delegate its duties or assign or transfer  
9 its rights under this Agreement, or any interest in this Agreement, or any portion of this  
10 Agreement without the prior written consent of City's City Manager. Any attempted  
11 assignment, transfer, or delegation shall be void and any assignee, transferee, or  
12 delegate shall acquire no interest or right by reason of such attempted assignment or  
13 delegation. Any such attempted assignment or delegation shall be void.

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

22 13. This Agreement constitutes the entire understanding between the  
23 parties pertaining to the subject matter in the Agreement and supersedes all prior  
24 negotiations, understandings, and agreements, oral or written, with respect to that subject  
25 matter.

26 14. In connection with performance of this Agreement and subject to  
27 applicable rules and regulations, Long Beach Transit shall not discriminate against any  
28 employee or applicant for employment because of race, religion, national origin, color,

1 age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability.  
2 Long Beach Transit shall ensure that applicants are employed, and that employees are  
3 treated during their employment, without regard to these bases. These actions shall  
4 include, but not be limited to, the following: employment, upgrading, demotion or transfer;  
5 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of  
6 compensation; and selection for training, including apprenticeship.

7 15. This Agreement shall be governed by and construed pursuant to the  
8 laws of the State of California.

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

12 17. The acceptance of any service or the payment of any money by City  
13 shall not operate as a waiver of any provision of this Agreement or of any right to  
14 damages or indemnity stated in this Agreement. The waiver of any breach of this  
15 Agreement shall not constitute a waiver of any other or subsequent breach of this  
16 Agreement.

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

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

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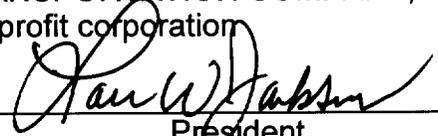
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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

LONG BEACH PUBLIC  
TRANSPORTATION COMPANY, a  
nonprofit corporation

Nov 24, 2008

By   
President  
Laurence W. Jackson  
Type or Print Name

Nov. 25, 2008

By   
Secretary  
Mark Curtis  
Type or Print Name

"Long Beach Transit"

CITY OF LONG BEACH, a municipal  
corporation

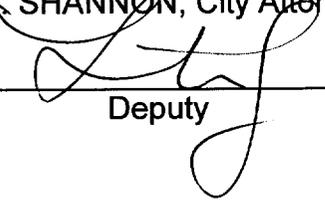
Dec. 15, 2008

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

"City"

This Agreement is approved as to form on December 2, 2008.

ROBERT E. SHANNON, City Attorney

By   
Deputy

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