

FOURTH AMENDMENT
to
AGREEMENT
between
BROWARD COUNTY
and
CITY OF FORT LAUDERDALE
for
COMMUNITY BUS SERVICE

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and

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COMMUNITY BUS SERVICE

This is a Fourth Amendment to the Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

CITY OF FORT LAUDERDALE, a municipal corporation organized and existing under the laws of the state of Florida, its successors and assigns, hereinafter referred to as "CITY."

WHEREAS, COUNTY and CITY entered into an Interlocal Agreement for Community Bus Service for the provision of public transportation services within the CITY; and

WHEREAS, the parties entered into a Second Amendment which included the lease of Vehicles to perform additional public transportation services to the Broward County Judicial Complex during the construction and renovation; and

WHEREAS, the parties entered into a Third Amendment to provide for additional service on the Las Olas Route and the Convention Connection Route and added the Galt Ocean Mile Route; and

WHEREAS, the agreement and the amendments shall be referred to collectively as the "Agreement"; and

WHEREAS, the parties entered into a separate agreement for Convention Connection Shuttle Service dated June 15, 2010, which expires on September 30, 2013 ("Convention Connection Agreement"); and

WHEREAS, pursuant to the Convention Connection Agreement, COUNTY leased to CITY two (2) vehicles to provide public transportation services as described in the Convention Connection Agreement; and

WHEREAS, CITY has requested that the two (2) vehicles from the Convention Connection Agreement be included in the lease of vehicles addressed in this Agreement; and

WHEREAS, the parties desire to amend the Agreement to add additional routes and five (5) additional vehicles (two (2) of the five (5) vehicles were previously leased to CITY in the Convention Connection Agreement) and eliminate the Courthouse Loop Expansion, NOW, THEREFORE,

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CITY agree as follows:

1. That the recitals set forth above are true and correct and made a part of this Amendment.
2. That Article 2, "Scope of Services," Section 2.1 and subsections 2.1.1 and 2.1.2, are hereby amended to read as follows:
 - 2.1 CITY shall provide public transportation services within the CITY at the locations and according to schedules contained in revised Exhibit "A," and ~~Exhibit "A-1", "Courthouse Loop Expansion,"~~(~~Exhibit "A-1" shall include the Courthouse Loop Expansion public transportation service~~), a copy of which is attached hereto and made a part hereof. The provision of transportation services may be performed by CITY through the use of its employees or CITY may enter into a contract with a third party to perform the services. In the event CITY contracts with a third party, CITY shall remain fully responsible hereunder and shall ensure that its contractor complies at all times with each and every term, condition, duty, and obligation set forth herein. Any changes to revised Exhibit "A" ~~or Exhibit "A-1"~~ made by CITY shall be effective only upon the written consent of Contract Administrator.

The services to be provided shall include the following:

- 2.1.1 Service shall be provided a minimum of twenty four (24) hours a week to ~~certain~~ the locations and at the scheduled intervals as listed on the attached revised Exhibit "A," and ~~service shall be provided a minimum of twenty four (24) hours a week to the locations and at the scheduled intervals as listed on Exhibit "A-1."~~ CITY acknowledges and agrees that it shall not deviate or make changes to the service routes established in revised Exhibit "A."

~~and Exhibit "A-1," including but not limited to a decrease or increase in revenue service hours, without the prior written consent of Contract Administrator. CITY further acknowledges and agrees that compensation under this Agreement is as set forth in Section 5.1, and COUNTY shall not compensate CITY for any deviations or changes from the service routes established in revised Exhibit "A" and Exhibit "A-1" without the prior written consent of Contract Administrator.~~

~~The foregoing, notwithstanding, the parties acknowledge that the need for Community Bus Service during the construction and renovation of the Broward County Judicial Complex is not completely known at the present time and adjustments may need to be made to the Courthouse Loop Expansion transportation service as set forth on Exhibit "A-1" during the term of this Second Amendment. Adjustments to the Courthouse Loop Expansion transportation service may include modifications to the scheduled service times (i.e. start/stop time), scheduled intervals, reduction in the number of vehicles, addition of revenue service hours, and/or deletion of revenue service hours. Adjustments to the Courthouse Loop Expansion transportation service shall be made pursuant to the procedures set forth below:~~

- ~~a. Contract Administrator may require CITY to provide additional revenue service in an amount not to exceed twenty (20) hours per week. The request for additional Courthouse Loop Expansion transportation service shall be in writing and shall be provided to CITY by Contract Administrator, not less than ten (10) business days prior to the onset of the additional transportation service. CITY, or its third party contractor, shall begin providing the additional Courthouse Loop Expansion transportation service on the date and time set forth in the notice from Contract Administrator. In the event that the request for additional Courthouse Loop Expansion transportation service requires CITY, or its third party contractor, to hire additional drivers to perform the additional Courthouse Loop Expansion transportation service, CITY shall provide written notice of such fact to COUNTY. CITY's notice to COUNTY shall indicate when the additional Courthouse Loop Expansion will start; provided, however, the transportation services shall start not more than thirty (30) calendar days from the date that Contract Administrator provided written notice to CITY requiring the additional Courthouse Loop Expansion transportation service. Notice shall be as set forth in Section~~

~~10.7 of the Agreement. The additional transportation service may be permanent or temporary.~~

- ~~b. Contract Administrator may require CITY to reduce the Courthouse Loop Expansion scheduled transportation service from five (5) days a week to two (2) days a week or reduce the number of vehicles performing the service. The request for the reduction in Courthouse Loop Expansion transportation service shall be in writing and shall be provided to CITY, not less than thirty (30) calendar days prior to the onset of the reduced transportation service. Notice shall be as set forth in Section 10.7 of the Agreement. CITY, or its third party contractor, shall begin providing the reduced Courthouse Loop Expansion transportation service on the date and time set forth in the notice from Contract Administrator. The reduction in the Courthouse Loop Expansion transportation service may be permanent or temporary.~~

- ~~c. Contract Administrator may require CITY to make modifications to the scheduled service times (i.e. start/stop time) and scheduled intervals ("Schedule Modifications"). The request for Schedule Modifications shall be in writing and shall be provided to CITY, not less than seven (7) calendar days prior to the onset of the Schedule Modifications. Notice shall be as set forth in Section 10.7 of the Agreement. CITY, or its third party contractor, shall begin providing the Schedule Modifications to Courthouse Loop Expansion transportation service on the date and time set forth in the notice from Contract Administrator. The Schedule Modifications to the Courthouse Loop Expansion transportation service may be permanent or temporary.~~

~~The Courthouse Loop Expansion transportation service shall not operate on Official Court Holidays. For the purposes of this Second Amendment, Official Court Holidays shall mean New Year's Day, Martin Luther King, Jr. Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Rosh Hashanah, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day. In addition, Contract Administrator may suspend the Courthouse Loop Expansion transportation service in the event of a hurricane, earthquake, fire, flood, or other natural phenomenon of a severe and unusual nature, act of a public enemy, epidemic, quarantine or any other event that prevents the operation of the Broward County Judicial Complex. In the event that service is suspended, as authorized herein, the notice by~~

~~Contract Administrator may be verbal and the notice shall be confirmed in writing when conditions permit.~~

- 2.1.2 ~~No fare shall be charged by CITY for the public transportation services known as the Courthouse Loop and the Courthouse Loop Expansion.~~

~~For the other transportation service routes set forth on Exhibit "A," if If CITY determines a fare to be appropriate prior to beginning service under the terms of this Agreement, CITY may institute such fare; provided, however, CITY shall comply with all applicable provisions, regulations, and directives of the U.S. Department of Transportation and the Federal Transit Administration, including but not limited to 49 U.S.C. 5307 and U.S. Department of Transportation, Federal Transit Administration Circular FTA C 4702.1B, that such fare shall never exceed one half (1/2) of the fixed-route, full adult COUNTY fare. A public hearing shall be held by the CITY prior to the institution of any proposed fare or fare increase. COUNTY must approve, in writing, the imposition of a fare prior to implementation by CITY.~~

3. For the purpose of providing the public service transportation as set forth on revised Exhibit "A," Section 2.6 "Equipment," shall be amended to include the following:

2.6 EQUIPMENT

2.6.1 CITY shall utilize ~~five (5)~~ three (3) CITY-owned wheelchair accessible, passenger Vehicle(s), as described on revised Exhibit "E" to be used in regular route service as set forth in revised Exhibit "A." Such Vehicle(s) shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations.

2.6.2 COUNTY shall lease to CITY ~~three (3)~~ eight (8) wheelchair accessible, passenger Vehicle(s), as described on revised Exhibit "E," as amended, to be used in public transportation service as set forth in revised Exhibit "A," Exhibit "A-1" and for no other purpose. The lease of the Vehicles described on revised Exhibit "E" as the Convention Connection Agreement Vehicles shall become effective on October 1, 2013. The eight (8) Vehicles shall be leased to CITY in "as is condition." ~~Such Vehicle(s) shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations.~~ These Vehicle(s) shall be leased to CITY for Ten Dollars (\$10.00) per Vehicle, per year.

2.6.3 Vehicle(s) used by CITY, or its subcontractor, to provide services pursuant to this Agreement, shall be equipped with bicycle racks or similar device used to transport non-motorized bicycles.

4. That Article 5, "Financial Assistance," Section 5.1, is hereby amended to read as follows:

5.1 COUNTY agrees to pay CITY Fifteen Dollars (\$15.00) per revenue service hour, per Vehicle in revenue service for those Vehicles performing the services set forth on revised Exhibit "A" under the terms of this Agreement, ~~during the term of this Agreement.~~

~~For those Vehicles performing the services set forth on Exhibit "A-1," COUNTY agrees to pay CITY, the actual rate per revenue service hour, per vehicle that CITY is contractually obligated to pay, and is paying to, its third party transportation provider "the Actual Rate." The Actual Rate shall include any fuel adjustment (either up or down) that is charged/credited to CITY but shall not contain any other mark up. At the onset of this Second Amendment, the Actual Rate is Forty Three Dollars and fifty two cents (\$43.52) per revenue service hour, per Vehicle. In the event that Actual Rate is changed, CITY shall document the Actual Rate change in a form acceptable to COUNTY. In addition, COUNTY agrees to pay an additional 10% (currently \$4.35) per revenue hour to cover the administrative costs incurred by the TAM less the revenue generated by TMA through advertisements on the three (3) Vehicles performing the Courthouse Loop Expansion transportation services up to an amount not to exceed the 10% administrative cost.~~

CITY shall submit its vehicle revenue service hour calculations on the form and pursuant to instructions prescribed by Contract Administrator as set forth in Exhibit "F," as amended, attached hereto and made a part hereof. The funds addressed herein shall be used by CITY solely for the purpose of maintaining, operating, and properly equipping the vehicle(s) and for no other purpose. On the effective date of this Agreement, COUNTY shall pay CITY, in advance, the anticipated amount due through the first quarter. All payments for subsequent quarters, if applicable, shall be paid in advance on a quarterly basis.

5.1.1 Advance payments made by COUNTY to CITY for any quarter based on projected revenue service hours will be adjusted by COUNTY in future quarterly payments based on the actual revenue hours achieved.

5.2 The name of the official payee to whom COUNTY shall issue checks shall be the CITY OF FORT LAUDERDALE.

5.3 METHOD OF BILLING AND PAYMENT

5.3.1 CITY shall submit invoices for compensation, in advance, on a quarterly basis. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and include a list of all Florida commercial licensed drivers, including drivers' license numbers, for each individual permitted to operate the Vehicle(s) under this Agreement. Each invoice must be submitted on the form and pursuant to instructions prescribed by Contract Administrator as set forth in Exhibit "F," as amended, attached hereto and made a part hereof.

5. That Article 9, "Termination," is amended by revising Section 9.5 to read as follows:

9.5 Upon termination of this ~~Second Amendment~~ Agreement for whatever reason, CITY shall return the Vehicles leased herein to COUNTY within seven (7) days of the termination date. CITY shall return the Vehicles to COUNTY in the condition they were received at the onset of this ~~Second Amendment~~ Agreement, normal wear and tear excepted. CITY's obligation to return the Vehicles to COUNTY in the condition they were received shall include the removal of any painting or wrapping of the Vehicles for advertisement purposes. Any costs necessary to restore and/or prepare the Vehicles for return to COUNTY shall be the sole responsibility of CITY. COUNTY, through its Maintenance Transit Manager, shall have the right to inspect and to approve the condition of the Vehicles prior to acceptance and should the Maintenance Transit Manager determine that the Vehicles are not in the proper condition, CITY shall at its sole cost and expense remedy any and all deficiencies identified by the Maintenance Transit Manager.

6. That paragraph 8 of the Second Amendment is deleted in its entirety.

7. Exhibit "A," revised Exhibit "E," and revised Exhibit "F" of the Agreement shall be replaced in their entirety by revised Exhibit "A," revised Exhibit "E," and revised Exhibit "F," attached hereto and made a part hereof.

8. The Agreement shall remain in full force and effect except as specifically amended herein. In case of a perceived conflict between the terms of the Agreement and this Fourth Amendment, the terms of this Fourth Amendment shall govern.

9. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

10. Preparation of this Fourth Amendment has been a joint effort of COUNTY and CITY, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
11. Each individual executing this Fourth Amendment on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Amendment, duly authorized by all necessary and appropriate action to execute this Amendment on behalf of such party and does so with full legal authority.
12. Multiple copies of this Fourth Amendment may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.
13. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this document that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Second Amendment on the respective dates under each signature: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the ____ day of _____, 2013, and CITY OF FORT LAUDERDALE, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
(Date)

By _____
Sharon V. Thorsen (Date)
Senior Assistant County Attorney

APPROVED:

Noel M. Pfeffer, Deputy County Attorney

FOURTH AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE FOR COMMUNITY BUS SERVICE

CITY

WITNESSES:

Witness Print Name

Witness Print Name

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida:

By _____
JOHN P. "JACK" SEILER, Mayor

By _____
LEE R. FELDMAN, City

ATTEST:

JONDA K. JOSEPH, City Clerk

Approved as to form:

City Attorney

SVT:slw
CommunityBusFortLauderdaleFourthAmendment2013
9/9/13
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