

**SECOND AMENDMENT TO THE AGREEMENT
FOR AIRPORT SHUTTLE BUS SERVICE
BETWEEN THE CITY OF SAN JOSE AND TRANSDEV SERVICES, INC.**

This SECOND AMENDMENT is entered into this _____ day of January, 2019 between the CITY OF SAN JOSE, a municipal corporation (hereinafter "City" or "Airport"), and TRANSDEV SERVICES, INC., a Maryland corporation registered to conduct business in the State of California (hereinafter "Contractor" or "Operator"). Each of City and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on September 1, 2013, City and Veolia Transportation Services, Inc. entered into an agreement entitled "Agreement for Airport Shuttle Bus Service between the City of San José and Veolia Transportation Services, Inc." ("Agreement"); and

WHEREAS, the initial four-year term of the Agreement is from September 1, 2013 to August 31, 2017, inclusive, plus six additional one-year options to extend the term; and

WHEREAS, under Resolution No. 76775, the San José City Council authorized the City Manager to execute amendments and change orders to the Agreement to add or delete routes and schedules as required to meet current service requirements; and

WHEREAS, on July 28, 2014, Veolia Transportation Services, Inc. changed its corporate name to Transdev Services, Inc.; and

WHEREAS, between August 13, 2014 and August 18, 2016, pursuant to Exhibit C of the Agreement, the City issued three (3) Notice of Compensation Adjustments and revised the compensation accordingly; and

WHEREAS, on August 22, 2017, City and Contractor entered into a First Amendment to the Agreement to retroactively memorialize the change to Contractor's corporate name, to add new routes and schedules for the North and South Airfields, and to adjust compensation accordingly; and

WHEREAS, City and Contractor now wish to further amend the Agreement to eliminate the 3% cap on adjustments to contract price if the wage increase exceeds 3%, and to make adjustments to the contract price as set forth in Second Revised Exhibit C to cover increase in wages necessary for Contractor to retain staff and comply with labor union pay rates;

NOW THEREFORE, the parties agree to amend the amended Agreement as follows:

SECTION 1. Revised Exhibit C, entitled "Compensation," is amended to read as shown in Second Revised Exhibit C, attached and incorporated into this Second Amendment.

SECTION 2. All of the terms and conditions of the amended Agreement, not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective names below.

City of San José
a municipal corporation

By _____

Name: Jennifer Cheng

Title: Deputy Director, Finance

Date: _____

Transdev Services, Inc.
a Maryland corporation
authorized to conduct business in California

By _____

First Authorized Signature

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Name: Rosa Tsongtaatarii

Title: Senior Deputy City Attorney

Date: _____

By _____

Second Authorized Signature

Name: _____

Title: _____

Date: _____

SECOND REVISED EXHIBIT C COMPENSATION

1 COMPENSATION BASED UPON COST PLUS SERVICE MODEL

City shall compensate Contractor for Airport Shuttle Bus Services according to the following schedule.

Table 1:

Year		Monthly Management Fee	Transit Visualization System installation and monthly service and maintenance	Basic Hourly Rate	Est Hours Per Month	Estimated Monthly Compensation	Estimated Maximum Annual Compensation
Initial 4-Year Term:							
Year 1 (9/1/13 – 8/31/14)		\$92,386.89	No additional cost	\$52.92	4,335	\$321,795.09	\$3,861,541.08
Year 2 (9/1/14 – 8/31/15)		\$95,066.11	No additional cost	\$54.45	4,335	\$331,106.86	\$3,973,282.32
Year 3 (9/1/15 – 8/31/16)		\$96,872.37	No additional cost	\$55.48	4,335	\$337,378.17	\$4,048,538.04
Year 4 (9/1/16 – 8/31/17)		\$99,294.18	No additional cost	\$56.87	4,335	\$345,825.63	\$4,149,907.56
		Maximum Compensation (Initial 4-Year Term)					\$16,033,269.00
Option Years:							
Option 1	(9/1/17 – 8/31/18) ⁽¹⁾	\$102,273.01	No additional cost	\$58.58	6,470 ²	\$481,285.61	\$5,775,427.32
Option 2	(9/1/18 – 1/31/19) ⁽³⁾	\$105,341.20	No additional cost	\$60.34	6,622	\$504,912.68	\$6,477,588.49
	(21/19 – 8/31/19) ⁽⁴⁾	\$112,898.81	No additional cost	\$68.23	6,622	\$564,717.87	
Option 3	(9/1/19 – 8/31/20) ⁽⁵⁾⁽⁶⁾	\$112,898.81	No additional cost	\$68.23	6,622	\$564,717.87	\$6,776,614.44
Option 4	(9/1/20 – 8/31/21) ⁽⁵⁾⁽⁶⁾	\$112,898.81	No additional cost	\$68.23	6,622	\$564,717.87	\$6,776,614.44
Option 5	(9/1/21 – 8/31/22) ⁽⁵⁾⁽⁶⁾	\$112,898.81	No additional cost	\$68.23	6,622	\$564,717.87	\$6,776,614.44
Option 6	(9/1/22 – 8/31/23) ⁽⁵⁾⁽⁶⁾	\$112,898.81	No additional cost	\$68.23	6,622	\$564,717.87	\$6,776,614.44

⁽¹⁾Option 1 rates reflect a 3% CPI increase over the previous year's rate in accordance with Section 4 of this Exhibit.

⁽²⁾The First Amendment to the Agreement adds new routes and schedules for the North and South Airfields and increases the estimated service hours from 4,335 per month to 6,470 per month.

⁽³⁾Option 2 reflects a 3% rate increase over the previous year's rate in accordance with Section 4 of this Exhibit and an increase to the estimated service hours from 6,470 per month to 6,622 per month.

⁽⁴⁾This Second Amendment to the Agreement reflects an increase to the Monthly Management Fee and Basic Hourly Rate of approximately 7.17% and 13.08%, respectively, if the increase in wages is implemented effective February 1, 2019.

⁽⁵⁾Option 3-6 rates are subject to compensation adjustments pursuant to Section 4 of this Exhibit.

⁽⁶⁾This Agreement is subject to the Federal Regulations applicable to Airport Concession Disadvantaged Business Enterprises (ACDBE) set out in 49 CFR Section 23.75. The term of this Agreement cannot exceed five years without prior approval from the Federal Aviation Administration (FAA). Airport has FAA approval for this Agreement to be effective through August 31, 2019.

2 MAXIMUM COMPENSATION

The maximum amount of compensation to be paid to Contractor shall not exceed Sixteen Million Thirty-Three Thousand Two Hundred Sixty-Nine Dollars (\$16,033,269) for the initial four-year contract term as set forth in Table 1 above. This amount is inclusive of all fees and expenses incurred in performance of the services provided under this Agreement. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the City.

3 COMPENSATION TO OPERATOR

3.1 Basic Rate of Compensation

- 3.1.1 City agrees to pay Contractor in arrears, upon receipt of invoice, a Monthly Management Fee and a Basic Hourly Rate for actual shuttle bus service provided by Contractor for shuttle bus operations. However, the total Maximum Annual Compensation for the first year of the Initial Term shall not exceed the amount designated in this Revised Exhibit C. The Maximum Annual Compensation for subsequent years shall be adjusted upon adjustment of the Monthly Management Fee and Basic Hourly Rate in accordance with the terms of this exhibit.
- 3.1.2 The Monthly Management Fee represents costs related to administrative, safety, management and dispatch staff, fixed fleet insurance costs, fixed facility and equipment costs, corporate overhead, and a portion of profit.
- 3.1.3 The Basic Hourly Rate represents costs related to shuttle bus drivers, utility and supervisory staff, support vehicles, bus cleaning and operations related expenses and a nominal profit.
- 3.1.4 Should Contractor be unable to provide Airport approved bus service due to lack of bus availability, City agrees to pay Contractor the Basic Hourly Rate for shuttle bus service while replacement buses are procured.
- 3.1.5 The compensation for the Transit Visualization (TransLoc GPS/AVL) System will be paid to the Contractor as set forth in Table 1.

3.2 Statement of Hourly Costs

On or before the Commencement Date, Contractor shall provide a written statement of the hourly cost components that comprise its cost per hour of Services per Shuttle Bus. The Director shall have the right to review and audit the methods of computation of such hourly costs.

3.3 Monthly Invoice

Operator shall submit a monthly statement to the Director within five (5) days from the end of each month indicating the following:

- 3.3.1 Number of hours of scheduled Shuttle Bus service performed during the month billed at the Basic Hourly Rate; and
- 3.3.2 Number of hours of special service, if applicable.

3.4 Adjustments to Monthly Invoice

Director reserves the right to review and adjust monthly invoices based on information from the Automated Vehicle Identification System or any other available tools and techniques used for monitoring bus service hours. These adjustments will be submitted to the Contractor for review, and Contractor will have five (5) calendar days from date of receipt to respond or demonstrate that stated adjustment did not occur. Director shall review Contractor's evidence as soon as reasonably possible and render a decision sustaining or reversing the adjustment(s). The Director's decision shall be final, and Contractor shall apply adjustment(s) to subsequent monthly invoice.

3.5 Payment

Each installment of compensation computed in accordance with the Basic Hourly Rate, Monthly Management Fee and Optional Transit Visualization System (if applicable) shall be payable in lawful money of the United States to Operator or to such person or at such place as Operator may designate from time to time in writing.

4 CPI ADJUSTMENT

The Contractor's compensation rates shall be subject to adjustment on each anniversary of the performance period. The adjustment shall be calculated as follows:

- 4.1 The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index") for the month of June, published in the month of July. If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term's monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.
- 4.2 If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
- 4.3 The preceding provision of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 3% of the previous term's monthly compensation rate, unless the increase to wages exceeds 3% of the previous term. Contractor must provide wages and benefits information to establish the amount paid to their workers to justify an adjustment that is greater than 3%. In no event will an adjustment greater than 3% be allowed for general and administrative expenses, overhead expenses, and profit.

- 4.4 For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall \$ X (the then expiring term's monthly compensation rate) multiplied by 124/115.