

**PROFESSIONAL SERVICES AGREEMENT**

**SEAL BEACH  
SENIOR TRANSPORTATION SERVICES**

Between



City of Seal Beach  
211 - 8th Street  
Seal Beach, CA 90740

&

Western Transit Systems  
1619 E. Lincoln Ave.  
Anaheim, CA 92805  
(714) 535-0156

This Professional Service Agreement ("the Agreement") is made as of November 8, 2010 (the "Effective Date"), by and between Western Transit Systems ("Contractor") and the City of Seal Beach ("City"), a California charter city, (collectively, "the Parties").

**RECITALS**

- A. City desires certain transportation services for seniors.
- B. After releasing a request for proposals for such services, the City Council for the City determined that it wants to provide an expanded program commonly known as "Dial-A-Ride" five days a week.
- C. Contractor represents that it is qualified and able to provide City with such services.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows.

**AGREEMENT**

**1.0 Services**

1.1. Services. Contractor shall provide those services ("Services") set forth in the request for proposal dated June 16, 2010 ("RFP") and Contractor's proposal dated July 22, 2010 ("Proposal"). To the extent that there is any conflict between the RFP and this Agreement, this Agreement shall control. Attachment A attached hereto includes the RFP, the Proposal and Contractor's executed "Letter of Acceptance," declaring that Contractor will perform and complete the work as required by the RFP.

1.2. Expanded Dial-A-Ride Services. Notwithstanding any inconsistent provision in the RFP or Proposal, Contractor shall provide one vehicle and one driver Monday through Friday 8:00 am to 5:00 pm for the Dial-A-Ride program to transport eligible Seal Beach residents to and from any location within the City and within a three mile radius outside the City's corporate boundaries.

1.3. Additional Services. The City Manager may authorize Contractor to perform additional services ("Additional Services") not specified in Subsections 1.1 and 1.2 provided the City Manager authorizes such work in advance and in writing. Payment for Additional Services in excess of \$10,000 requires prior City Council authorization.

1.4. Standard of Care. Contractor shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

1.5. Compliance with Applicable Law. In performing this Agreement, Contractor shall comply with all applicable provisions of federal, state, and local law.

### 2.0 Term

2.1 Initial Term. The initial term ("Initial Term") of this Agreement shall commence as of the Effective Date and shall continue for a term of 3 years unless previously terminated as provided by this Agreement.

2.2 Trial Term for Expanded Dial-A-Ride Services. Notwithstanding Section 2.1, the City may unilaterally cancel the dial-a-ride services set forth in Section 1.2 after a 6 month trial period. At its sole discretion, City may perform an evaluation of such services to determine whether to extend, modify or cancel such services.

2.3 City's Option(s) to Extend Agreement. At City's sole discretion, the City may elect to extend the term of this Agreement, upon the same terms and provisions, for up to three consecutive years, by providing notice to Contractor at least one month prior to the expiration of the Agreement.

### 3.0 Contractor's Compensation

3.1 Hourly Rate for Services. City will pay Contractor at the rate of \$50.25 for each hour of service satisfactorily performed by Contractor.

3.2 Hourly Rate for Dial-A-Ride Services. City will pay Contractor at the rate of \$47.24 for each hour of Dial-A-Ride Services satisfactorily performed by Contractor.

3.3 Compensation for Additional Services. City will pay Contractor at the rate of \$50.25 for each hour Contractor performs Additional Services pursuant to Section 1.3. City Manager may authorize payment for Additional Services up to a cumulative maximum of \$10,000. Payment for Additional Services in excess of \$10,000 requires prior City Council authorization.

### 4.0 Method of Payment

4.1. Contractor shall submit to City monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within 15 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. City will pay Contractor within 30 days of receiving Contractor's invoice. City will not withhold any applicable federal or state payroll

and other required taxes, or other authorized deductions from payments made to Contractor.

4.2. Upon 24-hour notice from City, Contractor shall allow City or City's agents or representatives to inspect at Contractor's offices during reasonable business hours all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement. City's rights under this Section 4.2 shall survive for two years following the termination of this Agreement.

**5.0 Termination**

5.1. This Agreement may be terminated by City, without cause, or by Contractor based on reasonable cause, upon giving the other party written notice thereof not less than 30 days prior to the date of termination.

5.2. This Agreement may be terminated by City upon 10 days' notice to Contractor if Contractor fails to provide satisfactory evidence of renewal or replacement of comprehensive general liability insurance as required by this Agreement at least 20 days before the expiration date of the previous policy.

**6.0 Party Representatives**

6.1. The City Manager is the City's representative for purposes of this Agreement.

6.2. Larry Slagle is the Contractor's primary representative for purposes of this Agreement.

**7.0 Notices**

7.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To City:	City of Seal Beach 211-8th Street Seal Beach, California 90740 Attn: City Manager
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To Contractor: Western Transit Systems  
1619 E. Lincoln Ave.  
Anaheim, California 92805  
Attn: Larry Slagle

7.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**8.0 Independent Contractor**

8.1. Contractor is an independent contractor and not an employee of the City. All services provided pursuant to this Agreement shall be performed by Contractor or under its supervision. Contractor will determine the means, methods, and details of performing the services. Any additional personnel performing services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

8.2. Contractor shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's personnel practices. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

**9.0 Subcontractors**

No portion of this Agreement shall be subcontracted without the prior written approval of the City. Contractor is fully responsible to City for the performance of any and all subcontractors.

**10.0 Assignment**

Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of City. Any purported assignment without such consent shall be void and without effect.

**11.0 Insurance**

11.1. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that Contractor has secured all insurance required under this Section. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements shall be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.2. Contractor shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and, if required by the City, (3) Professional Liability. Contractor shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage and if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Professional Liability: \$1,000,000 per claim/aggregate.

11.3. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to state: (1) coverage shall not be suspended, voided, reduced or canceled except after 30 days prior written notice by certified mail, return receipt requested, has been given to the City; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, (3) coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage and that any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it; (4) for general liability insurance, that the City, its directors, officials, officers, employees, agents and

volunteers shall be covered as additional insureds with respect to the services or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (5) for automobile liability, that the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible.

11.4. All insurance required by this Section shall contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

11.5. Any deductibles or self-insured retentions shall be declared to and approved by the City. Contractor guarantees that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

### **12.0 Indemnification, Hold Harmless, and Duty to Defend**

Contractor shall defend, indemnify, and hold the City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of city officials (collectively "Indemnities") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Contractor, its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of the City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Contractor shall defend Indemnitees, at Contractor's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its directors, officials, officers, employees, agents or volunteers. All duties of Contractor under this Section shall survive termination of this Agreement.

### **13.0 Equal Opportunity**

Contractor affirmatively represents that it is an equal opportunity employer. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

### **14.0 Labor Certification**

By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

### **15.0 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

### **16.0 Severability**

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

### **17.0 Governing Law**

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

### **18.0 No Third Party Rights**

No third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

### **19.0 Waiver**

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

**20.0 Prohibited Interests; Conflict of Interest**

20.1. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Contractor shall not accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained.

20.2. Contractor further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Contractor, to solicit or obtain this Agreement. Nor has Contractor paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Contractor hereunder the full amount or value of any such fee, commission, percentage or gift.

20.3. Contractor warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Contractor at any time during the term of this Agreement, Contractor shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

**21.0 Attorneys' Fees**

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.

**22.0 Exhibits**

All exhibits referenced in this Agreement are hereby incorporated into the Agreement as if set forth in full herein. In the event of any material discrepancy between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

**23.0 Corporate Authority**

The person executing this Agreement on behalf of Contractor warrants that he or she is duly authorized to execute this Agreement on behalf of said Party and that by his or her execution, the Contractor is formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

CITY OF SEAL BEACH

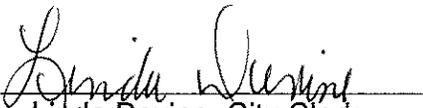
CONTRACTOR

By:   
~~XXXXXXXXXX~~, City Manager  
Patrick P. Importuna

By:   
Name: Larry Slagle

Attest:

Its: President

By:   
Linda Devine, City Clerk

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

Name: \_\_\_\_\_

Approved as to Form:

Its: \_\_\_\_\_

By:   
Quinn Barrow, City Attorney