

1 **AGREEMENT**

2 THIS AGREEMENT is entered into as of this _____ day of _____, 2010, by
3 and between the COUNTY OF TULARE, hereinafter referred to as the "County", and ORANGE
4 BELT STAGES, a California Corporation, hereinafter referred to as "Contractor";

5 **WITNESSETH:**

6 WHEREAS, the County desires to operate a public transportation system within the
7 County; and

8 WHEREAS, one phase of such a system will involve providing transportation over fixed
9 routes by common carriers; and

10 WHEREAS, Contractor operates regular routes between fixed points within the County and
11 is equipped to provide the desired services.

12 NOW, THEREFORE, County and Contractor mutually agree as follows:

13 1. **Scope of Work.** Contractor shall provide transit service to the general public
14 within the County along its regular routes and under its regular schedules. County and
15 Contractor have established a pattern of rural stops for the purpose of loading and
16 unloading passengers applicable only on those schedules designed for local, rather than
17 express service, and such stops shall become part of the service provided by Contractor.

18 2. **Compensation.**

19 (a) For each ticket transaction covering a one-way trip that originates and
20 terminates within the County, Contractor shall charge the passenger a reduced fare of
21 \$1.50. For each ticket transaction covering a round trip between two different points
22 within the County, no part of the trip being out of the County, Contractor shall charge
23 the passenger a reduced fare of \$3.00. Upon purchase of a reduced fare ticket, the
24 ticket agent shall complete and sign a purchase form to be supplied by the County, the
25 form of which shall be approved by Contractor. Upon receipt of said form, County
26 shall pay to Contractor for each such reduced fare ticket sold the difference between
27 the regular fare for such trip and the actual fare charged the passenger, as described
28 above. The County may, from time to time, increase the above described reduced fare
29 charged to the passengers. Said increase shall take effect 30 days after written notice
30 is given by the County to Contractor.

31 (b) Contractor shall bill the County once a month for the reduced fare tickets
32 sold during the previous month. Such billing shall be by invoice, the form of which
33 has been approved by the County; and each invoice shall be supported by the
34 purchase forms completed by the ticket agents and shall be subject to a County audit.

1 Any invoices not submitted in the regular course of business shall be submitted by
2 Contractor within 60 days after termination of this Agreement. The County's
3 maximum liability to Contractor under this Agreement shall not exceed the amount of
4 \$15,000; and no charge shall be imposed upon County other than for the reduced fare
5 tickets sold. In the event a reduced fare ticket is not used by a passenger, Contractor
6 agrees to refund any payment made by the County.

7 (c) County will endeavor to pay invoices within 45 days after receipt by the
8 Auditor, subject to questioning by the Auditor of one or more items of said invoice.
9 If the County disputes any item on an invoice for a reasonable cause, or if the County
10 discovers an invoice has been paid in error, County may deduct that disputed item
11 from the payment, but will not delay payment for the undisputed portions. Any
12 invoice not submitted prior to the termination of this Agreement shall be submitted no
13 later than 60 days after termination of this Agreement.

14 3. **Service Changes.** Contractor's rate increases or schedule changes shall not be
15 effective as to County until thirty (30) days after County has received written notice of such
16 proposed increases or changes.

17 4. **Drivers.** The parties shall require that all transit drivers meet all licensing
18 requirements of the State of California.

19 5. **Indemnification-Contractor.** Contractor shall hold harmless, defend and
20 indemnify County, its agents, officers and employees from and against any liability, claims,
21 actions, costs, damages or losses of any kind, including death or injury to any person and/or
22 damage to property, arising out of the activities of Contractor or its agents, officers and
23 employees under this Agreement. This indemnification specifically includes any claims
24 that may be made against County by any taxing authority asserting that an employer-
25 employee relationship exists by reason of this Agreement. This indemnification obligation
26 shall continue beyond the term of this Agreement as to any acts or omissions occurring
27 under this Agreement or any extension of this Agreement, and any claims made against
28 County alleging civil rights violations by City under Government Code section 12920 et
29 seq. (California Fair Employment and Housing Act).

30 6. **Insurance-Employment.** Contractor agrees, during the term of this Agreement,
31 to maintain at its expense all necessary insurance for its officers, employees and agents,
32 including, but not limited to, workers' compensation, disability and unemployment
33 insurance in accordance with state statutory requirements and to simultaneously with the
34 execution of this Agreement provide a certificate of insurance or other evidence of
35 compliance with the Clerk of the Board of Supervisors of the County.

1 **7. Insurance-Liability.** Contractor shall provide and maintain comprehensive
2 general liability and comprehensive automotive liability coverage insurance with a
3 combined single limit of liability coverage of at least \$5,000,000 per occurrence covering
4 all of the activities under this Agreement. Prior to commencing work, the Contractor shall
5 file with the Clerk of the Board of Supervisors of the County certificates evidencing
6 compliance with the above requirements and naming the County and their respective
7 employees, officers and agents as additional insureds; providing that in the event of
8 cancellation or material change of policy, the insurer will give the County no less than
9 thirty (30) days advance written notice of such cancellation or change. Contractor shall
10 provide a complete copy of the insurance policy or policies required herein.

11 **8. Term of Agreement.** The term of this Agreement shall commence on July 1,
12 2010, and shall end either on June 30, 2011, or when the County's cumulative liability
13 under this Agreement reaches \$15,000, whichever shall first occur.

14 **9. Termination.** The right to terminate this Agreement under this provision may be
15 exercised without prejudice to any other right or remedy to which the terminating party may
16 be entitled at law or under this Agreement.

17 (a) Without Cause. Either party shall have the right to terminate this
18 Agreement without cause by giving the other party SIXTY (60) days prior written
19 notice of its intention to terminate pursuant to this provision, specifying the date of
20 termination.

21 (b) With Cause. This Agreement may be terminated by either party should the
22 other party:

- 23 (i) be adjudged a bankrupt, or
- 24 (ii) become insolvent or have a receiver appointed, or
- 25 (iii) make a general assignment for the benefit of creditors, or
- 26 (iv) suffer any judgment which remains unsatisfied for 30 days, and which
27 would substantively impair the ability of the judgment debtor to perform under
28 this Agreement, or
- 29 (v) materially breach this Agreement.

30 For any of the occurrences except item (v), termination may be effected upon
31 written notice by the terminating party specifying the date of the termination. Upon a
32 material breach, the Agreement may be terminated following the failure of the
33 defaulting party to remedy the breach to the satisfaction of the non-defaulting party
34 within FIVE (5) days of written notice specifying the breach. If the breach is not
35 remedied within that FIVE (5) day period, the non-defaulting party may terminate the
36 Agreement on further written notice specifying the date of termination.

1 If the nature of the breach is such that it cannot be cured within a FIVE (5) day
2 period, the defaulting party may, submit a written proposal within that period which
3 sets forth a specific means to resolve the default. If the non-defaulting party consents
4 to that proposal in writing, which consent shall not be unreasonably withheld, the
5 defaulting party shall immediately embark on its plan to cure. If the default is not
6 cured within the time agreed, the non-defaulting party may terminate upon written
7 notice specifying the date of termination.

8 (c) Effects of Termination. Termination of this Agreement shall not terminate
9 any obligations to indemnify, to maintain and make available any records pertaining
10 to the Agreement, to cooperate with any audit, to be subject to offset, or to make any
11 reports of pre-termination contract activities.

12 10. **Notices.** Any notices to be given shall be written and served either by personal
13 delivery or by first class mail, postage prepaid and addressed as follows:

14 County: Director of Transportation
15 Resource Management Agency
16 5961 S. Mooney Blvd.
17 Visalia, CA 93277

18
19 Contractor: Orange Belt Stages
20 2134 E. Mineral King Avenue
21 Visalia, California 93291

22 11. **Integration.** This Agreement constitutes the sole and only Agreement between
23 the parties hereto as to the services to be provided hereunder. Any prior agreements,
24 promises, negotiations or representations as to such services not expressly referred to herein
25 are of no force and effect.

26 12. **Modification.** Except as otherwise specifically provided herein, this Agreement
27 shall be modified or amended only with the prior written consent of the parties.

28 13. **Records.** Contractor shall maintain written records and make written reports as
29 may be required by the County and/or the State Department of Transportation in
30 furtherance of purposes of the Transportation Development Act (Public Utilities Code
31 Section 99200 et seq.) and regulations issued pursuant to such Act. All records shall be
32 maintained on a current and accurate basis, and shall be available, upon request, for
33 inspection by designated officials of the County, State and Federal governments.
34 Contractor shall retain all records pertaining to operation under this Agreement for five (5)
35 years after termination of this Agreement.

36 14. **Independent Contractor Status.** This agreement is entered into by both parties
37 with the express understanding that Contractor will perform all services required under this

1 Agreement as an independent contractor. Nothing in this Agreement shall be construed to
2 constitute the Contractor or any of its agents, employees or officers as an agent, employee
3 or officer of the County.

4 Contractor agrees to advise everyone it assigns or hires to perform any duty under this
5 Agreement that they are not employees, agents or officers of County. Contractor shall be
6 solely responsible for determining the means and methods of performing the specified
7 services, and County shall have no right to control or exercise any supervision over
8 Contractor as to how the services will be performed. Notwithstanding this independent
9 contractor relationship, County shall have the right to monitor and evaluate the
10 performance of Contractor to assure compliance with its requirements.

11 **15. Legal Operation.** Contractor shall carry out its obligations under this Agreement
12 in full compliance with all applicable federal, state and local laws, ordinances, rules and
13 regulations.

14 **16. Construction.** This Agreement reflects the contributions of both parties and
15 accordingly the provisions of Civil Code section 1654 shall not apply to address and
16 interpret any uncertainty.

17 **17. Governing Law.** This Agreement shall be interpreted and governed under the
18 laws of the State of California without reference to California conflicts of law principles.
19 Any litigation arising out of this Agreement shall be brought in Tulare County California.

20 **18. Conflict with Laws or Regulations/Severability.** This Agreement is subject to
21 all applicable laws and regulations. If any provision of this Agreement is found by any
22 court or other legal authority, or is agreed by the parties, to be in conflict with any code or
23 regulation governing its subject, the conflicting provision shall be considered null and void.
24 The remainder of the Agreement shall continue in full force and effect.

25 **19. Headings.** Section headings are provided for organizational purposes only and do
26 not in any manner affect the scope, meaning or intent of the provisions under the headings.

27 **20. No Third Party Beneficiaries.** Unless specifically set forth, the parties to this
28 Agreement do not intend to provide any other party with any benefit or enforceable legal or
29 equitable right or remedy.

30 **21. Waivers.** The failure of either party to insist on strict compliance with any
31 provision of this Agreement shall not be considered a waiver of any right to do so, whether
32 for that breach or any subsequent breach. The acceptance by either party of either
33 performance or payment shall not be considered to be a waiver of any preceding breach of
34 the Agreement by the other party.

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1 secretary, any assistant, the chief financial officer,
2 or any assistant treasurer; **unless** the contract is also
3 accompanied by a certified copy of the Board of
4 Directors resolution authorizing the execution of the
5 contract."