

1 Long Beach Transit shall receive Prop. A funds from City in accordance with the
2 provisions of Section 1.C. below.

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

10 C. The City shall accrue seventy percent (70%) of three (3)
11 months of actual Prop. A allocations on September 30 each year and adjust
12 accounts payable to Long Beach Transit on June 30 each year to actual
13 entitlement.

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

24 2.

25 A. Long Beach Transit shall obtain funds or shall execute a
26 written agreement to receive funds from each neighboring jurisdiction served by
27 Long Beach Transit. The amount of each jurisdiction's contribution shall be based
28 on a "per passenger" operating subsidy rate equal to the Prop. A "per passenger"

1 operating subsidy rate established for City. City's Prop. A "per passenger"
2 operating subsidy rate shall be computed as the average annual Prop. A funds
3 from the City applied to offset operating expenses incurred by Long Beach Transit,
4 current year estimated and previous two years actual, divided by the average
5 annual ridership for City, current year estimated and previous two years actual.
6 The resulting operating subsidy rate multiplied by each jurisdiction's average
7 annual ridership, current year estimated and previous two years actual, shall equal
8 each jurisdiction's proportionate contribution for that fiscal year.

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

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

19 3. Long Beach Transit shall comply with all applicable laws, rules and
20 regulations pertaining to Prop. A funds, including the guidelines and other procedures
21 adopted by MTA. Long Beach Transit shall use the Prop. A funds, including any interest
22 on the funds, to carry out public transit purposes and projects which have been
23 authorized and approved by MTA. Long Beach Transit shall maintain such accounting
24 records as will clearly and separately identify all funds received under this Agreement,
25 including all interest and related cash disbursements. Long Beach Transit shall maintain
26 such additional records relating to the use of these funds as may be required by City in
27 order to satisfy necessary fiscal, performance, compliance reporting, and audit
28 requirements. Long Beach Transit shall make expenditures from these funds only for

1 purposes and projects approved by MTA. Long Beach Transit shall maintain a blanket
2 honesty bond in an amount of not less than One Million Dollars (\$1,000,000) insuring
3 against any loss which may result from the dishonesty or fraudulent acts of its officers,
4 directors or employees. Such bond shall include a loss payee endorsement naming City,
5 its officials and employees as an additional obligee with respect to Prop. A funds.

6 4. The term of this Agreement shall commence at midnight on July 1,
7 2011 and shall terminate at 11:59 p.m. on June 30, 2012. Either party shall have the
8 right to terminate this Agreement at any time, with or without cause, by giving thirty (30)
9 days prior notice of termination to the other party. Any Prop. A funds, including interest
10 on these funds, which have not been obligated as of the effective date of termination
11 shall be immediately returned to City.

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

23 6. The expenditure of Prop. A funds is subject to submission to MTA of
24 a description of intended use of the funds. Long Beach Transit shall submit to the
25 Director, for City's written approval, a program of proposed projects and expenditures
26 from Prop. A funds given to Long Beach Transit under this Agreement. Subsequent to
27 approval by City, Long Beach Transit shall obtain approval from MTA of all proposed
28 projects and expenditures from Prop. A funds. Long Beach Transit shall reimburse or

1 repay to City the amount of any unauthorized or inappropriate expenditures of Prop. A
2 funds received by Long Beach Transit under this Agreement.

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

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

25 9. In its performance of this Agreement, Long Beach Transit is not
26 acting and shall not act as an employee, agent or joint venturer with City. Long Beach
27 Transit acknowledges and agrees that City will not withhold taxes of any kind from funds
28 transferred under this Agreement, will not obtain workers' compensation or pay

1 unemployment insurance to, for or on behalf of Long Beach Transit, and will not provide
2 any of the usual and customary rights, benefits, or privileges of City employees to Long
3 Beach Transit. Long Beach Transit shall not represent itself to be an agent of City and
4 shall instruct its officers, employees and agents that they shall not represent themselves
5 to be officers, employees or agents of City. Long Beach Transit shall not have any
6 authority to bind City for any purpose at any time.

7 10.

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

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

22 ii. Workers' compensation in accordance with California's
23 Workers' Compensation and Insurance Act, endorsed, as applicable, to
24 include coverage pursuant to the United States Longshoremen and Harbor
25 Workers' Compensation Act and Jones' Act, and employer's liability
26 insurance with limits not less than One Million Dollars (\$1,000,000) per
27 injury or occupational disease. The policy shall be endorsed by the insurer
28 to waive the insurer's rights of subrogation against the City, its officials,

1 employees, and agents.

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

6 iv. Any other insurance that may be required by state and
7 federal regulatory authorities.

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

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

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

27 B. Long Beach Transit shall procure and maintain or cause to be
28 procured or maintained the insurance required in Section 10(A) by Long Beach

1 Transit's on-site contractors, subcontractors, lessees, or permittees of Long Beach
2 Transit, as may be applicable to their respective operations, subject to the
3 following amendments.

4 i. Long Beach Transit's public transportation contractors
5 and subcontractors shall provide Commercial General Liability (CGL) and
6 Commercial Automobile Liability (CA) insurance as required under Section
7 17(A)(i) in an amount not less than One Million Dollars \$1,000,000 per
8 occurrence and Two Million Dollars (\$2,000,000) general aggregate [One
9 Million Dollars (\$1,000,000) combined single limits for auto] (or the
10 coverage and minimum limits as required by the California Public Utilities
11 Code). For public marine transit providers, protection and indemnity
12 insurance with limits of not less than One Million Dollars per occurrence
13 (\$1,000,000) may be substituted for the CGL and CA coverage and limits.
14 This insurance shall be endorsed to include the City, its officials,
15 employees, and agents as additional insureds and to waive the insurer's
16 rights of subrogation against the City, its officials, employees, and agents.
17 All other applicable insurance requirements under Section 17(A), with the
18 exception of crime and property insurance, apply.

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

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

1 designee, at City's sole discretion.

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

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

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

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

26 G. Any self-insurance program, self-insured retention or
27 deductible must be approved separately in writing by City's Risk Manager or
28 designee and shall protect the City, its officials, employees, and agents in the

1 same manner and to the same extent as they would have been protected had the
2 policy or policies not contained such retention or deductible provisions.

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

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

21 J. The insurance required herein shall not be deemed to limit
22 Long Beach Transit's liability under this Agreement. The procuring of insurance
23 shall not be construed as a limitation on liability or as full performance of the
24 indemnification and hold harmless provisions of this Agreement. City makes no
25 representation that the limits or forms of coverage of insurance specified herein
26 are adequate to cover Long Beach Transit's liability or obligations under this
27 Agreement.

28 K. Any modification or waiver of these insurance requirements

1 shall be made only with the written approval of the City's Risk Manager or
2 designee.

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

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

17 13. This Agreement constitutes the entire understanding between the
18 parties pertaining to the subject matter in the Agreement and supersedes all prior
19 negotiations, understandings, and agreements, oral or written, with respect to that subject
20 matter.

21 14. In connection with performance of this Agreement and subject to
22 applicable rules and regulations, Long Beach Transit shall not discriminate against any
23 employee or applicant for employment because of race, religion, national origin, color,
24 age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability.
25 Long Beach Transit shall ensure that applicants are employed, and that employees are
26 treated during their employment, without regard to these bases. These actions shall
27 include, but not be limited to, the following: employment, upgrading, demotion or transfer;
28 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of

1 compensation; and selection for training, including apprenticeship.

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

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

7 17. The acceptance of any service or the payment of any money by City
8 shall not operate as a waiver of any provision of this Agreement or of any right to
9 damages or indemnity stated in this Agreement. The waiver of any breach of this
10 Agreement shall not constitute a waiver of any other or subsequent breach of this
11 Agreement.

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

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

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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
California nonprofit corporation

Jan 19, 2012

By *Paul W. James*
President
Laurence W. Jackson
Type or Print Name

Jan 27, 2012

By *Jan Ann James*
Secretary
Loi Ann Farrell
Type or Print Name

"Long Beach Transit"

CITY OF LONG BEACH, a municipal
corporation

2-14, 2012

By *[Signature]*
Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

This Agreement is approved as to form on 2/1, 2012.

ROBERT E. SHANNON, City Attorney

By *[Signature]*
Deputy

[Handwritten mark]

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