

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Services
SUBJECT: **Public Transit Operations Contract – Laidlaw Transit Services, Inc.**
DATE: July 17, 2007

Needs: For the Council to authorize a contract with Laidlaw Transit Services, Inc. (LTS) for transit services.

Facts:

1. The City's Short Range Transit Plan recommended that the City seek opportunities for "joint procurement" of public transit services.
2. Given that all the transit agencies in San Luis Obispo except the City of San Luis Obispo had contracts that were scheduled to expire June 30, 2007, a "consortium" was established to issue a joint Request for Proposals (RFP) for transit operations.
3. Phil McGuire of McGuire Management Consultancy was hired to assist and manage the joint RFP process.
1. Following an initial response, a "last and best offer", and a "final last and best offer", the consortium was unable to identifying a contractor who could provide the services at a cost beneficial to all consortium members.
2. The Council's ad hoc committee, Mayor Frank Mechem and Councilman Fred Strong, authorized staff to negotiate a contract on a "Paso only" basis.
3. Staff negotiated with the two top RFP responders, MV Transportation and LTS.
4. The pricing proposed by each vendor is nearly identical. Given the City's long and favorable relationship with LTS, there would appear to be no reason to change contractors at this time.

Analysis &

Conclusion: The joint procurement effort represents the second time in the last ten years that San Luis Obispo County transit agencies have attempted to partner together to select a single service provider. It has not proven successful. Given varied levels of services provided and geographic locations of each, pricing by vendors differed widely among agencies. For example; in a bid option that included Paso and RTA, the lowest cost for Paso wasn't competitive for RTA. In a Paso and Atascadero option, the similar dilemma arose.

The City provided LTS an opportunity to submit a bid for a Paso only option and requested assurances from MV Transportation that they could in fact deliver the level of service requested at the cost submitted for the Paso only option. The final bid results indicate that MV

Transporation's bid over three years (first year is actually on ten months) is \$1,544,043 while LTS bid iss \$1,542,016.

Given the exceptional service provided by LTS over the years and their willingness to provide competitive pricing, it is recommended that the City award the contract to LTS. The contract is for three years with five one year options to extend.

Fiscal

Impact:

The pricing proposed by LTS is actually lower under the proposed contract than the current contract. Using the average monthly vehicle service hours (VSH) over the last eleven months, the current annualized cost calculates to be \$547,101 including Greyhound Depot services. The cost using the same number of VSH under the proposed contract pricing, the annualized cost will be \$537,315. The proposed contract includes a driver and dispatch formula for wages that will assist in retention and recruitment and provides that project manager will spend more time managing rather than dispatching and/or driving.

Options:

- a. **That the Council adopt a resolution awarding a transit services contract to Laidlaw Transit Services; or**
- b. **Amend, modify, or reject the above option.**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A TRANSIT SERVICES AGREEMENT
WITH LAIDLAW TRANSIT SERVICE, INC.

WHEREAS, the City's current contract with Laidlaw Transit Services expires August 31, 2007 (extended by Council from June 30, 2007); and

WHEREAS, the City participated in a joint procurement endeavor with several other transit agencies throughout San Luis Obispo County; and

WHEREAS, it was determined that Laidlaw Transit Services provided the best value for the cost proposed; and

WHEREAS, the City desires to continue its relationship with Laidlaw Transit Services given their experience, service record and cost; and

WHEREAS, Laidlaw Transit Services desires to continue operating the City's public transit system including Greyhound Bus Depot operations.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the contract attached herewith as Exhibit "A" is hereby approved and the Director of Administrative Services is authorized to execute said contract.

PASSED AND ADOPTED BY THE City Council of the City of Paso Robles this 17th day of July, 2007 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah Robinson, Deputy City Clerk

TRANSIT SERVICES AGREEMENT

The following is a Transit Services Agreement ("Agreement") dated as of _____, 2007, by and between the City of Paso Robles (CITY) and Laidlaw Transit Services, ("CONTRACTOR") for the purposes of providing transit services per the Request for Proposals dated February 9, 2007.

WHEREAS, CONTRACTOR represents that it has the management and technical personnel, qualifications, expertise, and other assets necessary for the support of CITY's transportation project;

WHEREAS, CITY wishes to contract out daily management and operation of the Transit systems of the CITY ("Project");

WHEREAS, CITY is desirous of providing such Transit and Dial-A-Ride services as documented in the Request for Proposals; and

NOW, THEREFORE, in consideration of the foregoing recital and mutual covenants and agreements contained herein, CITY and CONTRACTOR hereto agree as follows:

1. Purpose: CITY hereby contracts with CONTRACTOR to provide transportation management and operations upon the terms and of this Agreement.

2. Scope of Work: CONTRACTOR shall provide services as set forth in Scope of Work, Proposal and Support Documentation attached hereto and incorporated herein by reference. In event of a conflict between this Agreement and the terms of Proposal and Support Documentation, this Agreement shall control.

3. Term: The term of this Agreement shall be from July 1, 2007 to June 30, 2010, inclusive. This Agreement may be extended for five (5) additional one-year terms at CITY's sole discretion.

4. Maximum Obligation: For the period September 1, 2007 to June 30, 2010, CITY agrees to pay CONTRACTOR in consideration for its services as described herein. The maximum cost to be paid by CITY for each fiscal year shall not exceed:

\$437,705	during September 1, 2007 to June 30, 2008;
\$544,408	during July 1, 2008 to June 30, 2009; and
\$559,903	during July 1, 2009 to June 30, 2010

Pricing for each of the option years will be based upon application of the Consumer Price Index for the twelve month period ending April 30th each year as published in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers San Francisco-Oakland-San Jose "All Items" (1982 – 84 = 100%) (the "CPI") to the rate in place for the year immediately preceding the Option year. Should this index no longer be published, a reasonable substitute shall be agreed upon by the parties.

5. Price Formula: CITY agrees to pay CONTRACTOR for performance of the services set forth in this Agreement as follows:

(a) Payment of a fixed hourly rate per vehicle service hour of \$20.97 for September 1, 2007 to June 30, 2008; \$21.75 for July 1, 2008 to June 30, 2009; \$22.26 for July 1, 2009 to June 30, 2010.

The definition of a revenue hour shall be as described for the CITY in the Request for Proposal dated February 9, 2007.

Prior to each schedule change, CONTRACTOR shall present CITY with a calculation of proposed total service hours by route. Both Parties shall agree on the service hours necessary to perform the printed schedules. This will serve as the basis for each billing by CONTRACTOR. Any deviation (i.e., an increase or decrease in service hours) shall be explained in the billing and receive prior approval by CITY Transit Manager before any increase or decrease in service is performed by CONTRACTOR.

The hourly rate shall compensate CONTRACTOR for those costs described as "Variable" as specified in the cost proposal forms provided by the CITY with the Request for Proposal.

(b) Payment of a fixed monthly rate, per service month, of \$15,511 for September 1, 2007 to June 30, 2008; \$16,050 for July 1, 2008 to June 30, 2009; \$16,595 for July 1, 2009 to June 30, 2010.

The monthly rate shall compensate CONTRACTOR for those costs described as "Fixed" as specified in the cost proposal forms provided by the CITY with the Request for Proposal.

(c) Except as specifically provided elsewhere in this Agreement, the fixed hourly rate and fixed monthly rate specified in Section 5(a) and (b) shall provide for all costs necessary to operate transit services defined in this Agreement.

(d) CITY shall provide vehicles and licenses; fuel; vehicle maintenance; facility insurance; bus stops; radios; radio maintenance and radio licenses; passes and tickets; printed route schedules; marketing and promotion; planning; monitoring.

(f) Payment of a fixed monthly rate, per service month for Greyhound Depot operations, of \$2,885 for September 1, 2007 to June 30, 2008; \$3,003 for July 1, 2008 to June 30, 2009; \$3,128 for July 1, 2009 to June 30, 2010.

6. Payment: All payments by CITY shall be made in arrears after the service has been provided. Payment shall be made by CITY no more than thirty (30) days from CITY's receipt of the invoice unless the monthly reporting has not been submitted. Payment may be withheld by CITY if monthly reports have not been submitted or other problems exist. Payment will be made on a monthly basis. If CITY disputes any items on an invoice for a reasonable cause, CITY may deduct that disputed item from the payment but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONTRACTOR within fifteen (15) working days after receipt of invoice by CITY.

Payments shall be by voucher or check payable to: Laidlaw Transit Services

Any penalty assessed against CONTRACTOR under Disincentives, included in Scope of Work in this Agreement, shall be deducted from the current payments to CONTRACTOR. Any incentive bonuses shall be paid by CITY. Any penalty imposed or incentive awarded under this Agreement shall be in accordance with Incentives and Disincentives, included herein.

Payment of outstanding invoices from CONTRACTOR may be withheld by CITY, without interest accruing to CONTRACTOR, if the monthly report is not submitted by CONTRACTOR in a timely manner and if non-performance has resulted in CITY demand against CONTRACTOR's Performance Bond.

No advance payments will be permitted.

7. Operating Revenues: All operating revenues collected by CONTRACTOR are the property of CITY. Operating revenues include all fares; sales of tickets, and passes; and advertising sales. Fares shall be collected in accordance with the fare schedule established at the sole discretion of CITY. Sales of tickets, passes, and advertising shall be as specifically authorized by CITY.

8. Management and Overall Staffing: During the term of this Agreement, CONTRACTOR shall provide sufficient staffing necessary and required to perform its duties and obligations under the terms hereof. Staffing levels shall, at a minimum, not fall below the position levels defined in CONTRACTOR Proposal. These minimum staffing levels shall be maintained at all times with the exception of normal employee vacations and other excused absences. Reasonable time caused by normal employee turnover shall be allowed, including in the case of discharge or lack of notice by employee. Any position vacant more than ten (10) working days shall be deducted from the fixed fee based on the average salary and benefit rates for that particular position unless filled by a temporary employee. However, in the event a position remains unfilled after thirty (30) calendar days for any reason, CONTRACTOR shall ensure timely replacement and provide reasonable assurances to CITY of its efforts to fill the position.

Any General Manager or Operations Manager assigned to this Project must remain in that position for a period of at least one (1) year unless the CITY asks the Contractor to remove the Manager. If for reasons other than a personal termination (voluntary resignation) or emergency, the General Manager or Operations Manager leaves prior to this date, the CITY in its sole discretion may immediately assess a penalty equal to one and a half (1½) times the Manager's annual salary, collected through a reduction in payment owed the Contractor in the next invoice cycle, or as otherwise agreed upon, at the CITY's sole discretion.

If for any reason the General Manager Operations Manager position is left open or not permanently filled, with a qualified full time Manager approved by the CITY, for more than sixty (60) days, a penalty equal to the Manager's monthly salary may be immediately assessed by the CITY, and collected through a reduction in payment owed the Contractor in the next invoice cycle, or as otherwise agreed to at the CITY's discretion. Such fee may continue to be collected for each subsequent month in which no permanent Manager is designated.

9. Medical Assistance to Passengers: CONTRACTOR's employees shall not be required to perform any medical or quasi-medical functions for passengers. In the event of illness on board a vehicle, the driver shall advise the dispatcher by radio and may proceed immediately to a medical facility for help if so directed by dispatcher.

10. Uniforms: CONTRACTOR shall purchase uniforms for employees and shall require the employees to wear them. The design, type, and logo of the uniforms shall be subject to CITY's approval. Uniforms shall include but not be limited to shirts with CONTRACTOR logo, Identification tags, pants, jackets, and caps (optional).

11. Merger and Modifications of Agreement: This writing constitutes the entire Agreement between the Parties relative to the subject matter of this Agreement and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both Parties to this Agreement. There are no understandings, agreements, or conditions with respect to the subject matter of this Agreement except those contained in this writing.

12. Assignment and Subcontracting: None of the Parties hereto shall assign, sublet, subcontract or transfer any interest in this Agreement without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other Party has consented in writing.

13. Breaches and Disputes:

(a) Disputes - Disputes arising in the performance of this Agreement that are not resolved by agreement of the Parties shall be decided in writing by the CITY Transit Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, CONTRACTOR mails or otherwise furnishes a written appeal to the CITY. In connection with any such appeal, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the CITY shall be binding upon CONTRACTOR and CONTRACTOR shall abide by the decision.

(b) Performance During Dispute - Unless otherwise directed by CITY, CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.

(c) Claims for Damages - Should either Party to the Agreement suffer injury or damage to person or property because of any act or omission of the Party or of any of his or her employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other Party within a reasonable time after the first observance of such injury of damage.

(d) Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between CITY and CONTRACTOR arising out of or relating to this agreement or its breach will be decided by arbitration if the Parties mutually agree, or in a court of competent jurisdiction within the State of California.

(e) Rights and Remedies - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by CITY shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

14. Termination:

(a) Termination without Cause: CITY may terminate this Agreement, without cause, in whole or in part, at any time by written notice to CONTRACTOR. CONTRACTOR shall be paid its costs, including Agreement closeout costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to CITY to be paid. If CONTRACTOR has any property in its possession belonging to CITY, CONTRACTOR will return, account for the same, and/or dispose of it in the manner CITY directs.

(b) Termination for Default: If CONTRACTOR does not deliver services, CONTRACTOR fails to perform in the manner called for in the Agreement, or if CONTRACTOR fails to comply with any other provisions of the Agreement, the CITY may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on CONTRACTOR setting forth the manner in which CONTRACTOR is in default. CONTRACTOR will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in the Agreement. If it is later determined by CITY that CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of CONTRACTOR, CITY, after setting up a new delivery of performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination without cause.

(c) Termination for Cost-Type Contracts: CITY may terminate this Agreement, or any portion of it, by serving a notice of termination on CONTRACTOR. The notice shall state whether the termination is for convenience of CITY or is for the default of CONTRACTOR. If the termination is for default, the notice shall state the manner in which CONTRACTOR has failed to perform the requirements of the Agreement. CONTRACTOR shall account for any property in its possession paid for from funds received from CITY, or property supplied to CITY may fix the fee, if the Agreement provides for a fee, to be paid CONTRACTOR in proportion to the value, if any, of the work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to CITY and the Parties shall negotiate the termination settlement to be paid CONTRACTOR.

15. Notices: All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof by registered or certified mail, return receipt requested, and postage prepaid to the persons named below:

CONTRACTOR:

Attention: _____

Phone: _____
FAX: _____

CITY:

City of Paso Robles
Attention: Mike Compton
1000 Spring Street Phone: 805-237-3999
Paso Robles, CA 93446 FAX: 805-237-6565

16. Proprietary Rights: All inventions, improvements, discoveries, proprietary rights, patents, and copyright made by CONTRACTOR under this Agreement shall be made available to CITY with no royalties, charges, or other costs, but shall be owned by CONTRACTOR. All manuals prepared by CONTRACTOR under this Agreement shall be made available to CITY at no charge and become property of CITY. The required financial and activity reports per other sections of this Agreement are excluded from this provision and shall be owned by CITY. CONTRACTOR may make presentations and releases relating to the project. Any report, public releases, papers, and other formal publications shall be subject to the approval of CITY before they are released.

17. Shortages and Delays:

(a) In the event that CITY delays providing items under Section 5(d) as herein provided, the number and size required, then CONTRACTOR shall not be responsible for any delays or resulting decline in the quality of service directly related to such failure by CITY.

(b) CONTRACTOR shall not be held responsible for losses, delays, failure to perform, or excess costs caused by events beyond the control of CONTRACTOR. Such events may include but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood, or other natural disasters; acts of government or public; riots, strikes, war, civil disorder, or fuel shortages. However, CONTRACTOR shall not receive payment for the vehicle service hour rate, and only the mutually agreed direct services provided portion of fixed monthly rate during the period of time that service is not provided. CONTRACTOR also grants CITY the right to provide these services through other means on a temporary basis should CONTRACTOR be unable to perform said services.

18. Audit: CONTRACTOR shall permit the authorized representatives of CITY, State of California, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of CONTRACTOR relating to performance under this Agreement.

19. No Government Obligation to Third Parties:

(a) CITY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a Party to this Agreement and shall not be subject to any obligations or liabilities to CITY, CONTRACTOR, or any other Party (whether or not a Party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

20. Transportation Data Reporting: CONTRACTOR shall report operating and financial data to CITY in accordance with the Uniform Financial Accounting and Reporting Elements (FARE) as required under NTD of the Urban Mass Transportation Act of 1964 as amended and the California Public Utilities Code, Chapter 4, Section 99243, and California Administrative Code Title 21, Chapter 3, Subchapter 2, as required under California Transportation Development Act, plus any information required by CITY.

21. Workers' Compensation: CONTRACTOR certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be either insured against liability for Workers' Compensation or implement self-insurance in accordance with such provisions of that Code, and it certifies that it will comply with such provisions of that Code, and

it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

22. Indemnification: CONTRACTOR shall indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees and litigation expenses arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the sole negligence, or willful misconduct of the CITY.

23. Insurance: With respect to performance of work under this Agreement, CONTRACTOR shall maintain and shall require all of its subcontractors to maintain insurance as described below:

(a) Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

"This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to CITY, directed to the attention of CITY Transit Manager per Section 16.

(b) Commercial or Comprehensive General and Automobile Liability covering personal/bodily injury and property damage for all activities of CONTRACTOR and its subcontractors arising out of or in connection with this Agreement, written on a broad form commercial or comprehensive general and auto liability basis including but not limited to blanket contractual; automobile including CITY-owned transit buses, service vehicles, and automobiles including coverage of owned, hired, and non-owned vehicles; employer's non-ownership liability; operator's liability; and independent contractor's liability coverage in an amount no less than \$5,000,000 combined single limit personal injury and property damage for each occurrence. Coverage shall be for the term of this Agreement. Costs of insurance shall be assumed to be those indicated in Exhibit "J" Price Proposal Forms. Each such policy shall be endorsed with the following specific language:

- (1) CITY is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects CITY, its officers, agents, and employees against liability for bodily injuries, deaths, or property damage or destruction arising in any respect directly or indirectly in the performance of the Agreement.

CONTRACTOR shall obtain an Additional Insured Endorsement from its insurance carrier naming the CITY as additional insured.

CONTRACTOR agrees to provide Additional Insured Endorsements as requested by CITY during the term of Agreement using the CITY approved forms included with this Agreement.

- (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and coverages afforded shall apply as though separate policies had been issued to each insured, but this Agreement shall not operate to increase the insurance company's total limit of liability.

- (3) The insurance provided herein is primary, and no insurance or self-insurance held or owned by CITY shall be called upon to contribute to a loss but only as respects work performed by the named insured for CITY.
- (4) The coverage provided by this policy shall not be reduced or canceled without thirty (30) days' written notice given to CITY by certified mail.

Should CITY wish to cancel this insurance coverage, it shall be canceled based on thirty (30) days' written notice prior to the date of cancellation. Insurance cost shall be pro-rata for those days of coverage provided per this Agreement.

- (c) Property All-Risk Damage coverage shall provide first-dollar reimbursement to CITY for any vehicle or equipment losses incurred and not offset by other Parties.
- (d) Documentation: The following documentation shall be submitted to CITY:
 - (1) Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement.
 - (2) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of Agreement.
 - (3) Upon CITY's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of CITY's request.
- (e) Policy Obligations: CONTRACTOR's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- (f) Material Breach: If CONTRACTOR, for any reason, fails to maintain insurance coverage which is required pursuant to this agreement, the same shall be deemed a material breach of Agreement. CITY, at its sole option, may terminate this Agreement and obtain damages from CONTRACTOR resulting from said breach. Alternatively, CITY may purchase such required insurance coverage and, without further notice to CONTRACTOR, CITY may deduct from sums due to CONTRACTOR any premium costs advanced by CITY for such insurance. These remedies shall be in addition to any other remedies available to CITY.
- (g) CITY Insurance Coverage: CITY will provide property all-risk damage coverage (including fire, extended coverage, theft, vandalism, etc.) for CITY buildings, bus stops, and contents; however, CONTRACTOR will be responsible for physical damage costs (such as labor, repairs, services, parts, and materials) above the aggregate loss not covered by other insurance payments per subsection (c) above. Excessive damage losses shall serve as the basis for Agreement termination.

24. Fidelity Bond: During the period of time this Agreement shall be in effect, CONTRACTOR shall cause its staff personnel to be covered under an appropriate bond protecting CITY from employee theft up to the minimum amount of Fifty Thousand Dollars (\$50,000) with respect to any one occurrence by CONTRACTOR employees.

25. Nondiscrimination: The following requirements apply to the underlying Agreement:

- (a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:
- (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- (c) CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected Parties.

26. Conflict of Interest: CONTRACTOR promises that it presently has no interest, which would conflict in any manner or degree with the performance of services hereunder.

CONTRACTOR further promises that in performance of this Agreement, no person having such interest shall be employed.

27. Retention of Records: CONTRACTOR and CITY agree to retain all documents relevant to this Agreement for four years from the termination of the Agreement or until all federal/state audits are complete for the period CONTRACTOR performed under this agreement. Except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case CONTRACTOR agrees to maintain same until CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). Upon request, CONTRACTOR shall make available these records to CITY, state, or federal government personnel.

28. Emergency Procedures: In the event of a major emergency such as an earthquake, flood, or man-made catastrophe, CONTRACTOR shall make labor, management, transportation and communication resources available to the degree possible for emergency assistance. If the normal line of direct authority from CITY is intact, CONTRACTOR shall follow instructions of CITY. If the normal line of direct authority is broken, and for the period it is broken, CONTRACTOR shall make the best use of transportation resources following to the degree possible the direction of an organization such as the police or San Luis Obispo County Office of Emergency Services, which appears to have assumed responsibility. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter.

CONTRACTOR shall be paid for said emergency assistance pursuant to the compensation rates set forth in the Agreement. Payment for such assistance shall not be included in the maximum financial obligation as provided in the Agreement. Upon the cessation of an emergency as determined by CITY, CONTRACTOR shall immediately resume normal transit operations as required under the Agreement.

29. Conflicting Use: CONTRACTOR shall not use any vehicle, equipment, personnel, or other facilities which are provided by CITY for performing services under this Agreement for any use whatsoever other than provided for in this Agreement.

30. Liaison: CONTRACTOR shall maintain on-going liaison with AGENCY regarding all public transit activities and any matters relating to the performance of this Agreement, including complaints. Such liaison includes but is not limited to CONTRACTOR's attendance at meetings as required.

31. Failure to Perform: It is agreed by both Parties that strict adherence to the routes and schedules of operation defined in Exhibit "L" Route Maps and Schedules is of primary importance.

CITY and CONTRACTOR will monitor service performance to assure that strict adherence of routes and schedules are being maintained. If performance is found to be substandard, CITY may request in writing adequate assurance of performance as defined under provision 33 of this Agreement.

CONTRACTOR understands that continual substandard performance including but not limited to service runs departing ahead of schedule, missed service runs, service runs departing scheduled stops fifteen minutes or more after the scheduled time, frequent accidents and safety violations, frequent vehicle failure, poor vehicle maintenance, and frequent public complaints regarding driver behavior are grounds for termination of this Agreement.

32. Damages and Misuse of CITY owned Vehicles, Equipment, Tools, and Facilities: It is understood that excessive damages to and misuse of any vehicles, equipment, tools, and facilities by CONTRACTOR are grounds for termination of this Agreement. At the commencement of this Agreement, CITY and CONTRACTOR will collectively assess and record the condition of all equipment, vehicles, and other CITY owned assets associated with this agreement. CITY and CONTRACTOR agree to conduct a similar assessment of assets at the conclusion of this agreement to determine if CONTRACTOR has damaged CITY assets beyond what is reasonable and expected and if CITY is due compensation for any damages caused by CONTRACTOR. CITY may choose to use a qualified third-party expert to conduct such an assessment.

33. Incentives and Disincentives: CONTRACTOR and CITY shall mutually strive to maintain the highest operating standards for transit services provided. Certain standards shall be called out. Incentive bonuses and penalties shall be assessed CONTRACTOR As outlined in Scope of Work, Section 3.20 Incentives and Section 3.21 Disincentives.

34. Performance Surety: CONTRACTOR shall keep in effect at all times a surety bond or letter of credit acceptable to CITY in guarantee of performance of all terms and conditions of this Agreement. Such bond or cash deposit will be maintained in effect during the entire term of this Agreement. Said surety bond or letter of credit shall be in an amount equal to 25% of the annual contract amount. Surety Company shall have a Best rating of "A" or better and be licensed to do business in the State of California. CITY may review the adequacy of the amount of the surety bond annually no later than April 1 or such other date as may be mutually agreed by the parties and increase or decrease the surety amount as appropriate. CONTRACTOR shall renew said surety bond as necessary and file it with CITY at least thirty (30) days prior to the expiration of the bond.

35. Compliance with Laws and Regulations: CONTRACTOR shall comply with any federal, state, and local laws and regulations or requirements of funding agencies such as Federal alcohol/drug testing, DMV Pull-Notice System for Drivers, and any other matters that impact eligibility for funding, risk exposure, safety, or other relevant area of endeavor.

CONTRACTOR shall indemnify, protect, defend, and save harmless CITY and its officers, agents, and employees from all fines, penalties, and liabilities imposed upon CITY under any such laws, rules, and regulations by any public agency, authority, or court having jurisdiction over the Parties hereto, when the imposition of same is attributed to the failure of CONTRACTOR to keep fully informed and to comply with obligations in this regard.

36. Standard of Care: CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of CONTRACTOR's work by CITY shall not operate as a waiver or release.

37. Status of Contractor: The Parties intend that CONTRACTOR, in performing the services hereinafter specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits CITY provides its employees. In the event CITY exercises its right to terminate this Agreement pursuant to Section 19 above, CONTRACTOR expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

38. Taxes: CONTRACTOR agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold CITY harmless from any liability which it may incur to the United States or to the State of California as a consequence of CONTRACTOR's failure to pay, when due, all such taxes and obligations. In case CITY is audited for compliance regarding any withholding or other applicable taxes, CONTRACTOR agrees to furnish CITY with proof of payment of taxes on these earnings.

39. Disadvantaged Business Enterprise: CONTRACTOR agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

- (a) CONTRACTOR agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
- (b) CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third Party Agreement, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. CONTRACTOR agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third Party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. CONTRACTOR's DBE program, as required by 49 C.F.R. Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the Grant Agreement or Master Agreement. Upon notification to CONTRACTOR of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

40. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -- Lower-Tier Covered Transaction:

- (a) The prospective lower-tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" (as defined at 49 CFR 29.105[p]) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (b) When the prospective lower-tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

41. Government-wide Debarment and Suspension (Non-procurement): CONTRACTOR agrees to comply, and assures the compliance of each third Party CONTRACTOR and SUBCONTRACTOR at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension (Non-procurement)," within 49 C.F.R. Part 29.

42. Lobbying: CONTRACTOR shall certify compliance with 49 CFR Part 20 as detailed in Exhibit "H"- Certification of Restrictions on Lobbying.

43. Lobbying Restrictions: CONTRACTOR agrees to:

- (a) Refrain from using Federal assistance funds to support lobbying,
- (b) Comply, and assure the compliance of each third Party CONTRACTOR at any tier and each SUBCONTRACTOR at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- (c) Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

44. Charter Bus Requirements: CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

45. School Bus Requirements: Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, Contractors and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

46. Drug and Alcohol Testing:

- (a) CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Parts 653 and 654 before March 15 and to submit the Management Information System (MIS) reports before March 15 to CITY Transit Manager and FTA Office of Safety and Security. To certify compliance, CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- (b) CONTRACTOR agrees to comply with the following Federal substance abuse regulations:

- (1) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 *et seq.*
- (2) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Part 655 before February 15 and to submit the Management Information System (MIS) reports before February 15 to CITY Transit Manager. To certify compliance CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

47. Program Fraud and False or Fraudulent Statements or Related Acts:

- (a) CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.
- (b) CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.
- (c) CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the SUBCONTRACTOR who will be subject to the provisions.

48. Energy Conservation: CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

49. Clean Water:

- (a) CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

50. Clean Air:

- (a) CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

51. Recycled Products: To the extent applicable, CONTRACTOR agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

52. Incorporation of FTA 4220.1E Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY request, which would cause CITY to be in violation of the FTA terms and conditions.

53. Federal Changes: CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (10) dated October, 2003), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement.

54. Vehicle Requirements: CONTRACTOR shall return all vehicles to CITY at the conclusion of this Agreement in a condition equivalent to the condition of other vehicles at the time of the commencement of this Agreement, normal wear and tear excluded.

55. Strikes: If during the term of this Agreement, the employees of CONTRACTOR go on strike or otherwise refuse to perform the services required by this Agreement, and the transit service and/or maintenance of vehicles is suspended or interrupted, CONTRACTOR shall only be paid the fixed hourly rate per vehicle service hour payment under this Agreement for services

actually provided, and that portion of the fixed monthly rate of this Agreement that is not attributable to wages and benefits of employees.

56. Termination for Non-Appropriation: CITY may terminate this Agreement at any time, upon giving Contractor thirty (30) days written notice, for any of the following reasons:

- (a) CITY has exhausted all funds legally available for payments to become due under this Agreement;
- (b) Funds which have been appropriated for purposes of this Agreement are withheld and are not made available to CITY;
- (c) No appropriation of funds for payments has been made for purposes of this Agreement in the budget for the next fiscal year.

57. No Assignment of Claims: The Parties warrant and represent that each is authorized to enter into this Agreement and that neither has made nor caused to be made any assignment of any claim or cause of action that any Party has or may have in the future against the Parties herein released.

58. Merger: This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties hereto.

59. Binding Agreement: All Parties hereto acknowledge that it or they are represented by an attorney; that it or they have had an opportunity to discuss this Agreement with their attorney; and it or they are fully aware of the contents of this Agreement and acknowledge that it is a legal and binding agreement.

60. Modifications: Any modification, amendment or waiver of this Agreement must be in writing and signed by all Parties hereto.

61. Agreement Binds Successors in Interest: This Agreement and the covenants and conditions contained herein shall apply to, be binding upon and inure to the legatees, devisees, administrators, executors, legal representatives, assignees, successors, and agents of the Parties hereto, and may not be altered, amended, modified or otherwise changed in any manner except by a writing executed by the Parties.

62. Further Acts: The Parties shall execute and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

63. California Law: This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

64. Construction: This Agreement shall be construed as if all Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party. Each of the Parties acknowledges that this Agreement has been negotiated at arm's length among persons knowledgeable in the matters herein. Accordingly, any rule of law -- including without limitation California Civil Code § 1654, or any other statutes, legal decisions, or common law principles of similar effect -- that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it, is of no application and hereby is expressly

waived. This Agreement and its provisions shall be interpreted in a reasonable manner to effect the Parties' intentions.

65. No Waiver: The waiver of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

66. Venue and Continued Jurisdiction: Any action to enforce the terms of this Agreement or for disputes arising out of or the breach thereof shall be brought and tried in the San Luis Obispo Superior Court in the County of San Luis Obispo.

67. Severability: Except as is set forth in this paragraph, should any part, term, portion or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California or the United States or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, providing such remaining portions or provisions can be construed in substance to constitute the Agreement that the Parties intended to enter into in the first instance.

68. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

69. Counterparts: This Agreement may be executed in counterparts or by facsimile.

70. No Third Party Beneficiaries: The Parties Agree that there are no third party beneficiaries to this Agreement, nor do the Parties intend for there to be any third party beneficiaries to this Agreement.

71. Exhibits: All exhibits to this Agreement are incorporated by this as if fully set forth herein. These include but are not limited to the CITY Request for Proposal dated February 9, 2007 and the proposal submitted by CONTRACTOR. In the event of a conflict between this Agreement and any exhibit, the terms of the Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective officers thereunto duly authorized on the date written below.

By CITY this _____ day of _____, 2007.

By CONTRACTOR this _____ day of _____, 2007.

LIDLAW TRANSIT SERVICES, INC.

CITY OF PASO ROBLES

By: _____

By: _____
Mayor, City of Paso Robles

Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM FOR CITY:

By: _____
CITY Attorney

Date: _____