

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
CABCO YELLOW, INC. DBA CALIFORNIA YELLOW CAB**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into as of the 1st day of July, 2021 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and CABCO YELLOW, INC., a California corporation DBA CALIFORNIA YELLOW CAB (“Contractor”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to provide transportation services, as more fully described herein; and

B. WHEREAS, Contractor represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Contractor desire to contract for the specific services described in Exhibit “A” and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Contractor shall provide the professional services described in the Scope of Services, attached hereto as Exhibit “A” and incorporated herein.

1.2. Professional Practices. All professional services to be provided by Contractor pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Contractor also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Contractor’s performance of this Agreement.

1.3. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of the City. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;

- (b) Require Contractor to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Contractor shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Contractor's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Contractor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Contractor may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense.

1.8. Confidentiality. Employees of Contractor in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Contractor's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and made a part of this Agreement by this reference (the "Fee Schedule"). Contractor's annual compensation shall not exceed One Hundred Seventy Thousand Dollars (\$170,000.00).

2.2. Additional Services. Contractor shall not receive compensation for any services

provided outside the scope of services specified in the Contractor's Proposal unless the City Manager or designee, prior to Contractor performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Contractor may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Contractor's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, pandemics, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of five (5) years, ending on June 30, 2026, unless previously terminated as provided herein

or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Contractor. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Contractor shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Contractor for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Contractor.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Contractor in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Contractor, at no cost to City. Any use of uncompleted documents without specific written authorization from Contractor shall be at City's sole risk and without liability or legal expense to Contractor.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers'

compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Contractor shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Contractor's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Contractor shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and

content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

**6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Contractor shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Contractor called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Contractor in the performance of this Agreement.

Contractor shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Contractor or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Cabco Yellow, Inc.  
520 W. Dyer Rd.  
Santa Ana, CA 92707  
Tel: (714) 427-2555  
Attn: Melissa Gomez

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 327-7561  
Attn: Kevin Stoddart

Courtesy copy to:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Finance Dept. | Purchasing

6.5. Drug-Free Workplace Policy. Contractor shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. Contractor's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions

contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Contractor or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Contractor agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Contractor. City shall indemnify and hold harmless Contractor from all claims, damages, losses,



and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Contractor. Contractor shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Contractor has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Contractor, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Contractor informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Contractor and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Contractor shall be responsible for its work and results under this Agreement. Contractor, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Contractor occurs, then Contractor shall, at no cost to City, provide all necessary design drawings, estimates and other Contractor professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Contractor will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.21. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.22. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.23. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.24. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.25. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.26. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.27. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.28. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**CONSULTANT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

**CITY OF COSTA MESA**

\_\_\_\_\_  
Lori Ann Farrell Harrison  
City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Brenda Green  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

Date: \_\_\_\_\_

**APPROVED AS TO INSURANCE:**

\_\_\_\_\_  
Ruth Wang  
Risk Management

Date: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Kevin Stoddart  
Project Manager

Date: \_\_\_\_\_

DEPARTMENTAL APPROVAL:

\_\_\_\_\_  
Jason Minter  
Parks and Community Services Director

Date: \_\_\_\_\_

APPROVED AS TO PURCHASING:

\_\_\_\_\_  
Carol Molina  
Finance Director

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**

## **City of Costa Mesa – Senior Transportation Programs & Network for Homeless Solutions Scope of Services**

### **Background**

The City of Costa Mesa Parks and Community Services Department, Senior Center, Senior Mobility Program (SMP) and Medical Transportation Program (MTP), jointly referred to throughout as, “Senior Transportation Programs” are facilitated by the City, and offer free transportation to seniors/older adults who reside in Costa Mesa to various locations within the City of Costa Mesa, Orange County, and on occasion to medical facilities based out of Los Angeles County. The program is free of charge for users, is for non-emergency transportation, and operates Monday through Friday. The transit routes vary daily depending on specific user needs, but the transportation is primarily within City limits.

The City of Costa Mesa Network for Homeless Solutions (NHS) is facilitated through the City to offer free on-call non-emergency transportation to NHS clients to destinations approved by City staff every day of the week. Route frequency and length vary from client to client.

### **General Scope of Work for Senior Transportation Programs & NHS Transportation Program**

Contractor shall provide professional transportation services related to meeting identified needs of the community’s senior/older adult population in addition to meeting the needs of Costa Mesa’s Network for Homeless Solutions (NHS). The scope of services for these two programs differ from each other.

Senior transportation services will focus on the provision of safe and reliable transportation to and from City-sponsored events/activities within the City’s boundaries, as well as other locations within Orange County. Certain transportation to Los Angeles County medical facilities should also be included as requested. However, at least 80% of transportation will be provided within Orange County boundaries. Transportation services for seniors are provided through the City’s Senior Mobility Program (SMP), for generic travel, and the Medical Transportation Program (MTP), meant for transportation to medical appointments.

The Network for Homeless Solutions transportation requires that its clients receive transportation to their approved destination will operate and provide services, 24 hours a day 7 days a week to assist those needing transportation to their approved destination by City of Costa Mesa Staff.

### **Professional services are required by the City’s Senior Transportation Program include the following tasks:**

1. Contractor will meet with City staff regarding the schedule, status, and program services on a monthly basis, at a minimum.
2. Door-To-Door Service. The Contractor shall provide door-to-door transportation of eligible Costa Mesa residents to and/or from the Costa Mesa Senior Center (CMSC) located at 695 W. 19th St, Costa Mesa, CA 92627 to allow patrons to participate in activities, programs and services at CMSC (including social/recreational/educational/health and fitness/nutrition programs). In addition to the CMSC, rides will be available for personal care, nutrition, medical, shopping, and social/recreational rides.
3. The Contractor shall provide a toll-free telephone number for use by Senior/Older Adult

Transportation Programs patrons. The Contractor shall accept telephone reservations from Costa Mesa for Senior/Older Adult Transportation Programs patrons and dispatch a vehicle to the requested pick-up location within the City. Reservations shall be both demand responsive and allow for advanced pre-scheduled one-way or round trip transportation services.

4. Eligible patrons must show their client ID badge when entering the Senior/Older Adult Transportation Programs vehicle. Contractor will invoice the City at the rate agreed to by the City and identified in Fee Schedule. No co-pay will be requested of participants and drivers must not accept any form of tip/payment for rides.
5. Contractor must comply with all state and federal regulations relating to driver training, licensing, vehicle inspections, maintenance documentation, and allowable hours on duty requirements, drug and alcohol testing, etc.
6. Contractor shall participate in on-going customer relations efforts as coordinated by the City.
7. The City assigned "Project Manager" will be the person in charge of all management and day-to-day operations of the Contractor.
8. Contractor shall provide the necessary staff to ensure efficient and timely administration of reservations, scheduling, and dispatch of City senior/older adult transportation trips in accordance with the service schedules and policies set forth by the City, and will provide substitute drivers in the event of absence from assigned/designated driver.
9. Drivers must be legally licensed to operate a motor vehicle in the State of California, be in good standing with the DMV, able to speak, understand, and read English adequately, and treat all passengers with respect and courtesy. Bilingual drivers are highly desirable.
10. Contractor must demonstrate it has an acceptable recruitment and hiring program, which is intended to minimize driver turnover and retain a high quality driver workforce.
11. Contractor shall provide a uniform to be worn by the driver when operating a vehicle in City service, which will convey a professional image at all times.
12. Contractor will provide all necessary operating equipment for the driver and supporting office personnel, if applicable.
13. The City may require at any time that any driver be removed from transporting City customers for complaints, rudeness, or other inappropriate behavior or appearance, and may also request specific drivers from the said Contractor who provide exceptional customer service and have established rapport with customers.
14. Driver feedback about schedules, customers' needs, vehicle maintenance, and working conditions is expected.
15. Contractor will be responsible for all training of the vehicle driver and ensuring all training and certifications are current, service policies, passenger fares, and overview of other City services;
16. Contractor shall comply fully with state and federal regulations pertaining to licensing and operations of vehicles, which are contained in the California Vehicle Code, California Administrative Code, and the Federal Motor Carrier Safety Regulations.
17. Contractor shall comply with the California OSHA requirements including the requirement of SB 198 to develop and implement an employee injury prevention program.
18. Contractor shall provide qualified and trained personnel to answer and properly respond to all telephone, facsimile calls for senior/older adult transportation trip reservations, cancellations, ride check status, service inquiries, and general information requests;
19. Contractor is required to provide a computerized system for trip reservations, scheduling, and dispatch of senior transportation services as well as for the collection, recording, and reporting of operational and performance data regarding these services.
20. City and Contractor shall jointly revise and refine the service levels based on actual service demand to maximize service efficiency within the parameters specified by City policies.
21. Contractor shall notify the City within 24 hours of any accidents/incidents, and ensure

proper follow up on any accidents/incidents, where appropriate, to ensure that any unresolved safety hazards or liability issues are addressed.

22. Vehicle Accidents. The Contractor shall have sole responsibility, at its own cost and expense, for repair of any vehicle damaged in a vehicular accident or by any passenger. The City retains the right to investigate any vehicular accident involving the Contractor, and may request drug/alcohol screening of a driver found to be at fault under specific circumstances.
23. Contractor shall provide to the City OCTA's Safety and Security Reporting Form with each invoice.
23. Retention/Review of Records. The Contractor shall maintain all records pertaining to the services as required by OCTA Project U Funding and Policy Guidelines. The Contractor shall make its records available to the City upon request during regular business hours either for inspection or audit.
24. The invoice for services rendered shall follow a format provided by the City, with all relevant back- up documentation, including monthly operations summaries, and OCTA's Safety and Security Reporting Form shall be included with the invoice.
25. Services provided for the Senior Mobility Program (SMP) and the Medical Transportation Program (MTP) require separate invoices.
26. To facilitate customer service and improve vehicle life, it is imperative vehicles remain clean and free from body damage;
27. Driver shall inspect vehicle daily, before pulling out of the yard in accordance with state requirements. Contractor shall ensure that a Preventative Maintenance Inspection (PMI) is performed on vehicles in at least 3,000-mile intervals.
28. The Contractor shall keep daily records of customer service reservations taken. Reservations shall include the client's name, telephone number, pick-up and drop-off address, time the call was received and time the call was dispatched.
29. Monthly Reports. The Contractor shall prepare and submit monthly reports as part of the billing invoice meeting City and OCTA SMP requirements and shall include at minimum the following: Date, Passenger ID #, Passenger Name, Pick-up address, Drop-off address, Pickup time, Drop-off time, Trip Miles, Odometer reading for start and end of each trip and daily operation of vehicle at start and end of operating hours, Co Pay or voucher received, Trip type (trip category or purpose), Number of trips per client, No shows and Cancellations.
30. Payments for all specified services will be made based on the following: customer satisfaction, receipt of a detailed invoice sent in no later than the 15th day of the services for the preceding month (i.e., an invoice for services performed January 1st through 31st should be received by the City no later than February 15th).
31. All payments will be paid within 30 days of the date invoice is received (Net 30).
32. The Senior/Older Adult Transportation Programs will operate and provide services, excluding City observed holidays, Monday through Friday, between the hours of 7:30 a.m. (or earlier) until 5 p.m. (or later). Additionally, transportation may be provided to and from special events at the Senior Center during non-operating hours. Specific hours of operation will be detailed at a later date and time, but ability to provide the service between Monday-Friday, occasionally on weekends, between 7:30 a.m.- 5 p.m. should be available.

**Professional services are required by the City's Network for Homeless Solutions (NHS) Transportation Program include the following tasks:**

1. Services shall be available on an on-call basis seven (7) days a week, twenty-four (24) hours per day, including holidays.
2. Destinations shall be limited to those approved by designated City staff, clients may not make deviations upon departure.
3. Contractor shall provide a fee for a waiting time between destinations in half hour



increments.

4. City Staff from the Costa Mesa Police Department, the Costa Mesa Fire Department, and the Network for Homeless solutions shall have access to summoning transportation services for clients when required.
5. Contractor shall provide the City with a toll-free telephone number for use for the NHS Transportation program.
6. Contractor must comply with all state and federal regulations relating to driver training, licensing, vehicle inspections, maintenance documentation, and allowable hours on duty requirements, drug and alcohol testing, etc.
7. Contractor shall provide the necessary staff to ensure efficient and timely dispatch of transportation services accordance with the service schedules and policies set forth by the City, and will provide substitute drivers in the event of absence from assigned/designated driver.
8. Drivers must be legally licensed to operate a motor vehicle in the State of California, be in good standing with the DMV, able to speak, understand, and read English adequately, and treat all passengers with respect and courtesy. Bilingual drivers are highly desirable.
9. Contractor must demonstrate it has an acceptable recruitment and hiring program, which is intended to minimize driver turnover and retain a high quality driver workforce.
10. Contractor shall provide a uniform to be worn by the driver when operating a vehicle in City service, which will convey a professional image at all times.
11. Contractor will provide all necessary operating equipment for the driver and supporting office personnel, if applicable.
12. The City may require at any time that any driver be removed from transporting City customers for complaints, rudeness, or other inappropriate behavior or appearance.
13. Contractor will be responsible for all training of the vehicle driver and ensuring all training and certifications are current, service policies, passenger fares, and overview of other City services.
14. Contractor shall comply fully with state and federal regulations pertaining to licensing and operations of vehicles, which are contained in the California Vehicle Code, California Administrative Code, and the Federal Motor Carrier Safety Regulations.
15. Contractor shall comply with the California OSHA requirements including the requirement of SB 198 to develop and implement an employee injury prevention program.
16. Contractor shall provide qualified and trained personnel to answer and properly respond to all telephone, facsimile calls for senior/older adult transportation trip reservations, cancellations, ride check status, service inquiries, and general information requests.
17. Contractor shall notify the City within 24 hours of any accidents/incidents, and ensure proper follow up on any accidents/incidents, where appropriate, to ensure that any unresolved safety hazards or liability issues are addressed.
18. Vehicle Accidents. The Contractor shall have sole responsibility, at its own cost and expense, for repair of any vehicle damaged in a vehicular accident or by any passenger. The City retains the right to investigate any vehicular accident involving the Contractor, and may request drug/alcohol screening of a driver found to be at fault under specific circumstances.
19. Contractor shall provide to the City OCTA's Safety and Security Reporting Form with each invoice.
19. Retention/Review of Records. The Contractor shall maintain all records pertaining to the services as required by OCTA Project U Funding and Policy Guidelines. The Contractor shall make its records available to the City upon request during regular business hours either for inspection or audit.
20. Retention/Review of Records. The Contractor shall maintain all records pertaining to the services. The Contractor shall make its records available to the City upon request during regular business hours either for inspection or audit.

21. The invoice for services rendered shall follow a format provided by the City, with all relevant back- up documentation, including monthly operations summaries, and OCTA's Safety and Security Reporting Form shall be included with the invoice.
22. Transportation services provided for the NHS must be invoiced separately from the Senior Transportation Program.
23. To facilitate customer service and improve vehicle life, it is imperative vehicles remain clean and free from body damage.
24. Driver shall inspect vehicle daily, before pulling out of the yard in accordance with state requirements. Contractor shall ensure that a Preventative Maintenance Inspection (PMI) is performed on vehicles in at least 3,000-mile intervals.
25. The Contractor shall keep daily records of customer service reservations taken. Reservations shall include the client's name, telephone number, pick-up and drop-off address, time the call was received and time the call was dispatched.
26. The Contractor shall prepare and submit monthly reports as part of the billing invoice meeting City requirements and shall include at minimum the following: date, passenger name, pick-up address, drop-off address, pick-up time, drop-off time, trip miles, odometer reading for start and end of each trip and daily operation of vehicle at start and end of operating hours, copay or voucher received, trip type, number of trips per client, no shows and cancellations.
27. Payments for all specified services will be made based on the following: client satisfaction, receipt of a detailed invoice sent in no later than the 15th day of the services for the preceding month (i.e., an invoice for services performed January 1st through 31st should be received by the City no later than February 15th).
28. All payments will be paid within 30 days of the date invoice is received (Net 30).

**Vehicle Specifications:**

1. Contractor must have ADA vehicles available upon request from Senior/Older Adult Transportation Programs participants when reservations are made 48 hours in advance.
2. All vehicles must be maintained in a safe, clean, and tidy manner, with appropriate signage for safety precautions, including emergency procedures.
3. The City reserves the right to remove from service any vehicle that does not meet its appearance and cleanliness standards.

**EXHIBIT B**  
**FEE SCHEDULE**



March 5, 2021

520 W. Dyer Rd., Santa Ana, CA 92707 • Tel: 714.427.2555 • Fax: 714.245.0313 • For Service: 877. YELLOW CAB (935-5692)

Dear Mr. Fuentes,

Cabco Yellow Inc., dba California Yellow Cab would kindly like to express interest in providing transportation services to the City of Costa Mesa. Should the City of Costa Mesa and Cabco Yellow Inc. come to an agreement, Cabco will provide services to eligible participants using the rates below:

**Senior Transportation Programs**

- Trips within Costa Mesa will be billed at \$12.50 per trip (one-way) per participant
- Trips outside of Costa Mesa, but within Orange County will be billed at \$12.50 plus \$2.50 a mile per trip (one-way) per participant.

**Homeless Outreach Program**

- Flag drop (first ¼ miles) - \$3.50
- Rate after flag drop per miles - \$2.75
- Wait time rate per half hour - \$16.00
- 

The rates above shall remain consistent with the executed contract.

Signed,

A handwritten signature in blue ink, appearing to read "Tim Conlon", is written over a light blue horizontal line.

Tim Conlon  
President

**EXHIBIT C**

**CITY COUNCIL POLICY 100-5**

**CITY OF COSTA MESA, CALIFORNIA**

**COUNCIL POLICY**

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BACKGROUND

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Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

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It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa’s commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor’s and/or sub-grantee’s workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:

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1. The dangers of drug abuse in the workplace;
  2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
    - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
    - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
    - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.