

1 **AGREEMENT**

2 THIS AGREEMENT is entered into as of this ____ day of _____, 2011, 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 the County fixed
21 route fare, currently \$1.50. For each ticket transaction covering a round trip between
22 two different points within the County, no part of the trip being out of the County,
23 Contractor shall charge the passenger a County fixed route fare, currently \$3.00.
24 Upon purchase of a fare ticket, the ticket agent shall complete and sign a purchase
25 form to be supplied by the County, the form of which shall be approved by
26 Contractor. Upon receipt of said form, County shall pay to Contractor for each such
27 reduced fare ticket sold the difference between the regular fare for such trip and the
28 actual fare charged the passenger, as described above. The County may, from time to
29 time, increase the above described reduced fare charged to the passengers. Said
30 increase shall take effect 30 days after written notice is given by the County to
31 Contractor.

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

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

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

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

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

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

31 6. **Insurance-Employment.** Contractor agrees, during the term of this Agreement,
32 to maintain at its expense all necessary insurance for its officers, employees and agents,
33 including, but not limited to, workers' compensation, disability and unemployment
34 insurance in accordance with state statutory requirements and to simultaneously with the
35 execution of this Agreement provide a certificate of insurance or other evidence of
36 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. **Base Term of Agreement.** The term of this Agreement shall commence on July
12 1, 2011, and shall end either on June 30, 2012, or when the County's cumulative liability
13 under this Agreement reaches \$15,000 annually whichever shall first occur.

14 8.1 **Option Term.** In consideration of the herein agreement, Contractor hereby grants
15 the below option, exercisable in writing at County's sole election, any time on or before the
16 date specified herein and as follows:

17 A. Description – County may extend the services provided by Contractor under this
18 Agreement for the prices and terms specified hereafter.

19 B. Price – The option term shall be in accordance with the base terms of the
20 Agreement.

21 C. Option Exercise Dates – On or before April 1, 2012 for an initial one (1) year
22 extension, and on or before April 1, 2013 for a second one (1) year extension.

23 D. Term - Two one (1) year extensions, July 1, 2012 through June 30, 2013, and July
24 1, 2013 through June 30, 2014.

25 It is mutually understood and agreed that all work performed and services provided
26 under the exercised option shall be in strict compliance with all of the requirements of the
27 Agreement as such may be amended from time to time, in writing, by mutual Agreement of
28 the parties.

29 It is mutually understood and agreed that County is under no obligation whatsoever to
30 exercise this option and that no representations have been made by County committing it to
31 such exercise of this option.

32 The exercise of such option may be made by amendment to this Agreement. Should
33 County elect to exercise said option, and upon Contractor's acceptance of County's election
34 to exercise the option herein described, the parties shall execute a written amendment to
35 this Agreement.
36

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

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

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

- 10 (i) be adjudged a bankrupt, or
11 (ii) become insolvent or have a receiver appointed, or
12 (iii) make a general assignment for the benefit of creditors, or
13 (iv) suffer any judgment which remains unsatisfied for 30 days, and which
14 would substantively impair the ability of the judgment debtor to perform under
15 this Agreement, or
16 (v) materially breach this Agreement.

17 For any of the occurrences except item (v), termination may be effected upon
18 written notice by the terminating party specifying the date of the termination. Upon a
19 material breach, the Agreement may be terminated following the failure of the
20 defaulting party to remedy the breach to the satisfaction of the non-defaulting party
21 within FIVE (5) days of written notice specifying the breach. If the breach is not
22 remedied within that FIVE (5) day period, the non-defaulting party may terminate the
23 Agreement on further written notice specifying the date of termination.

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

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

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

3 County: Director
4 Resource Management Agency
5 5961 S. Mooney Blvd.
6 Visalia, CA 93277

7
8 Contractor: Orange Belt Stages
9 2134 E. Mineral King Avenue
10 Visalia, California 93291

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

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

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

25 14. **Independent Contractor Status.** This agreement is entered into by both parties
26 with the express understanding that Contractor will perform all services required under this
27 Agreement as an independent contractor. Nothing in this Agreement shall be construed to
28 constitute the Contractor or any of its agents, employees or officers as an agent, employee
29 or officer of the County.

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

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

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

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

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

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

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

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

25 **22. Further Assurances.** Each party agrees to execute any additional documents and
26 to perform any further acts which may be reasonably required to effect the purposes of this
27 Agreement.

28 **23. Assignment/Subcontracting.** No part of this Agreement may be assigned or
29 subcontracted by Contractor without the prior written consent of County.

30 **24. Assurances of Non-Discrimination.** Contractor expressly agrees that it will not
31 discriminate in employment or the provision of services on the basis of any characteristic or
32 condition upon which discrimination is prohibited by state or federal law or regulation.
33
34
35
36

1 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the
2 date first above written.

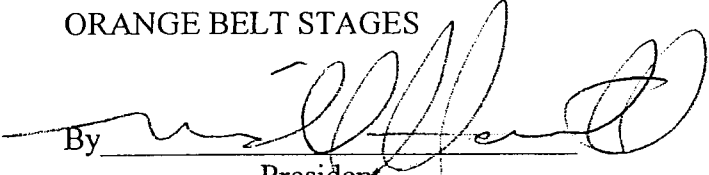
3
4
5
6 COUNTY OF TULARE
7

8
9 By _____
10 Chairman, Board of Supervisors
11 "COUNTY"

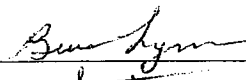
12 ATTEST:
13 County Administrative Officer/
14 Clerk of the Board of Supervisors
15

16
17 By _____
18 Deputy
19

20 ORANGE BELT STAGES
21

22 By  _____
23 President
24 "CONTRACTOR"
25

26 Approved as to form:
27 County Counsel
28

29 By  _____
30 Secretary
31 CONTRACTOR
32

33 By  6/7/2011
34 Deputy 2011538
35
36
37
38
39
40

"Corporation Code Section 313 requires that contracts with a corporation shall be signed by the (1) chairman of the Board, the president or any vice-president and (2) the secretary, any assistant, the chief financial officer, or any assistant treasurer; unless the contract is also accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract."

