

**COOPERATIVE PROCUREMENT CONTRACT BETWEEN
THE CITY OF SAN DIEGO
AND
CIRCUIT TRANSIT INC
FOR PACIFIC BEACH NEIGHBORHOOD ELECTRIC VEHICLE SHUTTLE PILOT
SERVICES**

I. RECITALS

A. San Diego Municipal Code (SDMC) section 22.3208 authorizes the City of San Diego, a municipal corporation (City), to use a cooperative procurement contract awarded by another agency where the City's Purchasing Agent certifies in writing that the cooperative procurement contract is in the City's best interests, to the City's economic advantage, and the agency's contract was awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.

B. The San Diego Association of Governments (Agency) issued a request for proposals (RFP) for Flexible Fleet On-Call Services to establish a selection of qualified on-demand mobility service providers by posting the solicitation on the Agency's website, contracting portal, BidNet, and the San Diego Union Tribune from February 15, 2022, to March 1, 2022.

C. On March 3, 2023, based on the results of the competitive process, Agency awarded a contract with Circuit Transit Inc. (Contractor) and executed the Regional Flexible Fleet Services – Category 6, NEV Shuttles Standard Services Agreement with Contractor, identified as SANDAG agreement S1145692, ("Agency Agreement"), attached as Exhibit 1,

D. On May 11, 2023, the City's Purchasing Agent certified in writing that the Agency Agreement meets the requirements under SDMC section 22.3208.

E. Contractor agrees to provide to City the same pricing offered to Agency for the Pacific Beach Shuttle Pilot consistent with the terms and conditions in the Agency Agreement except as modified by this Cooperative Procurement Contract.

II. GENERAL PROVISIONS

In consideration of the above recitals and mutual covenants and conditions set forth in this Contract, and for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree to the terms and conditions as set forth in the Agency Agreement with the exception of the following modifications:

1. Incorporation. This Contract shall fully incorporate the Recitals which the parties agree are true and correct.

2. Effective Date. This Contract is effective on the last date that this Contract is signed by City and Contractor and approved by the City Attorney, ending 24 months later, with

up to an additional one (1) year, which may be exercised subject to the restrictions in San Diego Charter section 99. The City, through the Mayor or designee, may exercise the option by written notice to Contractor sixty (60) days prior to the expiration of the current term. Contractor will provide notice to City within seven (7) days of renewal notice if Contractor declines the option to renew. The total duration of this Contract, including the exercise of any options under this section, shall not exceed five (5) years without approval of the City of San Diego Council by Ordinance.

3. Early Termination. Contractor must provide written notice within ten (10) calendar days of the date in which the Agency Agreement is terminated to the Contract Administrator identified in Section III below. The written notice must explain the basis for termination and the date upon which the termination is effective. Early termination of the Agency Agreement by Agency or Contractor, or failure by Agency to exercise an option to extend the Agency Agreement, shall not in any way affect the existence of this Contract.

4. Compliance with Controlling Laws. Contractor shall comply with all applicable local, state, and federal laws and regulations. In addition, Contractor shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

5. Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

6. Jurisdiction and Venue. The venue for any suit concerning this Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

7. Modifications. The modifications described in Exhibit 2, which is attached hereto and incorporated herein by reference, shall affect only the page(s) and section(s) and terms and conditions referred to therein. All other terms and conditions of the Agency Agreement shall be in full force and effect as to City and Contractor as incorporated in this Contract.

III. CONTRACT ADMINISTRATOR

1. Contract Administrator. The Department of Sustainability and Mobility (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Krystal Ayala, Program Manager
1200 Third Ave, Suite 1800
San Diego, CA 92101
(619) 236-7079
KAyala@sandiego.gov

2. Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the [Purchasing

Agent or Requesting Department]. Proper notice shall be effective on the date of personal delivery or five (5) days after deposit in the United States postal mailbox. Notices shall be sent to:

Department of Sustainability and Mobility, Attention: Krystal Ayala
1200 Third Ave, Suite 1800
San Diego, CA 92101
(619) 236-7079
KAyala@sandiego.gov

IV. COMPENSATION

1. City shall pay Contractor for the services provided under this Contract in an amount not to exceed \$500,000 or a maximum of 12,444 operating hours. Contractor is not obligated to provide services in excess of this amount, and does so at its own risk, unless this Contract is amended in writing duly executed by City and Contractor increasing this not-to-exceed amount.

2. Annual Appropriation of Funds. Contractor acknowledges that the contract term may extend over multiple City fiscal years, and agrees that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. City may terminate the Contract if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by the City Council.

V. CONTRACT

1. Contract Documents. This Contract consists of this Contract and its Exhibits, the SANDAG Flexible Fleet On-Call Services RFP, Circuit Transit Inc's Response to the SANDAG Flexible Fleet On-Call Services RFP, and the resulting Standard Services Agreement between SANDAG and Circuit Transit Inc for Regional Flexible Fleet Services – Category 6, NEV Shuttles, which are attached as Exhibits hereto and incorporated by reference (collectively, "Contract Documents"). These documents together contain all the terms and conditions of the Contract between City and Contractor.

2. Contract Interpretation. The Contract Documents completely describe the goods and/or services to be provided. Contractor shall provide any goods or services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry trade meaning and are used to describe goods or services will be interpreted in accordance with that meaning unless a different definition has been provided in the Contract Documents.

3. Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, City and Contractor will use the order of precedence as set forth below.

The document in highest order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st This Contract
- 2nd Standard Services Agreement between SANDAG and Circuit Transit Inc for Regional Flexible Fleet Services – Category 6, NEV Shuttles (Agency Agreement - Exhibit 1)
- 3rd Circuit Transit Inc’s Response to the SANDAG Flexible Fleet On-Call Services RFP (Exhibit 3)
- 4th Agency Contract - SANDAG Flexible Fleet On-Call Services RFP (Exhibit 4)

4. Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties executed the same page.

5. Public Agencies. Other public agencies as defined by California Government Code section 6500 may choose to use the terms of this Contract, subject to Contractor’s acceptance. City is not liable or responsible for any obligations related to a subsequent agreement between Contractor and another public agency.

VI. CITY’S ADDITIONAL TERMS

1. Wage Requirements: This Contract incorporates by reference the City’s Wage Requirements, attached hereto as Exhibit 5.

2. Drug-Free Workplace Certification. Contractor shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Contract by reference.

3. ADA Certification. Contractor shall comply with the City’s Americans with Disabilities Act Compliance/City Contracts requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference.

4. Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Contractor and any subcontractors or suppliers shall contain this language.

5. Compliance with the City’s Equal Employment Opportunity Outreach Program (EOCP): Contractor shall comply with the City’s EOCP requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall

ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime Contractor liable for any discriminatory practice of its subcontractors.

6. Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate and to provide a copy to the City before any contract is executed.

7. Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

8. Services Outside This Agreement. Contractor may provide transportation services outside the scope of this Agreement as mutually agreed upon with the City under the following conditions:

8.1 Non-Interference. Contractor shall not provide transportation services outside the scope of this Agreement if such services interfere with Contractor's ability to attain and/or maintain the level of service;

8.2 Use of Funds. Funds provided by the City to Contractor shall not be used for any purpose other than providing the work required by this Agreement and shall not be used outside the service area; and

8.3 Records Retention. Contractor shall retain all documents, records, and other works (collectively, "records") created pursuant to this Agreement for a minimum of four (4) years after the termination of this Agreement and any extension to this Agreement. Contractor shall provide a copy of any record on request of City and shall allow an authorized representative of City to inspect, examine, copy and audit such records during regular business hours at a mutually agreeable location in Southern California upon reasonable advance notice.

9. Public Records. Any records relating to or created pursuant to this Agreement may be public records and may be subject to disclosure pursuant to the Public Records Act (Government Code section 6250 et seq.)

10. Exclusivity. During the Term of this Agreement, Contractor, will be the sole provider of the Program for the City. IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

Circuit Transit Inc.

By: James Mirras
James Mirras (Jun 19, 2023 15:35 EDT)

Name: James Mirras

Title: COO & Co-Founder

Date: Jun 19, 2023

THE CITY OF SAN DIEGO

By: *Claudia Abarca*

Name: Claudia Abarca

Title: Director, Purchasing & Contracting

Date: Jun 28, 2023

Approved as to form this 29 day of
June, 2023.

MARA W. ELLIOTT, City Attorney

By: *Katherine A. Malcolm*
Katherine A. Malcolm (Jun 29, 2023 07:56 PDT)

Deputy City Attorney

Print Name: Katherine A. Malcolm