

**PART B: SCOPE OF WORK/
PURCHASE OF FIXED ROUTE AND ADA PARATRANSIT SERVICE AGREEMENT**

WHEREAS, the **Borough of Pottstown**, hereinafter referred to as the **“Borough,”** desires to promote and provide public transit services Montgomery County and Chester County; and

WHEREAS, the Borough is empowered to provide transportation to the general public; and

WHEREAS, the Borough desires to provide fixed-route, and ADA compliant accessible, affordable transportation and para-transportation to the general public, including, without limitation, persons with disabilities and senior citizens age 65 and over; and

WHEREAS, _____, hereinafter referred to as "Contractor" is a public transportation provider; and

WHEREAS, Contractor is prepared to furnish such transportation services in the form of fixed-route open to the entire general public and ADA compliant paratransit to eligible individuals in accordance with applicable legal guidelines and regulations of the Federal Transit Administration and the Pennsylvania Department of Transportation;

WHEREAS, the Borough desires to have Contractor provide public transportation services as described in this Agreement; and

WHEREAS, Contractor has agreed that it will provide said public transportation services in a reasonable and workmanlike manner.

NOW THEREFORE, as of the 1st day of July, 2020, in furtherance of the above desires, it is agreed by and between the parties intending to be legally bound hereby as follows:

GENERAL PROVISIONS

1. **Agreement Term** - This Agreement shall be effective as of July 1, 2020, and shall terminate June 30, 2023, unless terminated prior to the expiration of this Agreement in accordance with the terms and conditions set forth herein. The term of this Agreement may be extended by the Borough at its sole discretion for up to two extensions of one year each on the same terms and conditions as set forth herein. All references to Attachments herein refer to Attachments to the RFP dated January 24, 2020 in connection with which the Contractor submitted a proposal on which this Agreement is based.
2. **Scope of Work** – The Borough hereby engages Contractor and Contractor agrees to perform the services, hereinafter described, subject to the general policies and directions of the Borough and to the provisions and requirements of this Agreement. Contractor shall, upon receiving the Borough’s notice to

proceed, do all things necessary to manage, operate, and maintain the services described in this Agreement, including but not limited to:

- a. Undertake day-to-day operation of the Borough's vehicles in accordance with schedules established by the Borough;
- b. Employ and supervise all personnel, including managers, supervisors, vehicle operators, mechanics and other maintenance personnel;
- c. Provide management and supervision with respect to such operations and personnel;
- d. Administer training, drug and alcohol testing and safety programs;
- e. Provide a maintenance facility and undertake all required maintenance and repair of all vehicles and equipment, including without limitation all vehicle stop signage and shelters;
- f. Process warranty claims for the Borough vehicles;
- g. Assist in public relations and promotions, including without limitation installing advertising, if any, and the Borough signage on vehicles, stop signs and shelters; distributing to passengers at no charge, schedules containing fares and time points for all operated routes; ensuring that appropriate signage is installed in buses, at transit facilities, and bus stop locations; and providing a schedule of time points, for fixed routes to individuals wishing to use the service who may board at predetermined times and locations.
- h. Provide security information to passengers and other public awareness materials.
- i. Provide for at least two telephone lines and acceptable telephone equipment that will be solely dedicated to the transit service; ensure that adequate staff is assigned to answering these phone lines in a professional and courteous manner and are able to give accurate information to the public about the service and to take, record, and transmit requests to accommodate people with disabilities;
- j. Provide translation service into Spanish must also be provided on request.
- k. Provide a separate (TDD) or other accommodation for hearing impaired persons.
- l. Coordinate the dissemination of customer service surveys and provide reporting to the Borough.
- m. Implement a comprehensive Safety & Security Plan, to include accident and incident management, and to coordinate with local emergency authorities, Montgomery and Chester Counties, PennDOT, FTA, and other agencies in implementing safety measures;
- n. Prepare reports and provide information as required by the Borough, including without limitation those reports described on Attachment K;
- o. Establish a Dress-Code Policy acceptable to the Borough;
- p. Provide all equipment, parts and supplies unless specifically to be provided by the Borough under this Agreement;
- q. Collect of all passenger fares and deposit all revenues in accordance with policies and procedures approved by the Borough.

3. **Compliance with Laws and Regulations** - Contractor agrees to comply with all applicable laws, rules, and regulations; including without limitation those of the United States, the Commonwealth of Pennsylvania, Montgomery County, Chester County and local municipalities relating directly or indirectly to the transportation services to be provided under this Agreement.
4. **Conflicts of Interest** - It is agreed that all conflicts of interest will be prohibited. No Borough Board Member nor any member of the immediate family of any Borough Board Member nor any Borough management/supervisory employee, nor any member of the immediate family of any Borough management/supervisory employee shall be in any way interested in this Agreement nor in the business of Contractor as a principal or as an employee, nor shall any Borough Board Member nor member of the immediate family of any Borough Board Member nor Borough management/supervisory employee, nor member of the immediate family of any Borough management/supervisory employee shall receive any compensation, salary, commission or other payment from Contractor.
5. **Cooperative Agreements** - Contractor agrees to abide by cooperative agreements between the Borough and other counties or transit authorities, including without limitation the agreement between the Borough and Southeastern Pennsylvania Transportation Authority and to abide by the terms and conditions of such agreement.
6. **Contract Approval and Funds** - This Agreement may be subject to approval by the United States Department of Transportation and the Pennsylvania Department of Transportation. The Borough will be bound by the terms of this Agreement only to the extent funds are available. This Agreement's funds and Contractor payment rely on Federal, State and local funding and participation. This Agreement is conditioned upon the approval and release of those funds. By executing this Agreement, Contractor acknowledges that any Agreement or notice(s) communicated from the Borough will be considered to be null and void if at any time, for whatever reason, the Federal and State funds are not released in the full purchase amount.
7. **Assignment/Subcontracting** - Contractor certifies that no assignment or subcontracting of Contractor's rights or obligations under this Agreement shall be permitted without prior written authorization from the Borough, and any attempted assignment or subcontracting without such written authorization shall be void. The Borough shall expect all requirements of this Agreement to be fulfilled by Contractor. All applicable requirements of this Agreement shall be required of any assignees/subcontractor(s) that have been approved in writing by the Borough. The Borough's approval of any assignment, subcontract, award or delegation shall not release Contractor of any obligation under the Agreement. Contractor shall be fully responsible for the acts and omissions of the

subcontractors, and of persons either directly or indirectly employed by Contractor. Contractor is responsible for the acts and omissions of persons that it directly employs. Nothing contained in this Agreement shall create any contractual relationship between any assignee/subcontractor and the Borough.

8. **Complete Contract** - It is agreed that this document including all Exhibits and Attachments, Contractor's Proposal, the Request for Proposal for the Provision of Fixed Route and Paratransit Public Transportation Service (all reviewed and executed by the Borough), the Clauses and Procedures, Federal and State clauses and certifications and all Addendums to the RFP are incorporated herein, constituting the entire Agreement and understanding between parties hereto with respect to the subject matter hereof and that no other agreement, understanding, representation, or warranty expressed or implied, whether oral or written, exists which in any way limits, extends, or alters any provisions hereof. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. The Borough's failure to insist in one or more instances upon the performance of any term or terms of the Agreement shall not be construed as a waiver or relinquishment of the Borough's right to such performance by Contractor.

9. **Force Majeure** – Any delay or failure of performance by either party shall not constitute a default or give rise to any claims for damages if and to the extent the failure is primarily caused by any act, event or condition reasonably beyond that party's control and adversely affecting its ability to perform its obligations, including but not limited to:
 - a. Acts of God, lightening, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, failure of utilities, flood, nuclear radiation, or any other act by third parties that interferes with operations.
 - b. Condemnation or other taking by any government body, change in any applicable law, rule, regulation, ordinance, or permit condition not in effect as of the date hereof.
 - c. Any order, judgment, action or determination of any federal or state court administrative Borough or government body.

10. **Meetings** – Upon request, Contractor shall, at its own expense, attend Borough Board meetings, public meetings and other meetings to provide information concerning the operation of transit services under this Agreement. The General Manager or a supervisor designated by the General Manager shall meet with Borough transit staff at least monthly and at times and locations to be determined by the Borough. A meeting shall be held quarterly with all staff, including administrators, managers, drivers, and mechanics to discuss bus service problems and improvements, and to provide basic training including safety, security, procurement ADA, Title VI, Drug & Alcohol Program, Drug Free Workplace Program, Customer Service, and related programming. Meeting minutes shall be submitted to the Borough monthly and annually.

11. Performance Bond - Contractor shall procure, at its sole expense, and keep in full force and effect throughout the Agreement Term, a performance bond equal to 10% of the cost of the service for the then current Agreement Year, excluding capital costs, in favor of the Borough and executed by a corporate surety authorized to conduct business as a surety in the State of Pennsylvania. The bond shall be updated or renewed on an annual basis on the anniversary of the Commencement Date (July 1).

Contractor shall provide a fully notarized performance bond to the Borough within seven days after Agreement Award. Contractor shall provide any necessary updates, renewals, or modifications to the Performance Bond on an annual basis (on or before July 1st) thereafter or before each anniversary date of Contract Award for so long as a contract is active.

The performance bond shall be conditioned upon faithful performance by Contractor of the terms and conditions of this Agreement and shall be renewed to provide for continuing liability in the amount set forth in subsection (a) notwithstanding any payment or recovery thereon. Such bond shall not be subject to cancellation except after notice to the Borough by registered mail at least 45 days prior to the date of cancellation. Failure to maintain such surety bond shall be a default of this Agreement and shall, at the Borough's discretion; result in cancellation of this Agreement.

If the Borough determines that Contractor has substantially failed to keep and perform the covenants, conditions, and obligations under in this Agreement and the RFP, then the Borough may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, the Borough Designee shall notify the Surety and give the Surety an opportunity to perform within a reasonable time. If the Surety fails to perform, the Borough Designee shall perform and assess the Surety on its bond for the cost of such performance. The cost of such performance includes the costs of all labor and equipment reasonably necessary to perform the work in Contractor's absence.

The performance bond shall remain in effect until the later of (1) the Termination Date of this Contract; or (2) the resolution to the satisfaction of the Borough of all issues arising under the vehicle turnover audit conducted under Section 53.

12. Confidentiality – Any and all reports, information or data of whatever nature provided to, or prepared, generated or assembled by Contractor in connection with the performance of the Agreement shall not be made available to any individual or organization outside Contractor without the prior written approval of the Borough, unless such is required by a court process. Contractor shall promptly notify the Borough of any request for such information in a court proceeding.

OPERATIONS

13. **General Requirements** – Contractor shall provide the necessary management, technical and operating services for the operation of fixed-route and para-transit transportation services as specified by the Borough. Contractor shall assist and cooperate with the Borough in meeting the Borough’s goals of providing quality public transportation services. Unless specifically identified as being provided by the Borough in this Agreement, Contractor shall furnish all facilities, equipment, personnel and services required to manage and operate the transportation services.
14. **Services to be provided** – Using vehicles and equipment provided by the Borough (and supplemented to the extent necessary by vehicles owned or leased by Contractor), Contractor shall operate fixed-route, and para-transit and service as specified by the Borough. Fixed-route bus service shall be operated in strict accordance with the operating days, operating hours, routes and schedules detailed in Attachment B as such attachment may be amended from time to time by the Borough at its sole discretion. Contractor shall provide such service in a safe, professional, and courteous manner. The Borough reserves the right to make route, schedule and fare revisions, additions, and reductions as it deems in the best interest of the Borough throughout the term of this Agreement. Contractor shall also provide special transportation services as directed by the Borough. Special transportation services include shuttle service for special events within the Borough’s service area that are open to the general public, and the use of vehicles to promote the Borough’s transportation services including parades and vehicle displays. The transportation service provided by Contractor shall meet the following minimum fixed-route operating requirements:
- a. Contractor is authorized to deviate from established routes when necessary to avoid construction, detours, and vehicles or other obstructions in the public right-of-way on roadways capable and endorsed for applicable weight and height restrictions for each vehicle. All deviations are to be reported to the Borough immediately.
 - b. Contractor shall notify the Borough if a fixed-route is operating more than fifteen (15) minutes behind schedule and take steps to restore on-time performance.
 - c. Contractor shall develop operator work schedules to assure that reliable service is provided using the type of vehicle recommended by the Borough for a specific route. Contractor is responsible for having sufficient operators, maintenance, supervisory, and other personnel available at all times the Borough services are being provided including the requirement to assure back-up vehicle operators are adequately available.
 - d. A supervisor is required to be on duty or available at all times when buses are in service or are preparing to go into service. The supervisor will be required to evaluate employee’s readiness and ability to perform

scheduled work – ensuring that each employee is not experiencing any impairment that will have any possible outcome on the delivery of services or vehicle maintenance. Supervisor must also monitor and respond to radio communications and communicate with operators, supervisors, and maintenance personnel concerning operations, service, safety and customer service issues.

- e. Contractor shall comply with the operating and other requirements described in the Borough Operations Information/Policies & Procedures found in Attachment H and any revisions to such documents that may be made.
 - f. Fixed Route Fare Collection, Ticket/Pass Sales, and Senior Citizens - Fares and other fees shall be collected on board vehicles wherein fixed route bus fareboxes are installed. For these farebox-installed vehicles, cash boxes will be removed from the vehicles by Contractor personnel and deposited by Contractor into the backend onsite vaulting systems, twice per week or more if needed. Contractor personnel will remove all cash from the vault and will transport it to the bank. The Borough reserves the right to have designated representatives monitor cash collection procedures. Contractor agrees that the Borough may modify fare collection policies and procedures during the term of this Agreement.
 - g. In the event that a farebox is not functioning or present in a vehicle, operators are required to collect exact fares (no change given) and must manually record an accurate account of data/ridership. Therefore, back-up manifests for data/ridership collection and a safety cash pouch must be available for use on all vehicles in the event of farebox unavailability.
 - h. Contractor will also assist the Borough with ticket/pass sales on board vehicles to customers through an exact cash process. Ticket/Passes provided to each driver for sale shall be accounted for by appropriate Contractor staff to properly monitor their distribution. Cash collected shall be kept in a safety pouch by the driver and shall be turned in to designated Contractor staff with the appropriate driver trip sheets immediately at the end of each driver run. A purchase stub shall also be kept by the driver for each transaction and turned in with ticket sales in order to monitor and account for each purchase. Ticket/Passes shall be provided to Contractor by the Borough. The Borough reserves the right to revise ticket/pass sales procedures.
 - i. Contractor shall cause its operators to accurately and truthfully count each and all senior citizens who receive free transportation and to report such number to the Borough.
 - j. See Attachment B for Projected Fixed Route hours and service days.
15. **Service Changes** - the Borough reserves the sole right to add, delete, or restructure service, fares, or routes at its sole discretion. The Borough agrees to provide Contractor with sufficient written notice and instruction in order to accommodate any such service change. A written request by the Borough to Contractor, to reduce the level of fixed-route service shall not be construed as a

partial termination of the Agreement; unless the weekday scheduled revenue hours for fixed-route service is reduced below seventy-five percent (75%) of the initial level. Neither Contractor nor its employees nor employees of any approved assignee/subcontractor shall make any changes in service, routes, stops or other aspects of services without prior written approval by the Borough.

Pricing for all service changes resulting in increases and/or decreases to the revenue hours operated per year in changes between 5-20% of the yearly total are included in the Agreement. In the event of an increase or decrease in revenue hours per year of more than 20% occurs, the parties will in good faith negotiate an adjustment to the pricing.

16. **Operators** - All vehicle operators shall, at all times during performance of their duties, conduct themselves in a professional manner and operate vehicles safely on routes and according to schedules established by the Borough.
- a. Vehicle operators shall greet passengers in a pleasant manner and be sensitive to all passenger needs. Vehicle operators shall minimize conversations with passengers while any vehicle is in motion. Vehicle operators shall assist disabled, elderly, and other needy passengers board/exit the bus as necessary. Vehicle operators shall not discuss aspects of the operations and vehicle maintenance with passengers. Political, religious and cultural view points and debates shall not be discussed in the workplace or on vehicles, and especially not with customers.
 - b. Vehicle operators shall not eat, drink, or use tobacco products while their vehicle is in scheduled service, but may eat or drink nonalcoholic beverages on board while their vehicle is on scheduled break or layovers. The use of tobacco products on vehicles shall be prohibited at all times. Contractor will remove an operator from operating a Borough vehicle and or route if such operator uses tobacco at any time onboard a Borough vehicle.
 - c. Vehicle Operators are prohibited from personal use of any cell phones, tablets or other electronic communication devices while driving such as typing, texting or talking on the phone. Only electronic communication devices authorized for work-related purposes may be used and shall never be used in a manner that would distract from safe operations of the vehicle or for personal purposes.
 - d. Vehicle operators shall properly collect fares, issue transfers and validate transfers and tickets/passes and count senior citizens receiving free transportation according to policies and procedures provided by the Borough and any revisions thereto which may be made during the term of this Agreement.
 - e. Vehicle operators, when requested by the Borough, shall distribute notices and surveys to passengers or otherwise render assistance in any

promotion, special survey, service monitoring or other special project sponsored by the Borough.

- f. Contractor shall require all vehicle operators to complete daily ridership reports if needed, National Transit Database surveys and collect other data and information as required or requested by the Borough, the Pennsylvania Department of Transportation, the United States Department of Transportation, or the Federal Transit Administration for system monitoring and reporting requirements.
17. **Uniform/I.D.** - All vehicle operators shall be neat in appearance and in conformance with a Contractor dress code policy approved by the Borough. The Borough may require that a photo ID badge be worn while on duty.
18. **Emergency Services** - In the event of a declared civil disorder or natural catastrophe, Contractor shall direct the employees to operate as ordered by federal, state, and/or the City, Local or County Civil Authorities. Contractor must also operate services during an Emergency using the protocols established by the Borough.
19. **Communications System** – The Borough vehicles are equipped with two-way radios. The Maintenance and Operating facility provided by Contractor must be equipped with base stations – one in an area designated for administrative/dispatch and one in the maintenance area of the building. Refer to Attachment H for a list of available communications equipment.
- If Contractor, at its own expense, decides to utilize alternative equipment for a communication system, Contractor is required to supply the Borough with the unused equipment and provide information of Contractor equipment and related information in order for the Borough’s personnel to be afforded a means of communication with Contractor’s operators during all service hours if they so choose.
20. **Public Information and Fixed Route Destination Signs**- Contractor agrees to make available on all buses, required signage, timetables, bus schedules, fare schedules, route maps and other public relations materials, not only for routes being run by Contractor but also for other contractors who are operating routes for the Borough and for other transit authorities or organizations that connect with service of the Borough. The Borough will supply all bus schedules, signage and other materials. Contractor is responsible for ensuring that the appropriate materials are adequately supplied and/or displayed on each revenue vehicle.
- a. Contractor shall be responsible for programming all electronic destination signs. All destination sign messages and route directional phrasing must be pre-approved by the Borough at least one business day before destination sign programming occurs.

- b. Contractor must ensure that accurate and appropriate destination route directional phrasing is displayed at all times while the vehicle is on the road.
- c. Contractor shall be responsible for the repair, all spare and replacement parts of all destination signs in accordance with the manufacture's recommendations and requirements. Contractor shall also be responsible for all software updates required throughout the life of each destination sign product. All repairs, software and equipment become the property of the Borough.
- d. Contractor will, when requested by the Borough or when it is necessary and approved by the Borough, be responsible for the moving of destination signs from one bus to another during vehicle retirement or when the need arises to exchange destinations signs for repairs.

21. Issues/Complaints – Any complaint, or applicable comments/suggestions received by the Borough that concerns the delivery of transportation services under this Agreement or the behavior of Contractor employees shall be forwarded to Contractor for a full investigation, as soon as possible, but no later than the next regular operating day after the complaint, or applicable comment/suggestion is received by Contractor.

- a. Contractor shall provide a written response to complaints received to the Borough within 24 hours of receiving the complaint. Contractor's response shall include action(s) taken, if any, to address any problem or complaint. If any serious matters are reported to the Borough, the Borough may require that the operator or operators in question be removed by Contractor from operating routes of the Borough.
- b. Contractor shall report to the Borough immediately by electronic means any problems encountered in the provision of transit services, any and all complaints received directly concerning the provision of this service and the steps taken to remedy any such problems.

MAINTENANCE

22. Vehicles, Equipment, and Other Fixed Assets - The Borough will lease vehicles, and supply related equipment and other fixed assets to Contractor for use in providing transportation services under this Agreement. Contractor is responsible for the provision of both physical damage and public liability insurance for these vehicles, and they will be operated, maintained, and housed by the Contractor. It is the intent of the parties that from time to time other vehicles, equipment, and other fixed assets of a similar type and nature may be added to or deleted from this Agreement and will be subject to the same terms and conditions. Contractor shall be responsible for the vehicles, equipment, and other fixed assets used in the performance of the services called for under the Agreement and shall be responsible for all loss or damage with respect to any such vehicles, equipment, and other fixed assets.

23. General Maintenance Requirements - It is agreed that Contractor shall:

- a. Properly service, maintain, repair, and perform preventative maintenance per manufacture's guidelines and perform all appropriate warranty recovery on the leased vehicles and furnish all parts and labor which may be required to keep the vehicles in a safe mechanical condition according to the manufacturer's recommendations, industry norms, and the Borough's Required Maintenance Program set forth in Attachment I which may be amended by the Borough throughout the term of this Agreement. All repairs and maintenance shall comply with all applicable federal, state, and local laws and regulations.
- b. Promptly repair or make arrangements for the repair of vehicles damaged due to accidents. Contractor must notify the Borough in writing by electronic means if a vehicle is removed from service for more than 48 hours and provide the following information: Bus number, reason for removal from service, information on the bus which will replace the one down for service, and the estimated time of repairs/return to service. Contractor must provide the Borough with periodic updates on the status of repairs and must also contact the Borough when the bus is returned to service.
- c. Promptly address all painting needs that occur due to accidents or the normal wear and tear to prevent rusting, deterioration of vehicle structure and to ensure a positive appearance in the community.
- d. Properly maintain all vehicle features including destination signs, security cameras, security camera recorders, applicable recording cartridges and playback equipment. Contractor is responsible for all aspects of ensuring that installed equipment is fully functional and operational. All items installed related to security cameras or other safety measures become property of the Borough.
- e. Not defer maintenance for reasons of shortage of maintenance staff or operable buses, nor shall service be curtailed for the purpose of performing maintenance without prior written consent of the Borough. Preventative maintenance inspections and running repairs shall receive first priority in the use of Contractor's maintenance resources. Contractor shall adjust work schedules of its employees as necessary to meet all scheduled services and complete preventative maintenance activities required by the Borough. Contractor shall retain additional personnel or the services of outside firms, if necessary, to meet the Borough's maintenance requirements.
- f. Use parts, materials, tires, lubricants, fluids, oils that meet or exceed original equipment manufacturer specifications and requirements.
- g. Keep the vehicles properly serviced with all necessary oil, fuel, tires, and other fluids necessary for the safe operation of the vehicles.

- h. Keep the interior and exterior of the vehicles neat and clean and the interior free of debris as specified in the agreed upon bus cleaning schedule.
- i. Provide for any and all inspections or servicing of the vehicles according to manufactures warranty and keep all warranties in full force and effect.
- j. Provide liability, fire, theft, comprehensive, and collision insurance as required by this Agreement.
- k. Acquire and maintain all technical updates of service manuals, service bulletins, lubrication charts from the vehicle manufacturer or subcomponent part manufacturer and other such information needed to properly service and repair the Borough's vehicles including all electronic updates for equipment software. The Borough will provide all parts and service manuals to Contractor when acquired by the Borough upon the purchase of the vehicles. Said manuals shall be considered part of the Borough's maintenance requirements to be performed by Contractor. All new additions including both hard copy and electronic software upgrades become part of the Borough library and must be forwarded to the Borough in electronic formats and/or hard copy at the end of the Agreement.
- l. Exercise due diligence in the tracking, filing and general administration of all vehicle or vehicle component warranties. All warranty recovery, through claims made by Contractor, shall be paid to Contractor, unless previously reimbursed by the Borough.
- m. Maintain records of all maintenance and repairs to the Borough vehicles including a hard copy history folder for each the Borough vehicle. This folder shall contain, in chronological order, all work orders generated for each vehicle including documentation of preventative maintenance inspections according to the Borough's Preventative Maintenance standards. Records shall be available for the Borough's inspection at any time and shall be entered into the maintenance record keeping system no later than five (5) working days after the completion of repairs or preventative maintenance. The folder shall also contain the vehicle's make, model, year, and serial number along with any invoice information. The work order shall, at a minimum, include a description of the labor hours used and cost, parts used and cost, repair performed, date, mileage, vehicle number and other charges. All vehicle records are property of the Borough. At the end of the Agreement all original records must be forwarded to the Borough and Contractor must keep copies on file.
- n. Require that all vehicle operators perform pre and post trip inspections. These inspections are to be performed on a daily basis and recorded on a Vehicle Inspection Form provided by Contractor and approved by the Borough prior to Contract startup. All proposed changes must be submitted to the Borough at least five (5) business days before the proposed date of implementation of new or updated forms.
- o. Require that all vehicle operators inspect and report any defects that may occur during the service day. At the end of the driver's shift, the form will

be turned over to the Supervisor for forwarding to the maintenance department for correction.

- p. Conform to all State, Federal, and Municipal laws, rules, and regulations with respect to the maintenance and operation of the vehicles.
- q. Use the vehicles only for those services described in this Agreement.
- r. Not make any alterations to or dispose of the vehicles without the prior written consent of the Borough.
- s. Return the vehicles and equipment to the Borough at the expiration of the term of this Agreement or any renewal hereof in good and proper working condition, reasonable wear and tear excepted.
- t. Maintain all the Borough's service and support vehicles by providing all necessary manufactures' recommended preventative maintenance, parts, tires, wheels, oil, fluids, repairs and ensure all features of the vehicle are fully operational. All repairs and parts performed or placed on the Borough's service and support vehicles become property of the Borough. The service and support vehicles must be fully operational with all installed equipment operational for road call maintenance and vehicle towing throughout the service area at all times when revenue vehicles are in operations. See Attachment A for a listing of all current Borough vehicles.

24. Maintenance Evaluations – Contractor shall allow the Borough access to the Borough's vehicles and maintenance and records to monitor Contractor's maintenance performance, as the Borough deems necessary. The Borough may perform or use independent consultants to perform regular, unannounced maintenance inspections of vehicles maintained by Contractor. The Borough shall be permitted to view and copy any vehicle maintenance record, inspect vehicles and equipment, and request Contractor personnel to drive vehicles as necessary to evaluate the condition of vehicles used in the performance of this Agreement.

25. Spare Parts, Tire, Wheel, Fluid Inventories, Fuel - Contractor shall:

- a. Be responsible for monitoring and accounting for spare parts, oil and other fluids, tire, and wheel inventories necessary to assure that vehicle repairs will not disrupt the provision of transit service. All parts, tires and wheels installed by Contractor on the Borough vehicles become the property of the Borough. The Borough may monitor the inventory to ensure appropriate parts are on hand. Contractor is financially responsible for all parts, tires, wheels and fluid inventories.
- b. Be responsible for monitoring and accounting for fuel supplied to vehicles used in the provision of the services under this Agreement. Fuel may only be used in the Borough owned vehicles or vehicles approved by the Borough for use. Contractor agrees to work cooperatively with the Borough in monitoring fuel usage.

26. Repossession of Equipment - It is hereby agreed that the Borough shall be entitled to immediate repossession of the vehicles and equipment in the event of:

- a. Any change in the management or ownership of Contractor including changes of officers or the sale of a majority interest in the business of Contractor.
- b. The filing of any bankruptcy, receivership, or reorganization of Contractor under a bankruptcy law.
- c. The dissolution, merger, consolidation, or sale of a majority of the assets of Contractor.
- d. Breach or termination of this Agreement.

27. Permitted Use of the Borough Vehicles - Unless expressly authorized in writing by the Borough, Contractor shall not use any vehicle or other equipment that is part of the Borough's transit system other than in connection with the services to be provided under the Agreement. Contractor shall not use any such bus or other equipment for any private charters or any purpose other than as may be specifically permitted by the Borough and in the Borough's sole discretion and under such terms as the Borough elects.

28. PA Inspections - Contractor shall be responsible for the required Pennsylvania Motor Vehicle Inspection, and authorization or certificate of operation that may be required by the Pennsylvania Public Utilities Commission, or other regulatory agency. The required Pennsylvania Motor Vehicle Inspection for the Borough owned vehicles must be conducted by a Motor Vehicle Inspection facility property licensed to conduct inspections on the type of vehicle requiring inspection. All documentation supplied by the inspection facility will be kept with the appropriate vehicle file, including brake lining readings, tire tread depths, glass-glazing findings, wheel alignment measurements, and any other findings recorded during an inspection.

29. Vehicle Registration - The Borough will provide license plates and registration cards for the Borough vehicles.

30. Return of Vehicles and Equipment – Upon termination of this Agreement, Contractor shall return all the Borough-owned vehicles and equipment to the Borough ready for use, with no deferred maintenance or damage. The following procedure shall be used to determine the condition of the Borough vehicles and equipment prior to any change in contractors or, at the Borough's option, prior to the beginning of any new Agreement with an existing contractor:

- a. Authorized representatives of the current contractor, the successful proposer, an independent reviewer and the Borough shall meet at least thirty (30) days prior to the expiration of the Agreement. At this time, the parties shall examine every bus and all equipment to determine its current condition. Contractor shall make available such personnel as necessary to

move buses and operate hoists. Contractor shall also make available to the Borough all preventative maintenance inspection records, daily driver inspections, oil analysis test results, and other records as appropriate. Contractor shall fully cooperate with this audit.

- b. After the audit Contractor and the Borough shall meet to determine a plan and timeline for resolution of defects found during the audit. Contractor shall furnish the Borough with a timeline and a specific plan for resolution of deferred maintenance prior to the expiration of the Agreement.
- c. A second audit shall be conducted within five (5) days of Agreement expiration to reexamine every bus and to review work performed since the initial inspection. Records shall be kept and made available to the Borough documenting items that have been repaired since the initial inspection.
- d. In the event that Contractor returns the Borough vehicles and equipment to the Borough with deferred maintenance or damage, the Borough shall determine the cost to correct such deficiencies and shall withhold said amount from Contractor's final payment. The Borough may, at its discretion, use withheld funds to correct and resolve deferred maintenance and damage as necessary to bring the vehicles or equipment into compliance with acceptable standards for transfer to the new contractor. In the event that withheld funds are not adequate to do so, Contractor will pay the necessary additional funds to the Borough upon request.

MAINTENANCE/STORAGE FACILITY

31. Maintenance/Storage Facility – Contractor shall provide a purchased or leased building for use as a maintenance/storage facility for use in dispatching, storing and maintaining vehicles for services under this Agreement.

- a. Contractor shall provide an area to install the farebox vault and installation will be at the expense of the Borough. The Borough reserves the right to relocate equipment at its discretion.
- b. Any utilities, garbage removal, tools, equipment and other items needed to provide a fully functional vehicle maintenance/storage facility shall be the responsibility of Contractor.
- c. Interior and exterior maintenance and upkeep, including snow/ice removal necessary for safe operation of the facility, shall be the responsibility of Contractor.
- d. During the Agreement Term, Contractor shall be responsible for the proper handling, use, storage, and disposal of all waste oil, antifreeze and hazardous materials produced at the facility, and shall comply with all applicable Federal, State, and local laws and regulations. In this Section, the term "hazardous materials" includes all materials, products, waste, substances, chemicals, etc. identified as "hazardous" by federal, state, or local agencies and/or authorities.

- e. Contractor in its operations is required to comply with all DEP, EPA, OSHA, or other governmental regulations and for any fines or penalties imposed for failing to do so.

CONTRACTOR PERSONNEL

- 32. Independent Contractor** - It is agreed that Contractor is, and will remain in all respects, an independent contractor and not the agent or servant of the Borough and it is further agreed that the Borough neither has, nor shall in the future, have the power to hire or fire employees of Contractor nor control the actions of the employees of Contractor. Contractor attests that it is authorized under the laws of the Commonwealth of Pennsylvania to carry out activities as an independent contractor. Contractor agrees to hire and pay employees and shall make all necessary payroll deductions and payments to federal, state, and local governments, and shall make provisions for Workmen's Compensation where it is required.
- 33. General Qualifications** - For the purposes of this Agreement and interpretation thereof, it is agreed that public transportation is an unusual and specialized function. It is the essence of this Agreement that the passengers be transported regularly, promptly, safely and without interruption or incident. It shall be a primary obligation of Contractor to operate its affairs so that the Borough will be assured of this continuous and reliable service. It is recognized that for the protection of the public, vehicle operators must be of stable personality and of the highest moral character. The Borough places upon Contractor and Contractor agrees to accept the full responsibility of assuring such qualities in personnel. Contractor agrees that it will not knowingly allow any person to drive a bus whose moral character is not of the highest level, or whose conduct might in any way expose the public to any impropriety of word or conduct whatsoever, nor shall Contractor allow any person to drive a bus who is not physically competent or, at that time, not in a condition of mental and emotional stability. The responsibility for hiring and discharging personnel in respect to all of the foregoing shall rest entirely upon Contractor.
- 34. Management and Supervision** - The overall management and daily supervision of transportation services provided by Contractor shall be the responsibility of Contractor. Contractor shall meet the following minimum requirements unless an alternative Management and Supervision structure is approved in writing by the Borough:
- a. Designate and provide the services of a full-time General Manager who shall provide overall management and supervision of the services to be provided under the terms of this Agreement. The General Manager shall have the appropriate education, three (3) to five (5) years of experience in public transportation operations or equivalent managerial experience deemed acceptable by the Borough, and supervisory skills and experience

necessary to effectively manage all of the transportation services to be provided under this Agreement.

- i. The Borough shall be the sole judge in determining whether or not the General Manager possesses the necessary education, qualifications and experience. The General Manager shall work cooperatively with the Borough in matters relating to service quality, providing operational and other data, responding to comments from passengers and the general public, and responding to specific requests for other assistance as the need arises.
 - ii. The office of the General Manager shall be physically located at the facility approved by the Borough where Contractor will operate transportation services and maintain vehicles.
 - iii. At all times, the General Manager or a supervisor designated to act for the General Manager shall be available by telephone, e-mail or in person to make decisions regarding day-to-day operations and shall be authorized to act on behalf of Contractor regarding all matters pertaining to the transportation services provided under this Contract. A supervisor shall be on duty or available during the hours that transit service is being provided or is getting ready to be provided under this Agreement.
 - iv. Contractor shall assure that any replacements to the proposed General Manager during the term of this Agreement will possess the appropriate and, at a minimum, the qualifications indicated herein.
- b. Designate and provide the services of a qualified Maintenance Manager who shall be assigned responsibility for the maintenance of the Borough vehicles and equipment, including preventative maintenance scheduling, repair supervision, technical training, and other activities as may be necessary to ensure the performance of Contractor's maintenance duties and responsibilities. This also includes warranty recovery, appropriate record keeping, parts inventory and oversight of all facilities aspects including appropriate Contractor preventative maintenance, repairs and cleanliness. The Maintenance manager will oversee and manage vehicle cleanliness and appearance. The Maintenance Manager shall have the appropriate education, three (3) to five (5) years' experience in maintaining public transportation vehicles or vehicles similar to those to be provided by the Borough, experience in managing the maintenance function of a diesel facility similar in size and complexity to the services herein described, and supervising the work of other maintenance personnel. The Borough shall be the sole judge in determining whether or not the Maintenance Manager possesses the necessary education, qualifications and experience. Contractor shall assure any that any replacements to the proposed Maintenance Manager during the term of this Agreement will possess the appropriate and, at a minimum, the qualifications indicated herein.

- c. Designate and provide the services of a qualified Safety & Operations Manager who shall be assigned responsibility for training drivers and support staff; accident and incident investigations; road supervision; investigate complaints; assist transit agencies with events, detours, new route development and other information as required; assist drivers to carry out the assigned trips on-time; monitor the performance of scheduled trips; and ensure that general service delivery is handled and performed in accordance with the Borough policies and procedures. This individual must have the capacity to be deployed in the field during service hours of operation and have use of a Contractor provided non-revenue vehicle or the Borough non-revenue service truck to respond quickly to driver requests for assistance and emergency conditions.
 - i. The Safety & Operations Manager shall have the appropriate education and training; three (3) to five (5) years of experience in public transportation operations or equivalent managerial experience deemed acceptable by the Borough. the Borough shall be the sole judge in determining whether or not the Safety & Operations Manager possesses the necessary education, qualifications and experience.
 - ii. Contractor shall assure any that any replacements to the proposed Safety & Operations Manager during the term of this Agreement will possess the appropriate and, at a minimum, the qualifications indicated herein.

- d. Support Staff - Contractor is encouraged to secure dispatchers and other support staff who have two to three (2-3) years of operating and/or transit experience. All support staff are required to be fully trained and familiar with all contractual and operational requirements relating the provision of services under this Agreement. Contractor must provide support staff responsible for:
 - i. Timely and efficient provision of real-time service, vehicle operator conduct and proper documentation of all service related activity.
 - ii. Providing special attention to timely departures from base for any run pull-outs.
 - iii. Providing continuous monitoring of assigned radio frequencies during all hours that vehicles are out of the yard.
 - iv. Answer and respond to telephone calls.
 - v. Basic troubleshooting.
 - vi. Scheduling and assigning drivers and vehicles in accordance with the service hour schedules and scheduled trips for each day.
 - vii. Responding to customer comments and questions daily.
 - viii. Providing the Borough with all requests for information/data upon request and for completion and submission of monthly invoices and reporting data and all other reporting information on or before the prescribed due date.

- ix. All voice radio communications pertaining to Contracted Fixed Route Services meet all FCC rules and the applicable regulations are enforced.
- e. Contractor must also provide mechanics, bus cleaners, and other maintenance personnel necessary to maintain vehicles and respond to road calls.
- f. The Borough will at review the performance of Contractor's managerial staff. If poor performance by any member of the management staff is determined, the Borough reserves the right to require remedial and/or corrective action as well as removal from continuing to provide services under this Agreement for just cause.
- g. The Borough reserves the right to request the removal of any member of Contractor's managerial staff for just cause from assignment at its discretion.

35. Key Personnel – Contractor's General Manager, Maintenance Manager and Safety & Operations Manager are considered to be essential to the work being performed under this Agreement.

36. Minimum Requirements for Vehicle Operators – All Contractor employees, including vehicle operators, maintenance personnel, supervisory and management personnel, that operate any vehicle in performing any and all services on behalf of the Borough under this Agreement shall:

- a. Possess the proper valid Commercial Driver's License (CDL) required by the Commonwealth of Pennsylvania to operate such vehicle. The CDL shall be Class B with a "P" endorsement. No "L" restrictions, prohibiting the operation of air-brake equipped vehicles, are permitted on any CDL license. Vehicle operators shall not be permitted to have licenses in more than one state. All vehicle operators shall notify Contractor of any suspensions, revocations or cancellations of their license. Contractor shall not permit a driver to operate a bus if the driver has no CDL license with proper endorsement or his/her license has been suspended, revoked or canceled.
- b. All operators who Contractor will hire to operate the Borough vehicles are preferred to have at least three (3) but not less than one (1) year of Class B CDL driving experience with air-brake endorsement before entering into Contractor's training program for fixed route operators.
- c. Pass a U.S. Department of Transportation physical examination prior to employment and every two (2) years thereafter or as defined by physician. This is to include all pre-employment drug and alcohol testing requirements.
- d. Have never been convicted of a felony at any time.
- e. Have not been convicted of a misdemeanor involving theft or dishonesty in the last ten (10) years.

- f. Not be allowed to drive a vehicle and transport passengers if they have a record showing “indicated” or “founded” for child abuse.
- g. Be suspended from transporting passengers if charged with a felony or a misdemeanor involving theft or dishonesty pending the outcome of the case.
- h. Not be addicted to the use of alcohol or controlled substances and participate in a substance abuse program as required by federal, state and local law and the Borough Policy.
- i. Must be able to read, speak and understand the English language.
- j. Be eliminated from driving a vehicle on behalf of the Borough if one or more of the following exists in the driver’s or applicant’s personal or professional driving background:
 - i. Two or more chargeable accidents in the last three (3) years;
 - ii. One or more type A violations in the last five (5) years. Type A Violations are:
 - 1. Driving while intoxicated;
 - 2. Driving under the influence of drugs;
 - 3. Negligent homicide arising out of the use of a motor vehicle;
 - 4. Operating during a period of suspension or revocation;
 - 5. Using a motor vehicle for the commission of a felony;
 - 6. Aggravated assault with a motor vehicle;
 - 7. Operating a motor vehicle without owner’s authority;
 - 8. Reckless driving and speed contest; and,
 - 9. Hit and run (BI and PD) driving;
 - iii. Any combination of chargeable accidents and type B violations that equal four (4) or more in the last five years (5 years). Type B Violations are defined as all moving violations not listed as Type A violations.

37. Training Requirements for Vehicle Operators – Contractor shall develop, implement, and maintain a formal training and retraining program for vehicle operators that must be submitted and approved by the Borough prior to the Agreement start-up that meets the following minimum requirements.

- a. Initial Training and Orientation - Prior to permitting any employee to operate a bus in revenue service Contractor must assure the operator is trained to proficiency. Contractor shall adequately provide orientation, training, including but not limited to, vehicle orientation, safe bus operation, passenger relations, fare collection and passenger data reporting, route and schedule orientation, on-time performance, driver hours of service and fatigue training, completion of required reports, use of radios, accident/emergency procedures, ADA requirements, and any training procedures and laws, regulations or policies concerning the use of drugs and alcohol. The following minimum requirements shall be met:

- i. Each operator both full-time and part-time shall receive a minimum of eighty (80) hours of training or as required by law. The training shall include:
 1. A National Safety Council Defensive Driving Course or equivalent. Operator shall have satisfactory scores.
 2. Driving time with a supervisor or senior vehicle operator. Each operator shall be trained on each type of vehicle prior to operating that type of vehicle in revenue service. All trainees must begin training on vehicle operations on a small to large scale based on vehicle size/length and gradually train up to peak Pittsburgh commuter trips.
 3. Training on the following topics: passenger relations, operating procedures, fatigue awareness, Drug and Alcohol, Drug Free Work Place, Safety & Security, Emergency Preparedness, ADA, and Title VI.
 - ii. All operators must be trained and proficient on all the Borough routes, vehicles, fareboxes, and destinations signs prior to entering revenue service.
 - iii. Contractor shall distribute and review all appropriate and related the Borough policies and procedures with every vehicle operator prior to permitting the vehicle operators to drive in revenue service for the Borough. The Borough reserves the right to revise policies and procedures throughout the term of this Agreement. Contractor shall review any revisions thereto with all vehicle operators immediately after any revision is issued by the Borough.
 - iv. Contractor shall certify in writing, by name, each individual vehicle operator who has satisfactorily completed all requirements and training courses prior to allowing that individual operator to operate a bus in revenue service to the Borough. All operator credentials which include all clearances, MVR, criminal & child abuse background check, copy of CDL, a copy of required DOT medical card, the Vehicle Operator Training report with copies of the above referenced materials must be kept on file at Contractor's office and be available for inspection upon request.
- b. Continuing Training – Contractor shall provide ongoing continuing training courses for all vehicle operators that meet at least the following minimum requirements required by law:
- i. Contractor shall hold periodic training sessions per year for all full time and part time vehicle operators. Operators shall receive at least annual refresher training in the areas of passenger relations, operating procedures, fatigue awareness, Drug and Alcohol, Drug Free Work Place, Safety & Security, Emergency Preparedness, ADA, Title VI, and equipment updating at these sessions.
 - ii. Contractor shall retrain operators in any of the above areas, as needed, due to unsatisfactory performance.

- iii. The Borough reserves the right to evaluate operators and provide feedback and recommendations for improvement independent from Contractor.

38. Minimum Requirements for Maintenance Personnel – All maintenance personnel assigned to work on the Borough owned vehicles shall have:

- a. A thorough knowledge of diesel engines, automatic transmissions, electronic engine and transmission diagnostic equipment and systems, air brake systems, air conditioning systems, electrical systems, vehicle chassis and bodies, and related bus mechanical systems and equipment.
- b. Knowledge of the general methods and procedures used in servicing and repairing mechanical equipment, including the use of tools, precision instruments, and equipment used in the general repair and maintenance of vehicles and equipment provided by the Borough.
- c. An understanding of decimals, fractions, and specifications related to vehicle maintenance.
- d. Knowledge of specialized bus systems and equipment including wheelchair lifts and wheelchair tie-down systems, electronic fare boxes, and electronic destination signs.
- e. The skills and experience necessary to conduct preventative maintenance inspections per manufactures' recommendations and complete associated paperwork.
- f. The ability, skill, and experience to inspect, diagnose problems, and repair the Borough vehicles and equipment, including the general and specialized bus components and systems.
- g. All persons who operate a Borough vehicle either in service, on the road without being in revenue service or in the yard must have a CDL Class B license with an airbrake endorsement.

39. Training Requirements for Maintenance Personnel – Contractor agrees that only properly trained mechanics will be used by Contractor to maintain and service the vehicles. Contractor shall provide technical training for all maintenance personnel necessary to ensure a consistent level of current knowledge in the maintenance and repair of the vehicles and equipment listed in Attachment A and Attachment H including air conditioning systems, wheelchair lifts and other ancillary equipment. It is further agreed that the Borough requires Contractor maintenance personnel to receive training in the proper care of all new or replacement the Borough owned vehicles.

- a. Contractor shall assure that all appropriate maintenance personnel receive training classes on warranty procedures for the Revenue and Non-Revenue Vehicles and all systems, components, and subcomponents thereof.
- b. Further Contractor shall provide ongoing training for all maintenance personnel such as ASE (Automotive Service Excellence) certification

preparation training or the Borough approved equal, all vendor provided training, maintenance safety training and ongoing training which includes at a minimum the following and any other training the Borough may feel appropriate:

- i. Brake Inspection Certification training
- ii. Electromagnetic braking systems (brake retarder) training
- iii. Wheelchair lift manufacturers' training
- iv. Fare collection device training
- v. Electronic head sign training
- vi. Hazmat and storm water training
- vii. Alternative fuel system training
- viii. HVAC training
- ix. OSHA & DOT compliance, health and safety training
- x. Hazardous waste operations and emergency response training
- xi. Lockout/tagout training
- xii. Material handling and storage requirements training
- xiii. Vehicle drive train training
- xiv. Vehicle Electrical system training
- xv. All training included with the manufactures warranties and vehicle vendor offered training for proper bus maintenance.

40. Disciplinary Action Policy - Contractor is expected to develop a Disciplinary Action Policy, which indicates what steps will be taken in the event of unsatisfactory performance by its employees. The policy must include steps for remediation and retraining. The Disciplinary Action Policy must be submitted to the Borough before contract start up.

41. Removal of Employees – Promptly upon the written demand of the Borough, Contractor shall remove from activities associated with this Agreement any employees whom the Borough considers unsuitable for such work. Any such request shall not imply that the Borough is recommending that the employee be terminated and employee termination shall be determined solely by Contractor.

42. ERISA – Contractor shall comply with the provisions of the Employee Retirement Income Security Act of 1974, as amended, with respect to each of its employee benefit plans. Contractor shall supply the Borough with such information concerning the status of each of Contractor's employee benefit plans, as the Borough shall reasonably request.

43. Labor Disputes – If applicable and if Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor immediately shall give notice, including all relevant information, to the Borough.

44. **Equal Employment Opportunity** – Contractor shall develop and implement an Equal Employment Opportunity and Affirmative Action Programs as required by federal, state and local law.
45. **Personnel Reporting Requirements** – Contractor shall maintain the following information and records concerning Contractor personnel:
- a. A list of all vehicle operators, including maintenance and supervisory personnel, who will operate any vehicle while providing fixed-route, special or other service or maneuver any vehicle on the road or in the yard on behalf of the Borough. This list shall include the name, address, date of hire, date of birth, and copies of the Pennsylvania Department of Transportation Bureau of Motor Vehicles Class CDL license, MVR / Criminal Record / Child Abuse History checks, Motor Vehicle Records and clearances. Contractor further agrees to provide the Borough with a list, including any updates thereto during the term of this Agreement, that includes the names, address, date of birth, and proof of a valid Pennsylvania Department of Transportation Bureau of Motor Vehicles Class CDL License prior to the start-up of service.
 - b. Contractor shall request a Criminal Record Check from the Pennsylvania State Police prior to the employment and once a year thereafter for any person who drives a vehicle and transports passengers on behalf of the Borough.
 - c. Contractor shall request a Pennsylvania Child Abuse History Clearance from the Childline and Abuse Registry, Pennsylvania Department of Public Welfare prior to the employment and once a year thereafter for any person who drives a vehicle and transports passengers on behalf of the Borough.
 - d. Contractor, as part of a pre-hiring qualification procedure for vehicle operators, shall verify accident/violation record of the applicant. Contractor shall also check the Motor Vehicle Records of all employees who operate vehicles prior to contract start-up. This check should also be completed once a year thereafter during the term of this Agreement to assure that all vehicle operators continue to remain eligible to operate vehicles.
 - e. If Contractor has an established Personnel Policy in place that that is comparable to the above requirements, the Contactor has the option to present the same to the Borough for review and possible acceptance.

SAFETY

46. **Safety Program** – Contractor shall assume full responsibility for assuring the safety of passengers, personnel, and members of the public, and for assuring that the Borough's vehicles and equipment are maintained at the highest possible level throughout the term of this Agreement. In this regard, Contractor shall develop and implement an ongoing comprehensive safety program. The safety program shall, at a minimum, meet all applicable federal, state, and local regulations. Contractor shall require all vehicle operators, supervisors,

dispatchers, mechanics, and managers to participate in the safety program. the Borough reserves the right to participate in the Safety Program, including but not limited to attending meetings, content development, accident investigation and follow up. Further, the Borough reserves the right to employ third party or neutral safety evaluators. The safety program shall be submitted to the Borough for approval thirty (30) days prior to beginning service under this Agreement. The safety program shall address the following:

- a. Safety Review and Accident Prevention – The program shall include provisions to regularly review all aspects of the operation to ensure that the service being provided meets the highest level of safety standards. This shall include audits of vehicles, accident prevention programs, safety meetings, and follow-up of findings. Also, as required by PennDOT to further ensure safety of drivers and passengers, each transit driver must receive periodic fatigue awareness training and a record of driver hours worked must be maintained for five (5) consecutive years and include driver's name, shift date, shift start and end times, and drive (revenue service) start and end times.
- b. Emergency Preparation – Contractor shall develop procedures and provide training programs to address all types of emergency situations including, but not limited to, accidents, crime/security incidents, terrorism, and inclement weather.
- c. Accident/ Incident Response and Reporting – Contractor shall develop and implement procedures to respond to and report all accidents and incidents including, but not limited to, vehicle accidents, passenger injuries, disturbances on buses, employee injuries, and lift failures on in-service buses. All traffic accidents involving the Borough vehicles are to be reported within one hour to the appropriate police unit, as well as the Borough. All reports and incident responses must be filed with the Borough within 24 hours. A record of each accident or incident must be maintained for five (5) consecutive years and include time and any causal factor(s) and must include other requirements for accident reporting contained in 49 CFR 390.15(b). Contractor is also required to report all major mechanical failures and other mechanical failures as part of their monthly report/invoice.
- d. Accident Investigation, Rating and Follow-up – Contractor shall develop procedures to investigate, review and rate each accident to determine if the accident could have been prevented utilizing the National Safety Council definition of preventability. In addition, this review shall establish the need for any corrective training, operating guideline revision, or maintenance procedure revision.
- e. ADA Requirements – Contractor's safety program shall include provisions for meeting the Americans with Disabilities Act (ADA) public transit requirements, including policies, regulations and training of all bus operators in the safe use of all ADA bus equipment. Requirements shall include the operation of the wheelchair lift equipment, wheelchair tie-down

procedures, wheelchair lift standee policies, operation of the bus kneeling feature, use of the public address system, boarding and securing of mobility devices, service animal regulations, and disability awareness training.

- f. Drug and Alcohol Testing Program – Contractor agrees to establish and implement a Drug and Alcohol Testing Program that complies with 49 CFR Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the Borough, to inspect the facilities and records associated with the implementation of the Drug and Alcohol Testing Program as required under 49 CFR Part 655 and to review the testing process under 49 CFR Part 40. Contractor shall have a written Drug and Alcohol Testing Policy along with detailed procedures for implementing this policy including the identification of any third party administrator, scope of work that the administrator will perform on behalf of Contractor, and employee training certifications, for review and approval of the Borough prior to beginning service under this Agreement and shall provide any updates thereto during the term of this Agreement. Contractor agrees further to certify annually its compliance with Parts 655 and to submit an original signed copy of the annual Federal Transit Administration (FTA) Management Information System (MIS) Drug and Alcohol reports no later than February 15 of every year to the Borough.

BOROUGH'S RIGHTS AND RESPONSIBILITIES

47. **Advertising, Media Inquiries and Promotion** - the Borough shall be the official source for the issuing of all press releases and marketing activities. The Borough shall respond to all media inquiries. All media inquiries received by Contractor shall be referred to the Borough's Manager or Grants Administrator.
48. **Communication with Vehicle Operators/Other Contracted Employees** - the Borough shall have the right through its authorized representatives to communicate directly with Contractor's vehicle operators or other employees during hours of bus service operation to obtain general operational information, including but not limited to: passenger loads, location of bus, passenger complaints, emergency situations, general road or weather conditions, on-time performance, and lost and found items.
49. **Service Planning and Administration** – The Borough is responsible for all planning activities relative to the Borough routes, schedules, days and hours of operations, bus stop locations, location of bus stop improvements, preparation of planning documents, budgets, grant applications and related documentation, and other such activities relative to overall system administration. Contractor is expected to provide feedback, data and pinpoint possible problems, ideas and operator feedback regarding routing and other items mentioned above. Contractor shall be both proactive and reactive to the needs of service planning

and the delivery of services. The failure of the Borough to perform its obligation under this paragraph, however, shall not constitute a default under this Agreement.

- 50. Vehicles, Equipment and Tools** – The Borough shall lease to Contractor the vehicles noted in Attachment A and any replacement or additional vehicles acquired by the Borough the Borough from time to time. Contractor agrees that all vehicles and equipment shall be used only for activity directly related to the transportation services covered by this Agreement.
- 51. Schedules, Passes, Tickets and Identification Badges** – The Borough shall prepare, print, and provide to Contractor all schedules, passes, tickets, tokens, Identification Badges and like materials. Contractor shall distribute and disseminate such materials in accordance with the provisions of this Agreement and any directions supplemental thereto provided by the Borough.
- 52. Fareboxes** – The Borough may provide mechanical or electronic registering fareboxes on all Borough owned vehicles. Contractor shall be responsible for all farebox repairs needed to keep all fareboxes in proper working order in accordance with the farebox manufacturer’s recommendations and requirements. Contractor agrees to monitor the fare collection system to ensure that it is operating correctly during farebox probing, vaulting and operationally in the field. Immediate notification by Contractor to the Borough of an farebox-related issues is required. In order to provide timely repairs or corrections to the fare collection system and equipment, Contractor will be required to contact the farebox vendor immediately upon discovery of an issue with the fare collection system and equipment and, if applicable, file an appropriate request for assistance/ticket with the farebox vendor’s Help Desk of any problem or error. Contractor shall also electronically notify the Borough of the farebox-related issue, actions taken, and any updates thereto. If for any reason Contractor is unsuccessful in, or unable to contact the farebox vendor, immediate notification must be made to the Borough. If any farebox equipment needs to be returned to the vendor for repairs/service, such action will be the responsibility of the Borough.
- a. It is critical that all portions of the fare collection system are working properly for reporting and customer service purposes.
 - b. If Contractor must place a vehicle in service that does not have a fully functioning farebox, Contractor must abide by a policy approved by the Borough for manual fare collections and reporting requirements.
 - c. Contractor will, when requested by the Borough or when it is necessary and approved by the Borough, be responsible for the moving of fareboxes from one vehicle to another during vehicle retirement or when the need arises to exchange out for repairs.
- 53. Notification** – Both Contractor and the Borough shall make a reasonable effort to notify each other in advance of any road closures, detours, parades, or other

such events under the Borough jurisdiction that may interfere with the Borough operations or require deviations from established routes or schedules.

54. **Bus Advertising** – The Borough reserves the right to use and/or sell the interior and exterior advertising space on and in the Borough’s vehicles. Contractor shall cooperate with the Borough and its advertising contractor in the coordination, installation and removal of advertising from the Borough’s vehicles.

55. **Special Identification Cards and Passes** – The Borough shall issue all Transfer Tickets, Senior Citizen, Disabled Half Fare, other identification cards, and Complementary Ride Tickets to qualified passengers. Contractor agrees to honor such identification cards and passes as directed by the Borough.

CONTRACTOR PERFORMANCE AND REPORTING/CONTRACTUALLY AGREED CHARGES FOR NON-COMPLIANCE

56. **Performance Standards** – Contractor will perform all transit services required by the Agreement according to the performance standards set forth below. Failure by Contractor to meet these standards may result in the Borough assessing Contractually Agreed Charges for Non-Compliance in an amount for each incident of non-compliance as set forth in **EXHIBIT 2**.

- a. Vehicle Maintenance Standards– The Borough’s maintenance requirements do not refer solely to the task of performing normal preventive maintenance tasks on a specified schedule, but rather that all maintenance is done well and in a timely manner, and that the operation of the bus and all equipment on board the bus is in fact operable and reliable when in-service. Contractor is responsible for performing the following maintenance on a bus by bus basis:
 - i. Completing all preventive maintenance inspections within 1,000 miles of the scheduled mileage interval.
 - ii. Making timely repairs to vehicles as soon as possible after problems are identified. Vehicles shall not be out of service for extended lengths of time due to routine mechanical breakdowns. Refer to maintenance requirements contained in the Maintenance Section.
 - iii. Maintaining the heating and air conditioning systems so that they are fully operable at all times to assure that the interior bus temperature is comfortable for passengers regardless of weather conditions. Contractor is required to notify the Borough immediately if there is a bus in service that is experiencing poor heating or air conditioning control issues that may negatively impact riders.
 - iv. Repairing major vehicle body damage (interior or exterior) including paint within twenty-one (21) days of occurrence.
 - v. Repairing minor vehicle body damage (interior or exterior) such as scratches or damage to decals and paint due to normal wear and

- tear within sixty (60) days of occurrence or determination by the Borough that paint needs addressed.
- vi. Replacing or repairing seat damage within forty-eight (48) hours of occurrence which affects the comfort or safety of riders.
 - vii. Repairing ADA required Equipment within twenty-four (24) hours of occurrence. This Equipment includes:
 - 1. Public address (PA system)
 - 2. Destination sign
 - 3. Stop Request sign
 - 4. Passenger pull cord, signal tape, or buttons
 - 5. Wheelchair lift/ramp Equipment
 - 6. Wheelchair tie-down and securement Equipment
 - 7. Required ADA signage and decals
 - viii. Ensuring that all buses placed in revenue service meet safety standards. This includes the following systems:
 - 1. Brakes.
 - 2. Steering components.
 - 3. Emergency exits/doors/windows.
 - 4. Radios or cellular telephones.
 - 5. Other conditions required by Federal or State regulations.
 - ix. Ensuring that all of the following elements, if applicable to vehicle, are operational at all times:
 - 1. Video Camera Systems.
 - 2. Destination Signs.
 - 3. Mobile Data Terminals.
 - 4. Fareboxes.
 - 5. Fare collection backend systems.
- b. Operating Standards:
- i. Maintaining on-time performance within zero (0) minutes early and five (5) minutes late of scheduled times. A total yearly performance of 85% on time must be achieved.
 - ii. Completing scheduled trips in their entirety - Contractor is expected to complete 100% of all scheduled Borough trips on a daily basis (by route and entire system). For purposes of measuring performance and for purposes of calculating and assessing Contractually Agreed Charges for Non-Compliance, "missed trips" are defined as:
 - 1. Any scheduled revenue trip not operated or any trip that was not completed in its entirety that does not have accompanying documentation acceptable to the Borough for the incomplete trip.
 - 2. Any initial bus departing the garage/facility greater than six (6) minutes behind scheduled pullout time from the garage going to the start point of a scheduled trip or directly scheduled to begin revenue service from the garage/facility.

3. Any trip that departs greater than six (6) minutes behind scheduled pullout time from the relief point when the trip was capable of leaving on time.
 4. In the event of an in-service breakdown, driver's absence or other service related problem, Contractor shall provide a replacement driver and adequate means to dispatch transit revenue vehicles so as not to miss subsequently scheduled trips.
 5. Dispatched transit vehicles shall be capable of resuming normal the Borough revenue service within 30 minutes – any service not resumed on normal schedule within 30 minutes will be considered missed trip(s).
 6. Any route running 30 minutes behind or more with no plan for time recovery without accompanying documentation acceptable to the Borough will be considered missed.
 7. Missed trips will be measured by the Borough using the random checks, confirmed passenger information, and other information as required from Contractor.
- iii. Operating routes in accordance with the established routes - operating according to the correct routing including deadhead routing via the correct turn by turn, displaying correct destination signs and serving all designated stops.
 - iv. Ensure that all Operators are correctly utilizing all fareboxes and assuring that all Operators are correctly signing-in and out of fareboxes certifying that the correct ridership data for the proper routes are being recorded. Verify that all components of the farebox system are operating correctly and immediate notification and assistance regarding the filing of any problems with the manufacturer's help desk.
- c. Vehicle Cleanliness – Contractor shall maintain the Borough vehicles in a clean and neat condition at all times.
 - d. ADA Compliance – Contractor shall meet the ADA requirements and ensure that all operators are proficient in the use and practice of the following:
 - i. The use of mobility devices to board passengers.
 - ii. Properly boarding passengers who request to stand on the wheelchair lift platform to be lifted into the bus.
 - iii. Properly securing wheelchair passengers in the wheelchair using four (4) securement points.
 - iv. Making the required announcements of stops on the bus PA system on the fixed-route.
 - v. Ensuring all ADA stop request features are operational at all times.
 - vi. Ensuring all bus kneeling features are operational and operators are trained on their proper use.

- vii. Door-to-door service in compliance with the ADA is required for all ADA eligible passengers regardless of need, from the door of the vehicle to the entrance to a building or residence.
 - viii. On-time performance of 85% or above is required. A pick-up will be deemed on time if it occurs within 5 minutes before to 15 minutes after the scheduled pick-up time. A drop-off, especially for work or medical appointments, will be deemed on time if it occurs at or before the passenger's desired drop off time.
 - ix. From the standpoint of service quality, any pick-up more than 30 minutes after the scheduled pick up time is unacceptable.
 - x. Sufficient staff and equipment must be provided such that customers, other callers, and Borough staff can reach personnel in the office of the Contractor in a timely manner without undue busy signals or hold time.
- e. Safety and Security Requirements
- i. Reporting all passenger or vehicle accidents and/or incidents to the Borough, following procedures stated in Safety Section.
 - ii. Immediate filing any Incident or Request for Security report electronically to the Borough.
- f. Reporting and submission requirement – Submitting required reports and documentation electronically by the required deadlines as outlined in **EXHIBIT 1**. Dates, Times and Reports are subject to change based upon mutual agreement of changes in due dates and reports in writing by both parties.

57. Within fifteen (15) days after the end of each calendar quarter, Contractor shall submit a report of the operating statistics for fixed route, ADA and charter service. Such operating statistics shall include at least the following.

- a. All measurements and statistics required by Act 44 and by Pennsylvania Public Transportation Quality Control and Data Verification dated August 2018 as such document may be amended from time to time.
- b. Operating cost / revenue hour
- c. Passengers/revenue hour
- d. Operating revenues / revenue hour
- e. Operating cost / passenger
- f. Mechanical breakdowns / 1,000 vehicle miles (maintenance)
- g. Complaints / 1,000 passenger trips (customer service measure)
- h. On-time performance ratio (operations and scheduling)
- i. Farebox recovery

58. All items in Sections 57 and 58 shall be monitored, determined and verified in accordance with the requirements of the Pennsylvania Public Transportation Quality Control and Data Verification dated August 2018 as such document may be amended from time to time to the extent that document is applicable.

59. **Contractually Agreed Charges for Non-Compliance for Non-Compliance with Requirements and Performance Standards General** - The Borough and Contractor acknowledges and agree that the Borough may incur Contractually Agreed Charges for Non-Compliance if Contractor fails to meet the requirements set forth. The parties further acknowledge and agree that the damages, which might be reasonably anticipated to accrue as a result of failure to meet one or more of the above, are difficult to ascertain due to their indefiniteness and uncertainty. **EXHIBIT 2** contains information related to and identifies the calculated value associated with each contractually agreed charges for non-compliance category and are in amounts that the parties agree reasonably approximates the actual damages that will be suffered by the Borough if requirements and/or performance standards are not met.

RECORD KEEPING AND REPORTING

60. **General Requirements** - Contractor shall keep all records and data pertinent to the provision of services described in this Agreement, separate and apart from all other services provided by Contractor. Contractor shall provide:

- a. Financial, operating, and any other data necessary for the Borough to accurately complete the annual National Transit Database (NTD) Report and other reports required by the Federal Transit Administration, the Pennsylvania Department of Transportation, and/or other funding agencies;
- b. All information necessary to submit completed and accurate grant applications, quarterly reports, DBE reports, and other reports that may now or in the future be requested by the Pennsylvania Department of Transportation, the United States Department of Transportation, the Federal Transit Administration, and other governmental bodies and funding sources; including without limitation all information necessary to report information as required under Pennsylvania Act 44.
- c. Information and other data documenting Contractor's actual cost of providing specific goods and services, including both capital and operating costs. Contractor shall document and provide the following information to the Borough, if requested:
 - i. Cost of Contractor owned maintenance equipment, partially or wholly utilized to maintain buses;
 - ii. Financial information necessary to document Pennsylvania Department of Transportation Asset Maintenance costs and FTA Preventative Maintenance costs.

61. **Annual Audit** - The Borough shall designate a certified public accountant to perform an audit of Contractor's business conducted under the terms of this Agreement. Such an audit shall be completed within ninety (90) days after the end of each fiscal year of this Agreement period in a format acceptable to Federal and State funding agencies. Contractor must be prepared and provide

the Borough and/or their Auditor(s) with requested information within sixty (60) days after the close of the fiscal year.

- 62. Audit and Inspection by Governmental Agencies** – Contractor understands that the business conducted under the terms of this Agreement is subject to audit by the Commonwealth of Pennsylvania and the United States Department of Transportation and their designated representatives at any time during the term of this Agreement or at a later date established by the Commonwealth and/or the United States Department of Transportation. Both parties shall agree to abide by any audit findings in terms of refunds or payments due. Any payments or refunds due by or to Contractor shall be paid in full within sixty (60) days of the audit findings. If Contractor is not in agreement with the results of an audit performed by the Borough or any funding agency of the Borough, Contractor may appeal to the Borough following the Protest Procedures contained the RFP.
- 63. Audit Adjustments** - If Contractor is able to receive permission from the State and Federal funding sources for the Borough to pay Contractor, any disputed items in audit findings, the Borough agrees to pay Contractor the amounts so approved by the State and Federal agencies when the Borough receives the money from the State and Federal agencies.
- 64. Records Retention** - All records pertaining to the operation and maintenance as well as ridership, transfers, fares, expenses and the like shall be retained by Contractor for six (6) years after the termination of this Contract and shall be accessible to the Borough and duly authorized representatives of the Borough, the Pennsylvania Department of Transportation, and the Federal Transit Administration, and any and all local funding agencies, including such other cities, boroughs, townships, or municipalities as may desire financial information. Said records shall be kept separate and apart from all other services provided by Contractor. All original vehicle maintenance records must be forwarded to the Borough at the end of the contract and copies of all such files must remain on file with Contractor for the time period state above.
- 65. Open Records** – In compliance with Pennsylvania’s Right to Know Law, all information within Contractor’s proposal and contained within this contract document or attached, including financial information of a Contractor may be provided as a public record as required by law.

PAYMENT

- 66. Costs Included in Rate per Vehicle Revenue Hour-** Contractor shall be required to supply and pay for all administrative, operating and maintenance costs not specifically identified in this Agreement as being the responsibility of the Borough including, but not limited to, all necessary lubricants including oil, tires, preventative maintenance, body work, bus washing, all necessary labor, parts, vehicle repairs, insurance, services, supplies, utilities, office supplies,

capital assets not supplied by the Borough, and all other expenses for the proper fulfillment of this Agreement.

67. Taxes - The Borough is exempt from many taxes including fuel taxes, and sales and use taxes, and others. Contractor shall cooperate with the Borough in establishing a system or systems to avoid the payment of all taxes and to allow the Borough to recover all taxes paid. Any and all tax rebates related to this contract with the Borough, including any refunds or rebates received by Contractor, shall belong to the Borough.

68. Payment to Contractor

- a. Compensation for the provision of Fixed Route Service shall be determined on a cost-per-scheduled fixed route revenue hour times the total scheduled hours/trips to be operated for each reporting month (subject to adjustment as provided below).
 - i. Revenue hour service specifically does not include deadhead hours, time for changing routes, time for vehicle change out due to down time for road-calls, road tests, fueling, vehicle inspections, driver training, missed trips or staging.
 - ii. Before the beginning of each fiscal year (July 1), the Borough and the Contractor will agree in writing upon the projected total scheduled fixed route revenue hours for the year.
 - iii. Prior to providing any new services not specifically defined herein, the Borough provide Contractor with information as to the revenue hours for the new service/
 - iv. If the Borough makes changes in regular scheduled fixed-route service that results in an increase or decrease in annual scheduled revenue hours of more than 20%, the cost per revenue hour will be renegotiated by the parties in good faith.
 - v. The amount invoiced shall be based the scheduled number of scheduled revenue hours for that month (subject to adjustment as discussed above) multiplied by the agreed-upon hourly rate, less farebox revenue collected and any applicable Contractually Agreed Charges for Non-Compliance.
 - vi. If, due to circumstances outside a party's control, the actual fixed route revenue hours exceed by 1% or more the scheduled revenue hours are worked by the Contractor in any month (for example, due to detours) or if the Borough determines that scheduled revenue hours shall be reduced by 1% or more (for example, due to storms), either party may request in writing an adjustment to the amount due for that month. The party making the request must include a detailed description/rational for the additional or reduced hours worked. If approved by the non-requesting party (which approval shall not be unreasonably withheld or delayed), the additional revenue hours will be added to or subtracted from the pre-

determined revenue hours for the invoice month and paid accordingly.

- b. Compensation for the provision of ADA paratransit service shall be determined on a cost per revenue hour basis.
 - i. Payment by Service Hour - Payment of _____ per service hour shall be paid for all regular service rendered under this contract. Payment shall be based upon time from pull-out to pull-in minus any driver lunch breaks and any gap in the schedule of more than two hours. Contractor shall meet minimum vehicle productivity standards, measured in terms of revenue passengers per billable hour, and shall achieve vehicle productivity goals daily. A deduction shall be made from Contractor's compensation equal to the shortfall between the actual productivity and the minimum standard. The deduction shall be assessed only if contractor fails to achieve the minimum standard over the course of a calendar quarter. The vehicle productivity goals and standards will be reviewed periodically by the Borough and adjusted to reflect significant changes in the number, type, trip mix, and length of trips provided by subcontractor during the contract year. The Borough will negotiate productivity standards with Contractor after 90 days of service has been provided. The initial productivity standards shall be as follows: two revenue passengers per billable hour.
- c. Compensation for Charter Service shall be determined on an actual revenue hour basis. The Borough will collect all charter service revenue and will pay to the Contractor the Contractor's hourly charter service rate multiplied by the actual number of hours of charter service during the applicable month.
- d. The cost-per-hour/trip price does not include purchase of diesel or gasoline-type fuel. Such fuel costs will be paid by the Borough separately in order that it can monitor and track fuel usage.
- e. Farebox revenue collected by Contractor for the same month for both fixed route service and ADA paratransit service, up to the amount due to the Contractor under the Agreement is to be retained by the Contractor. Such farebox revenue collected in a month shall be considered as partial payment for services rendered in the performance of the contract and shall be subtracted from the agreed upon monthly payment and the difference shall be paid to the Contractor. The Borough reserves the right to revise collection procedures for farebox revenue.
- f. Payments will be made to Contractor in the month following the month that contracted services were performed (i.e., payment for July services will be paid by the end of August). This is contingent upon the timely submittal of information by Contractor. Contractor shall provide the Borough with a monthly invoice by the tenth (10th) day of each month utilizing the Borough's standard format "Operating Invoice" and all related supplemental supporting documentation, or in such standard format as the

Borough may from time to time revise as needed to ensure that it is receiving all necessary information from Contractor in order to provide timely payments and meet reporting requirements. Invoices shall include reporting data that is required by the Borough. The form of the standard Invoice will be supplied the Contractor prior to service start-up. Failure to submit said invoice and the required reporting data shall be grounds to withhold upcoming payments to the Contractor by the Borough.

- g. The Contractor will be responsible for collection of all passenger fares and deposit of all revenues. An accurate account of all farebox revenue (which shall be audited annually) shall be reported on a monthly basis on the invoice. Contractor is required to collect fares as identified by the Borough and must follow review control and farebox collection procedures established by the Borough. In addition, the Borough reserves the right to periodically inspect vehicles/contractor for proper farebox collection procedures. Per the annual audit, appropriate adjustments may be made to payments made to the Contractor, if it is determined by the auditor that the Borough made an overpayment or underpayment of farebox revenue to the Contractor. The Borough reserves the right to revise collection procedures for farebox revenue.
- h. Scheduled Fixed Route Hour Changes - If the Borough decides to increase or decrease the number of revenue hours of fixed route transit services during the term of the contract by up to 20%, the agreed upon cost per fixed route scheduled revenue hour shall not change. Changes in excess of 20% will result in the parties renegotiating the cost per fixed route scheduled revenue hour.

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INDEMNIFICATION AND INSURANCE

69. Indemnification

- a. Contractor agrees to hold harmless the Borough, the Borough's officers, board/council members, and employees, Montgomery County, Chester County, the Pennsylvania Department of Transportation, the Federal Transportation Administration, local governments and the United States Department of Transportation of and from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including court costs and attorney's fees, arising out of, in connection with or alleged to have arisen out of or to be in connection with a claim filed by any and all employees of Contractor.
- b. Contractor agrees to indemnify and hold harmless the Borough, the Borough's officers, board/council members and employees, Montgomery County, Chester County, the Pennsylvania Department of Transportation, the Federal Transportation Administration, local governments and the United States Department of Transportation for any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including court costs and attorney's fees, arising out of, in connection with, or resulting from Contractor's actions or failures to act and/or out of or in

connection with loss, damage, theft, or injury by any means to any property of Contractor or of any third person, which said property may be or may have been in or on the vehicles or other equipment of the Borough, whether or not such damage was caused by the agents or employees of Contractor. This indemnity provision includes, but is not limited to, any action or claims resulting from the following:

- i. Accident, injury, death, loss, or damage, to any person or property, or other economic loss or claimed liability to the extent caused by, resulting from, connected with or arising out of the negligence, acts, or omissions of Contractor, its officers, directors, employees, agents or subcontractors;
- ii. Violation of any statute, ordinance, administrative order, rule, regulation or order of any governmental body or any order or decree of any court or other tribunal applicable to the operation of the transit system contemplated herein including, but not limited to, all State and Federal environmental laws and regulations, Motor Vehicle laws and regulations, Title VI of the Civil Rights Act, Title VII of the Civil Rights Act, Disadvantaged Business Enterprise (DBE), American with Disabilities Act (ADA), labor laws and regulations, and other laws and regulations for actions undertaken by Contractor in this Agreement; and,
- iii. Infringement of any patent, trademark, or intellectual property right, or violation of any State or Federal patent, trademark, or intellectual property law; provided, however, that Contractor's indemnity shall not cover any claims or losses arising from or related to the alleged infringement of any patent, trademark, copyright or similar property right regarding any logo, mark, insignia, advertising, or marketing materials provided to Contractor by the Borough.

70. Insurance - Contractor shall maintain such insurance as will protect the Contractor from claims under Workmen's Compensation laws, disability benefit laws or other employee benefit laws; from claims for damages because of injury, sickness, disease, or death of any person(s) other than its employees; and from claims for damages to property, included but not limited to the vehicles supplied by the Borough, including loss of use thereof, any or all of which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by anyone directly or indirectly employed by Contractor for whose acts any of them may be legally liable. Contractor's liability insurance shall include any and all liability incurred by Contractor as a result of its storage and maintenance of the Borough vehicles. All coverage shall be placed with an insurance carrier duly admitted or licensed in the Commonwealth of Pennsylvania. Contractor's Insurance Carrier must maintain an AM Best Rating of A-VIII or better. Contractor agrees to carry the following minimum insurance coverage throughout the term of this Agreement:

- a. Workers compensation coverage as required by law;

- b. General Liability coverage including employer's liability, of no less than \$2,000,000 Combined Single Limit (CLS) or \$2,000,000/\$2,000,000 bodily injury and \$2,000,000 property damage Split Limit Policy (SLP);
- c. Auto Liability coverage of no less than \$2,000,000 Combined Single Limit (CLS) or \$2,000,000/\$2,000,000 bodily injury and \$2,000,000 property damage Split Limit Policy (SLP), hired and non-owned coverage, uninsured/underinsured motorist coverage of no less than \$2,000,000/\$2,000,000 unstacked, and Pennsylvania Basic First Party Benefit (PA Act 6) of no less than \$5,000 medical payments;
- d. Follow Form Umbrella Liability insurance of no less than \$5,000,000 per occurrence or \$5,000,000 aggregate;
- e. Physical damage coverage written on an All Risk Inland Marine Form for all Equipment, except motor vehicles;
- f. Uninsured Motorist Insurance of no less than \$35,000.00;
- g. Comprehensive fire, theft and collision coverage for all motor vehicles listed based on the value of such vehicles and up-dated from time to time by the Borough. The deductible of collision and comprehensive coverage shall be no more than \$10,000 per occurrence.

71. Named Insured - Contractor shall name The Borough of Pottstown, its representatives and employees, Montgomery County, Chester County, the Pennsylvania Department of Transportation, the United States Department of Transportation, and the Federal Transit Administration as an additional insured on all policies pertinent to the provision of services described in this Agreement. The Borough shall be listed as loss payee for the Borough-owned vehicles. Pursuant to ISO General Liability Endorsement Form CG20-10-11-85 (or substitute form providing equivalent coverage) or on the combination ISO CG20-10-01-0 and CG20-37-10-01 (or substitute forms providing equivalent coverage) including a Waiver of Subrogation on the General Liability portion. No later than ten (10) days before starting operations of the transit service, certificates of such insurance, acceptable to the Borough, shall be filed with the Borough and shall contain a provision that the policy will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the Borough. Contractor shall provide a certified copy of Contractor's Insurance Policy to the Borough within thirty (30) days after the award of this Contract and within thirty (30) days of any renewal or change to Contractor's policy.

72. Claims Information and Loss Runs – Contractor shall make available to the Borough, through its records or the records of their insurer, information regarding a specific claim. Any loss run information available from Contractor or their insurer will be made available to the Borough upon request.

CANCELLATION AND AMENDMENT

73. Termination for Cause - During the term of this Agreement, either party may cancel this Agreement by notifying the other party in writing sixty (60) days prior

to the proposed termination date for failure by the other party to fulfill its obligations in accordance with the provisions contracted herein.

- a. If Contractor is unable to carry out its obligations under this Agreement for any reason, including but not limited to work stoppages, accidents, fire, flood, or any other reason, the Borough may contract with another contractor to perform the obligations of Contractor under this Contract for so long as Contractor is unable to perform its obligations.

74. Termination for Convenience – See Attachment F (Required Clauses & Certifications).

75. Contract Amendment - This Agreement may be amended upon mutual consent by both parties and must be confirmed in writing.

76. Contract Extension - This contract is for a three (3) year period with two (2) one-year renewal options at the Borough’s sole discretion. Extensions are not guaranteed. The Borough may elect to re-solicit for any year of service after June 30, 2018.

77. Breach or Non-Compliance with Contract - The Borough shall have the right to inspect vehicles and other assets supplied by it and/or investigate operations at any time to determine compliance with the Agreement standards and if the Borough should find any breach of Contract or noncompliance with the Agreement or with any rules or regulations pertaining to the same, the Borough shall notify Contractor within five (5) days thereafter and if action to correct such noncompliance is not undertaken within three (3) days thereafter and completed within ten (10) days thereafter, this Agreement may, at the option of the Borough, be canceled.

78. Notice Requirement - In all matters pertaining to this Agreement or to any dispute arising hereunder, both parties hereby appoint the following to represent them in all negotiations, discussions, and other matters related to this Contract and all notices and correspondences to the Borough shall be addressed as follows:

Kourtney L. High
Grants Administrator
100 East High Street
Pottstown, PA 194

All notices and correspondences to Contractor shall be addressed as follows:

79. ARTICLE GENERAL PROVISIONS

- a. Contractor shall pay the Borough for all costs and expenses, including attorney's fees, incurred by at the Borough in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.
- b. No right or remedy herein conferred on or reserved to the Lessor is exclusive of any other right or remedy herein or by law or by equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder, now or hereafter existing at law, in equity, by statute or otherwise, and may be enforced concurrently therewith or from time to time.
- c. No covenant or condition of this Agreement may be waived except by the written consent of at the Borough. Forbearance or indulgence by at the Borough in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor to which the same may apply, and, until complete performance by Contractor of any covenant or condition, at the Borough shall be entitled to invoke any remedy available to at the Borough under this Agreement or by law or in equity despite said forbearance of indulgence.
- d. Service of all notices under this Agreement shall be sufficient if given personally or mailed to the party involved at its respective address hereinabove set forth, or at such address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed and with postage prepaid.
- e. This Agreement shall be constructed under and in accordance with the laws of the Commonwealth of Pennsylvania, and all obligations of the parties created hereunder are performable in Montgomery County and Chester County, Pennsylvania.
- f. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
- g. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein.

IN WITNESS WHEREOF, the parties hereto agree to the conditions of this Agreement and hereto, have set their hands and seal the date first written above.

[SIGNATURE LINES TO BE ADDED]

EXHIBIT 1

CONTRACTOR REPORTING & SUBMISSION REQUIREMENTS

Dates, times and reports are subject to change.

<u>REPORT/DOCUMENTATION</u>	<u>DUE DATE</u>
Information Regarding General Manager & Maintenance Manager	Before startup. Any changes thereafter must notify Agencies
Contractor Staffing Plan	Before startup & within 10 days of changes thereto.
Uniform Plan	Before startup & within 10 days of changes thereto.
Vehicle Pre & Post Trip Inspection Form	Before startup & at least 5 business days before proposed changes.
Disciplinary Action Plan	Before startup & at least 5 business days before proposed changes.
Operator Training Plan	Before startup & at least 5 business days before proposed changes.
Safety Plan	Before startup & at least 5 business days before proposed changes.
Complaints filed with CITY/WCTA	Follow up and summary of action within 3 business days.
Complaints filed with Contractor	Complaint form filed with Borough by the next business day and follow up with summary of action within 3 business days.
Monthly Reports/Invoice	Due to the Borough by the 10 th of each month for services performed in the prior month.
Annual Audit	Contractor must close-out year and be ready to provide required audit support 60 days from close-out of fiscal year.
Annual Drug & Alcohol Certification/Report	Contractor must provide completed certification/report by February 15 th of each year for the prior year.
Accident Reports	All accidents reported to the Borough within 1 hour. Report and action follow-up within three 3 days.

EXHIBIT 2

CONTRACTUALLY AGREED CHARGES FOR NON-COMPLIANCE

CONTRACTUALLY AGREED CHARGES FOR NON-COMPLIANCE

The Contractor agrees to pay Contractually Agreed Charges for Non-Compliance at the rates set forth.

The Contractually Agreed Charges for Non-Compliance shall be calculated, assessed, and reported by THE BOROUGH to the Contractor on a monthly basis. THE BOROUGH shall monitor its transportation services in order to assess the performance of the Contractor in delivering the service. Contractually Agreed Charges for Non-Compliance shall be assessed on the basis of the information provided in the Contractor's invoices, reports, and other documentation as required under this Contract, as well as through the various reporting mechanisms available to THE BOROUGH, including visual observations, inspections, ride checks, data surveys, passenger comments, and other monitoring activities including but not limited to vehicle maintenance, operating standards, vehicle cleanliness, ADA compliance, safety and security, and reporting.

THE BOROUGH will provide the Contractor with a listing of Contractually Agreed Charges for Non-Compliance assessed each month, itemized by category and dollar amount. THE BOROUGH will establish appropriate forms for such notification and assessment. The Contractor shall respond to THE BOROUGH in writing within five (5) days of receipt of the notice of assessment of Contractually Agreed Charges for Non-Compliance. The Contractor shall have an opportunity to demonstrate to THE BOROUGH that it made all reasonable efforts to comply with its contractual obligations and that its failure to comply was due to circumstances beyond the control of the Contractor, or any person for whom the Contractor is legally or contractually responsible, as consistent with the Force Majeure definition set out the Agreement. The circumstances beyond the Contractor's control do not include delays which may reasonably be anticipated on a daily basis on any given roadway or in any given area.

The Contractor understands and agrees that if it fails to meet the performance requirements of this Contract, THE BOROUGH will suffer damages that cannot be precisely quantified as of the date of execution of the Agreement. The Contractor hereby agrees to have deducted from its invoices, or to pay directly upon request, the Contractually Agreed Charges for Non-Compliance amounts stated in this section. The Contractor further agrees that amounts payable under this Section are in the nature of Contractually Agreed Charges for Non-Compliance and are not a penalty, and that such amounts are reasonable in light of the actual or anticipated harm incurred and the difficulties of proof of actual loss. The parties expressly acknowledge that the amounts

of Contractually Agreed Charges for Non-Compliance established below are based on the parties best estimate of the actual damages and expenses that THE BOROUGH will incur should the event on which the Contractually Agreed Charges for Non-Compliance occurs; including such items as administrative time addressing the issue and customer complaints arising out of the issue; resolving issues with funding agencies/oversight agencies; legal expenses of outside legal counsel to deal with the situation; and expected lost farebox or passenger fare recovery.

The intent of this program is to ensure high quality service - not reduce THE BOROUGH's costs.

- A. **WAIVING DAMAGES** - THE BOROUGH reserves the right to waive the imposition of Contractually Agreed Charges for Non-Compliance at its discretion. Waiver or failure to assess Contractually Agreed Charges for Non-Compliance in any circumstance does not negate or abridge THE BOROUGH's right to assess such damages in the future for the same infraction or infractions of the Agreement for which THE BOROUGH previously waived or failed to assess such damages. This provision shall not abridge or affect any other remedy, which THE BOROUGH may have for any damages, which THE BOROUGH may incur in consequence of the failure of the Contractor to perform in accordance with Agreement specifications.
- B. **RECOVERY OF CONTRACTUALLY AGREED CHARGES FOR NON-COMPLIANCE** – In the event Contractually Agreed Charges for Non-Compliance are imposed by THE BOROUGH, then the Contractor may have the opportunity to recover, at the discretion of THE BOROUGH, any sums assessed against it as Contractually Agreed Charges for Non-Compliance by demonstrating either:
- 1) Incorrect Assessment – The Contractor had met the applicable service standard and/or that the Service had been delivered in accordance with the Agreement.
 - 2) Beyond Contractor's Control – The event which resulted in a contractually agreed charges for non-compliance assessment was caused by or attributable to mitigating circumstances beyond the Contractor's control. The Contractor shall not be held responsible for failure to provide on-time service due to accidents not involving THE BOROUGH vehicles, unusual weather or traffic conditions, unavoidable vehicle malfunctions (such as flat tires due to unavoidable road hazards), or naturally occurring disasters, if sufficient documentation is provided to THE BOROUGH.
- C. **CONTRACTUALLY AGREED CHARGES FOR NON-COMPLIANCE**
- 1) Use Of "Out Of Service" Due To Safety-Related Issues - Contractually Agreed Charges for Non-Compliance in the amount of nine hundred ninety dollars (\$990) per incident may be assessed for each instance in which the Contractor operates

a bus in service when it has been designated OUT OF SERVICE because of safety related issues. The Contractor shall also not be paid for revenue hours operated by buses that have been designated OUT OF SERVICE. A full report and remediation plan must be submitted the next business day outlining who allowed this circumstance to occur, when it occurred, why it occurred and the steps to prevent it from happening again.

- 2) Missed Trips - Trips that are missed due to mechanical failures, vehicle unavailability, preventable accidents, driver unavailability, or driver error may also be subject to a time deduction equal to the actual lost revenue time.
- 3) ADA Compliance - For each instance in which the Contractor fails to comply with the ADA requirements of this Agreement, Contractually Agreed Charges for Non-Compliance may be assessed at the rate of one hundred forty-six dollars (\$146) per incident.
- 4) Operating Standards - For each instance in which the Contractor fails to comply with operating standards of this Agreement, Contractually Agreed Charges for Non-Compliance may be assessed at the rate of seventy-six dollars (\$76) per incident.
- 5) Overdue Scheduled Maintenance - Contractually Agreed Charges for Non-Compliance in the amount of one hundred and eighty dollars (\$180) per vehicle per instance a scheduled preventative maintenance has reached 1,000 miles past due and fifty cents (\$0.50) for every mile over 1,000 miles for required maintenance that has not been performed.
- 6) Driver Appearance - \$23.00 per infraction
- 7) Customer Service
 - \$23.00 per valid complaint over one per 1,000 completed trips.
 - \$23.00 for each complaint not responded to within one business days
- 8) Administration – For billing or other required paperwork not submitted within the required time frame, there will be a charge of \$23 per calendar day for each day it is late.
- 9) Accidents - Failure to report an accident immediately and/or failure to produce a written accident report by the end of the next business day: \$500 per occurrence.
- 10) Productivity Standards – ADA Services – If Contractor is paid by the revenue hour for ADA services, minimum vehicle productivity standards will be required. A penalty equal to the shortfall between the actual productivity and the minimum standard shall be assessed if the contractor fails to achieve the minimum standard in any calendar quarter.

- 11) Door-to-Door Service - \$23 for each observed occurrence of door-to-door ADA service not being rendered. Each individual violation will be minimally documented to include time, location and vehicle.
- 12) Contractually Agreed Charges for Non-Compliance shall be imposed for failure to attain the passenger Trips Per Service Hour (TPSH). The following will apply:
- TPSH for the first 90 days of the Contract will be 2.
 - Contractually Agreed Charges for Non-Compliance will be calculated based on the following formula: $(\text{Goal TPSH} - \text{Actual Performed TPSH}) / \text{Goal} = \text{Reduction Factor}$ (carried to four decimals). Example: $(1.7400 - 1.7343) / 1.74 = 0.0033$. The monthly Contractor invoice amount will be multiplied by the reduction factor formula results and deducted from the total invoice amounts.
- 13) Late Trips - For any service day in which the actual calculated On-Time Performance is below 85% (no rounding), Contractually Agreed Charges for Non-Compliance shall be imposed in the amount of Fifty Dollars (\$50.00) for each Trip that service day for which the Revenue Vehicle's arrival exceeds the On-Time Window by more than five (5) minutes. Note that On-Time Performance is determined by the performance of passenger pickups within the On-Time Window as defined in Section of the Agreement. The five-minute grace period provided in this paragraph for the assessment for late trips *does not extend* to the calculation of On-Time Performance.
- 14) Contractually Agreed Charges for Non-Compliance may be assessed at the rate of nine hundred ninety dollars (\$990) per occurrence for failure to report an accident or fails to comply with Safety and Security requirements of this Agreement.
- 15) Contractually Agreed Charges for Non-Compliance in the amount of forty-six dollars (\$46) per day for delay in submitting all reports and documents needed as outlined in the Agreement.
- 16) Contractually Agreed Charges for Non-Compliance in the amount of One Hundred Dollars (\$100.00) per day for each THE BOROUGH owned vehicle shall be imposed if the Contractor's Preventive Maintenance Inspections (PMI), at the time of performance, exceed by five percent (5%) for PMIs for extreme service as set forth in the manufacturers' operations and maintenance manuals and such vehicle is operated after the scheduled PMI. The Contractually Agreed Charges for Non-Compliance shall increase to Two Hundred Dollars (\$200.00) per day per vehicle if the vehicle is operated more than three (3) days or 300 miles past the scheduled PMI.
- 17) Contractually Agreed Charges for Non-Compliance in the amount of One Hundred Dollars (\$100.00) per occurrence shall be imposed for failure to use OEM or OEM-approved parts and required fluids, and Contractually Agreed

Charges for Non-Compliance shall be assessed in the amount of Twenty-five Dollars (\$25.00) per THE BOROUGH owned vehicle per day for failure to use correct OEM parts or required fluids in accordance with agreed-upon corrective action plan.

- 18) Contractually Agreed Charges for Non-Compliance in the amount of One Hundred Dollars (\$100.00) per vehicle per day shall be imposed for any THE BOROUGH owned vehicle unavailable for service more than fifteen (15) consecutive days due to any reason, including body damage and failure to have spare parts or tires in inventory, unless otherwise approved by THE BOROUGH.
- 19) Contractually Agreed Charges for Non-Compliance in the amount of Fifty Dollars (\$50.00) shall be imposed per day per each revenue vehicle and/or support vehicle that THE BOROUGH determines the Contractor has failed to maintain the cleanliness or vehicle appearance standard of in compliance with the vehicle cleaning and appearance standards and requirements in the Agreement for each day the violation continues to exist.
- 20) Contractually Agreed Charges for Non-Compliance in the amount of Twenty-five Dollars (\$25.00) per occurrence shall be imposed if the Contractor fails to properly record any maintenance activity in THE BOROUGH System.
- 21) Because violations of the Borough's Do Not Leave Unattended (DNLU) Policy pose a significant potential danger, violations of the DNLU Policy are treated separate and apart from any other type of event. Contractually Agreed Charges for Non-Compliance in the amounts set forth below shall be imposed if any vehicle operator or road supervisor fails to properly follow the DNLU Policy and that failure results in a "lost" passenger situation. The assessments based on a rolling 12-month period are:
 - a. first violation - \$500.00
 - b. second violation - \$1,000.00
 - c. third violation - \$1,500.00
 - d. subsequent violations - \$1,500.00
- 22) If the Contractor fails to provide a replacement for a Key Personnel position(s) within sixty (60) days, as required by Section of the Agreement, THE BOROUGH will deduct the monthly salary and benefits of the vacant position for each full month that the position is vacant and shall impose Contractually Agreed Charges for Non-Compliance in the amount of One Hundred Dollars (\$100.00) per day for each day that the position remains unfilled.
- 23) Contractually Agreed Charges for Non-Compliance in the amounts set forth below shall be imposed if the Contractor is found by THE BOROUGH or the FTA to be in violation of DOT/FTA guidelines of the Drug and Alcohol Policy and Program. Contractually Agreed Charges for Non-Compliance shall be assessed

on a daily basis from the date of the written notice until either THE BOROUGH or FTA deems compliance has been met and issues a written notification. The assessments are:

- e. first violation - \$500.00 daily.
- f. second violation - \$1,000.00 daily.
- g. third violation - \$1,500.00 daily.
- h. fourth and each subsequent violation - \$2,000.00 daily.

24) Contractually Agreed Charges for Non-Compliance in the amounts set forth below shall be imposed if the Contractor is found by THE BOROUGH or the FTA to be in violation of the FTA Equal Employment Opportunity/Affirmative Action Guidelines. Contractually Agreed Charges for Non-Compliance shall be assessed on a daily basis from the date of the written notice until either THE BOROUGH or FTA deems compliance has been met and issues a written notification. The assessments are:

- i. first violation - \$500.00 daily.
- j. second violation - \$1,000.00 daily.
- k. third violation - \$1,500.00 daily.
- l. fourth and each subsequent violation - \$2,000.00 daily.

G. Reservation of Rights. Neither the agreement of THE BOROUGH to accept Contractually Agreed Charges for Non-Compliance as compensation for its damages for the Contractor's failure to perform, nor the imposition or assessment of any Contractually Agreed Charges for Non-Compliance, shall affect any other rights and remedies of THE BOROUGH under the Agreement, including the right of THE BOROUGH to terminate the Agreement in accordance with the termination provisions.