

SECOND AMENDMENT

to

AGREEMENT

between

BROWARD COUNTY

and

TENDER LOVING CARE TRANSPORTATION
SERVICES, INC

for

PARATRANSIT TRANSPORTATION SERVICES

Bid Number V0696801B1

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BROWARD COUNTY

and

TENDER LOVING CARE TRANSPORTATION
SERVICES, INC

for

PARATRANSIT TRANSPORTATION SERVICES

Bid Number V0696801B1

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

AND

TENDER LOVING CARE TRANSPORTATION SERVICES, INC., a Florida corporation, hereinafter referred to as "CONTRACTOR."

WHEREAS, COUNTY sought providers of paratransit transportation services pursuant to Bid Number V0696801B1, which was opened on July 15, 2009 ("the Solicitation"); and

WHEREAS, CONTRACTOR was one of five companies awarded a contract to perform paratransit transportation services (the "Paratransit Providers"); and

WHEREAS, one of the five companies awarded a contract to perform paratransit services is no longer a Paratransit Provider and there are currently four Paratransit Providers providing paratransit transportation services; and

WHEREAS, the parties entered into a first amendment to redistribute Trips; and

WHEREAS the paratransit transportation services agreement as amended shall be

referred to collectively as the "Agreement"; and

WHEREAS, the Solicitation for the paratransit transportation services included operational changes from the previous paratransit transportation business model, with the new business model utilizing a virtual fleet design with Trips scheduled through the ADEPT paratransit scheduling software by StrataGen Systems, Inc. ("ADEPT scheduling engine"), and utilizing a third party to perform the reservation and scheduling duties (the "Call Center"); and

WHEREAS, upon the commencement of the paratransit transportation services on January 1, 2010, Lucanus Developmental Center, Inc. ("Lucanus") was scheduled to perform all of the Trips in and out of its own site ("Lucanus Site Trips") which assignment was contrary to the virtual fleet concept of the Solicitation; and

WHEREAS, starting from Friday, May 7, 2010, the Lucanus Site Trips have been scheduled through the ADEPT scheduling engine which scheduling COUNTY claims is consistent with the Solicitation; and

WHEREAS, COUNTY agreed to meet with the Paratransit Providers to address the issue of potential financial impact to the Paratransit Providers as a result of Lucanus performing the Lucanus Site Trips through May 6, 2010, and to address the long term financial viability of the Paratransit Transportation Services program established in the Solicitation; and

WHEREAS, some of the Paratransit Providers have alleged that inefficiencies in the paratransit business model established in the Solicitation (whether inherent in the model or resulting from how the model is managed) have created financial difficulties and their Trip rates are not sufficient to continue to provide paratransit transportation services; and

WHEREAS, some of the Paratransit Providers have alleged that they have suffered losses due to the inefficiencies in the paratransit model established in the Solicitation relating to the routing of trips by the Call Center and their failure to receive a specific percentage of Trips; and

WHEREAS, COUNTY is interested in the long term viability of the current paratransit business model established in the Solicitation and is making arrangements for a review of the efficiencies of the paratransit program operations by representatives from New York City Transit which operate a paratransit business model similar to COUNTY's and to obtain a peer review from the American Public Transportation Association ("APTA"); however, COUNTY disagrees that either the Solicitation or Agreement contains any guarantees of Trip efficiencies, or any guarantees relating to the specific percentage of Trips that a Paratransit Provider would receive; and

WHEREAS, based on representations made by some of the Paratransit Providers, COUNTY is concerned that some Paratransit Providers may not be willing or able to

perform paratransit transportation services for the duration of the Agreement, thereby creating risk to paratransit customers; and

WHEREAS, the Paratransit Providers have submitted to COUNTY monthly profit and loss statements and general ledgers for the months of January, February, March, April and May 2010 ("Financial Information"), which information following a preliminary review by COUNTY has indicated that all four Paratransit Providers have incurred operating losses; however a more detailed review of the Paratransit Providers' operations is necessary and additional financial and operational information is needed from the Paratransit Providers; and

WHEREAS, COUNTY is willing to make certain additional resources available to the Paratransit Providers pending completion of its analysis of the following two issues (the "County Review"): (1) attempt to quantify the financial impact of Lucanus performing the Lucanus Site Trips through May 6, 2010; and (2) receive the requested additional information and consider the long term financial viability of the paratransit transportation services program as established through the Solicitation; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

1. The above-stated "Whereas" clauses are true and correct and are incorporated herein by reference.
2. Notwithstanding any language in the Agreement to the contrary and for the sole purpose of providing additional cash flow to CONTRACTOR during the County Review:
 - a. Commencing with the rider's fare collected by CONTRACTOR on June 1, 2010, and continuing throughout the term of this Second Amendment, COUNTY will not set off against amounts payable to CONTRACTOR (as is required in the Agreement) the Current Rider's Fare. "Current Rider's Fare" shall be defined to mean the paratransit fare for prescheduled paratransit trips as established in the Administrative Code of Broward County at the rate in effect on July 1, 2010, which rate was \$3.00 per Trip. In the event of an increase in the rider's fare, any such increase will be for the benefit of County and will be set off against amounts payable to CONTRACTOR. If invoices for trips provided on or after June 1 have already been processed, such that the rider's fare set-off related to those trips has already occurred, COUNTY will work with CONTRACTOR to, as quickly as practicable, provide CONTRACTOR with funds equaling the amount of the set-off.
 - b. Effective on August 11, 2010 and continuing throughout the term of this Second Amendment, the fixed Trip rates shall not be subject to adjustment for fuel costs (as is required in the Agreement) in either direction of the base

fuel price which is established as \$3.00 - \$3.24 per gallon; and

- c. Effective on August 11, 2010 and continuing through the term of this Second Amendment, CONTRACTOR's Trip rates shall be increased in the amount of twenty one cents (\$0.21) per Trip.
3. The additional cash flow provided to the CONTRACTOR as set forth in paragraph 2 above will serve as a set off to any damages claimed by CONTRACTOR against the County arising under the Agreement, including but not limited to those damages alleged to relate to the Lucanus Site Trips, inefficiencies in the business model, routing, scheduling, assigned Trip percentages, Trips per revenue hour, or the reduction in the total number of program Trips. The parties hereby expressly agree that the terms of this paragraph shall survive expiration or termination of this Second Amendment.
4. CONTRACTOR shall fully cooperate in good faith with COUNTY during the County Review. CONTRACTOR's cooperation shall include but not be limited to, participating in discussions, responding to verbal and written inquires, and providing all additional information requested by COUNTY as part of the County Review
5. This Second Amendment shall be effective upon proper execution by all parties hereto and shall remain in effect for the period of six (6) months from the date of proper execution.
6. The County shall have the option to extend the term of this Second Amendment by one (1), two (2), or three (3) months (with the duration of any extension being the County's decision) by providing notice that it is exercising its option to extend at least forty-five (45) days prior to the time this Second Amendment would expire without any such extension.
7. During the term of this Second Amendment, as same may be extended by County, CONTRACTOR agrees that it shall be obligated to perform all services required under the Agreement notwithstanding any claim for breach or any similar claim, whether or not such claim relates in any manner to the Lucanus Site Trips, inefficiencies in the business model, routing, scheduling, assigned Trip percentages, Trips per revenue hour, or the reduction in the total number of program Trips, provided that COUNTY continues to meet its financial and operational obligations during such time period (i.e. – while the Second Amendment remains in effect).
8. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
9. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or

understandings concerning the subject matter of this document that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

10. Preparation of this Second Amendment has been a joint effort of COUNTY and CONTRACTOR, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
11. Each individual executing this Second Amendment on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Second Amendment, duly authorized by all necessary and appropriate action to execute this Second Amendment on behalf of such party and does so with full legal authority.
12. Multiple copies of this Second Amendment may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Second Amendment to Paratransit Transportation Services Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and TENDER LOVING CARE TRANSPORTATION SERVICES, INC., signing by and through its _____, duly authorized to execute same.

COUNTY:

ATTEST:

County Administrator and Ex-Officio
Clerk of the Board of County
Commissioners of Broward County,
Florida

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

By _____
Mayor

_____ day of _____, 20_____.

Approved as to form by
Office of County Attorney
Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Room 423
115 South Andrews Avenue
Ft. Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Sharon V. Thorsen
Senior Assistant County Attorney

SECOND AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND
TENDER LOVING CARE TRANSPORTATION SERVICES, INC. FOR PARATRANSIT
TRANSPORTATION SERVICES

CONTRACTOR:

TENDER LOVING CARE TRANSPORTATION
SERVICES, INC.

Witnesses:

Witness 1 Signature

Witness 1 Print/Type Name

Witness 2 Signature

Witness 2 Print/Type Name

By: _____

Printed Name: _____

Title: _____

(CORPORATE SEAL)

SVT:
8/25/10
Paratransit\FBRidersTenderLovingCare
09-114.16

