



September 11, 2015

MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION

**FROM: DARREN KETTLE, EXECUTIVE DIRECTOR AND
STEVE MATTAS, GENERAL COUNSEL**

**SUBJECT: AGREEMENT FOR TEMPORARY ADJUSTMENT RELATED TO INTER-CITY
TRANSIT SERVICES BETWEEN VENTURA COUNTY TRANSPORTATION
COMMISSION AND ROADRUNNER MANAGEMENT SERVICES, INC.**

RECOMMENDATION

- Approve the Agreement for Temporary Adjustment Related to Inter-City Transit Services and authorize the Executive Director to execute the Agreement.

DISCUSSION

1. Background

The Ventura County Transportation Commission ("VCTC") and Roadrunner Management Services, Inc. ("Roadrunner") entered into an Intercity Transit Services Agreement dated November 26, 2014 (the "Transit Services Agreement") under the terms of which, in general, Roadrunner agreed to provide inter-city transit bus services for VCTC, and VCTC agreed to pay for these services. On December 1, 2014, VCTC issued a Notice to Proceed under the Transit Services Agreement, with a start date for services of May 4, 2015 and Roadrunner began providing services under the Transit Services Agreement;

On June 2, 2015, Roadrunner advised VCTC that Roadrunner's costs of performing under the Transit Services Agreement were in excess of its bid amounts and contract payments, and, therefore, that Roadrunner was operating the services at a negative cash flow, which might impact Roadrunner's ability to continue performing under the Transit Services Agreement. After receiving Roadrunner's June 2, 2015 letter, VCTC and Roadrunner entered into a series of discussions to discuss interim resolution of the issues raised in Roadrunner's letter and to avoid any interruption in transit services in the County. After extensive negotiations, Roadrunner and VCTC have agreed on the terms of the Agreement for Temporary Adjustment Related to Inter-City Transit Services.

2. Summary of Major Terms

The Agreement for Temporary Adjustment Related to Inter-City Transit Services does the following:

- Augments the fixed monthly rates paid to Roadrunner under the Transit Services Agreement as follows:
 - For August, 2015, by \$31,407.
 - From September 1, 2015 through January 31, 2016, by \$23,400 per month, which amount may be increased by up to \$8,050 per month if Roadrunner hires and retains a qualified and experienced full-time transit manager, acceptable to

VCTC's Executive Director, to serve as transit manager to administer the Transit Services Agreement.

- Augments the "gate-to-gate" rate in the Transit Services Agreement by a fixed, monthly amount from August 1, 2015 to January 31, 2016 by \$37,820.
- The augmented payments are intended to pay for Roadrunner's asserted cost increases for bus leases, auto insurance, wages, maintenance costs and project management during the six-month time period that Roadrunner seeks a third party operator or investor to purchase it or an interest in Roadrunner and/or its assets and thereafter complete the work under the Transit Services Agreement. Roadrunner is required to provide verifying documentations to support the proposed additional payment.
- Roadrunner agrees that it will continue to provide the level of service required under the Transit Services Agreement.
- VCTC agrees not to engage in discussions with any third party transit operators about completing the Transit Services Agreement before January 1, 2016 to provide Roadrunner with an opportunity to locate a third party operator or investor to purchase it or an interest in Roadrunner and/or its assets.
- After January 1, 2016, if VCTC reasonably determines that Roadrunner may not be able to provide the services required pursuant to the Transit Services Agreement during the following six (6) months, VCTC is authorized to engage in discussions with third party providers of transit services related to the services that Roadrunner is required to provide pursuant to Transit Services Agreement. This right to engage in discussion continues after March 1, 2016 if VCTC believes, in its sole discretion, that Roadrunner may not be able to continue to provide the services required.
- Roadrunner is required to maintain the performance bond required under the Transit Services Agreement.
- All other terms of the Transit Services Agreement remain in force and the augmented payments will revert to the existing rates on February 1, 2016.

VCTC obligations set forth in the agreement are contingent upon Roadrunner continuing to operate the Inter-City bus service pursuant to the terms of the Transit Services Agreement through, at minimum, February 28, 2016. The agreement also expressly provide that any potential modification to the Transit Services Agreement that may be requested by Roadrunner for a third-party provider shall be subject to VCTC's approval and its sole discretion.

AGREEMENT FOR TEMPORARY ADJUSTMENT RELATED TO INTER-CITY TRANSIT SERVICES

This Agreement for Temporary Adjustment Related to Inter-City Transit Services Agreement (the “**Interim Agreement**”) is entered into as of September 11, 2015, by and between Ventura County Transportation Commission (“**Commission**” or “**VCTC**”) and Roadrunner Management Services, Inc., a California corporation (“**Roadrunner**”). When used in this Agreement, the term “**Parties**” shall refer to and include the Commission and Roadrunner.

RECITALS

WHEREAS, the Parties entered into that certain Intercity Transit Services Agreement dated November 26, 2014 (the “**Transit Services Agreement**”) under the terms of which, in general, Roadrunner agreed to provide inter-city transit bus services for the Commission, and the Commission agreed to pay for these services, as more fully defined in the Transit Services Agreement;

WHEREAS on December 1, 2014, the Commission issued a Notice to Proceed under the Transit Services Agreement, with a start date for services of May 4, 2015;

WHEREAS Roadrunner has commenced providing services under the Transit Services Agreement;

WHEREAS, on June 2, 2015, Roadrunner advised the Commission in writing that Roadrunner’s costs of performing under the Transit Services Agreement were in excess of its bid amounts and contract payments under the Transit Services Agreement, and, therefore, that Roadrunner was operating the services at a negative cash flow;

WHEREAS, after receiving Roadrunner’s June 2, 2015 letter, the Commission and Roadrunner entered into a series of discussions to discuss and seek interim resolution of the issues raised in Roadrunner’s letter;

WHEREAS, the parties acknowledge that continued and uninterrupted inter-city transit services is necessary to serve the residents of Ventura County;

WHEREAS, Roadrunner believes it may be able to locate a third party operator or investor to purchase it or an interest in Roadrunner and/or its assets and thereafter complete the work under the Transit Services Agreement;

WHEREAS, Roadrunner acknowledges that by entering into this Interim Agreement that the Commission retains its sole and exclusive authority to approve any amendment to the Transit Services Agreement that may be requested by Roadrunner or any third-party.

NOW, THEREFORE, the Parties wish to enter into this Agreement to ensure that Roadrunner can explore opportunities with third parties, ensure that the Commission obtains assurances of short term performance, and avoid any disputes or litigation over the actions each party may now take to accomplish those ends.

AGREEMENT

NOW, THEREFORE, in consideration of the following terms, covenants and conditions, the Parties agree as follows:

SECTION 1. CONSIDERATION

- 1.1. **Temporary Payment Adjustment.** The compensation paid to Roadrunner under the Transit Services Agreement shall be temporarily modified as follows:
- (a) The fixed monthly rate set forth in paragraph 8(b) of the Transit Services Agreement, applicable to the time period between September 1, 2015 and January 31, 2016 shall be augmented by an additional \$23,400 per month. The augmented amount shall also be increased by up to \$8,050 for any month between September 2015 and January 2016 that Roadrunner hires and retains a qualified and experienced full-time transit manager, acceptable to the VCTC Executive Director, to serve as transit manager to administer the Transit Services Agreement. This potential additional amount of up to \$8,050 per month for the transit service manager shall only be payable (1) during the time period between September 1, 2015 and January 31, 2016 and (2) so long as the transit manager is employed by Roadrunner. In addition, for the month of August 2015 only, the fixed monthly rate set forth in paragraph 8(b) of the Transit Services Agreement shall be augmented by an additional \$31,407.
 - (b) The “gate to gate” rate set forth in paragraph 8(a) of the Transit Services Agreement, applicable to the time period between September 1, 2015 and January 31, 2016, shall be augmented by a fixed monthly amount of \$37,820. In addition, for the month of August 2015 only, the “gate to gate” rate set forth in paragraph 8(a) of the Transit Services Agreement shall be augmented by an additional \$37,820.
 - (b) These temporary payments set forth in paragraph 1.1(a) and 1.1(b) (the “**Interim Payments**”) are intended by the Parties to pay for Roadrunner’s cost increases for bus leases, auto insurance, wages, maintenance costs and project management during the time period that Roadrunner seeks a third party operator or investor to purchase it or an interest in Roadrunner and/or its assets and thereafter complete the work under the Transit Services Agreement.
 - (c) The Interim Payments shall commence for services under the Transit Services Agreement beginning on September 1, 2015 and shall cease at midnight on January 31, 2016, at which time the compensation due Roadrunner for services provided, including the fixed monthly rate and the gate to gate rate, shall revert back to the compensation set forth in the Transit

Services Agreement. For purposes of this subsection, the Interim Payments include the additional payment to be made for services in August 2015.

- (d) The Commission's obligation to make any of the Interim Payments is conditioned on (1) Roadrunner maintaining the current level of services provided under the Transit Service Agreement and (2) Roadrunner submitting verification of actual cost increases under the Transit Services Agreement in a form acceptable to the Executive Director of the Commission within 15 days of the effective date of this Agreement, and Roadrunner's compliance with the terms of this Interim Agreement and the Transit Service Agreement.
- (e) The Interim Payments shall be made at the same time as the regular payments due Roadrunner under paragraph 10 of the Transit Services Agreement. Provided, however, that Roadrunner submits complete invoices with all required information, the Commission shall during the term of this Interim Agreement through February 28, 2016 use reasonable efforts to pay the fixed monthly rates (as defined in Section 9.b of the Transit Services Agreement) by the fifteenth (15th) day of each month and shall use reasonable efforts to pay the gate-to-gate rates (as defined in Section 9.a of the Transit Services Agreement) by the thirtieth (30th) day of each month.

- 1.2. **Roadrunner's Representations and Warranty of Continued Performance.** Roadrunner represents and warrants that the payments payable pursuant to Section 1.1 above are sufficient for it to continue operating under the Transit Services Agreement for an additional six-month month period from the Effective Date (i.e., through February 28, 2016). Roadrunner further represents, warrants and agrees that it shall not request nor be entitled to any additional increase in payments or rates for services provided pursuant to the Transit Services Agreement before February 28, 2016.
- 1.3. **Roadrunner Maintenance of Performance Bond.** Roadrunner shall maintain the Performance Bond in full force and effect and shall make all bond payments prior to the time those payments are due.
- 1.4. **Roadrunner to Engage in Negotiations.** On or around the first day of each month, Roadrunner shall provide VCTC with an update on its negotiations with one or more third party transit providers regarding a merger, acquisition, or investment by such third parties of Roadrunner, its assets, and/or the Transit Services Agreement. Such update shall include the frequency of communications with the third party and the name of the third party (provided such information is not protected by a Non-Disclosure Agreement). Such update shall not include any terms of the negotiation. In addition, Roadrunner shall use best efforts to arrange for the third party transit provider(s) with whom they are negotiating to send a letter to VCTC confirming that the third party transit provider(s) is currently in negotiations with Roadrunner.

SECTION 2. Potential Contract Modifications and Time Period for Exclusive Negotiations.

- 2.1. **No Obligation by the Commission to Consent to Modifications to Transit Services Agreement.** The Commission understands that Roadrunner will be in discussions with third parties regarding a merger, acquisition, or investment by such third parties of Roadrunner, its assets, and/or the Transit Services Agreement. Roadrunner acknowledges that the Commission has no obligation to agree to any assignment of the Transit Services Agreement or delegation of duties thereunder to a third party, as set forth in paragraph 16 of the Transit Services Agreement. Roadrunner further acknowledges the Commission has no obligation to accept any proposal to modify or amend the Transit Services Agreement made by Roadrunner or any third party. Roadrunner further acknowledges and agrees that the Commission reserves its rights to enter into appropriate agreements with a contractor to complete the Transit Services Agreement or provide the transit services identified in the Transit Services Agreement in the event that Roadrunner fails or is unable to perform the required services.
- 2.2. **Time Period for Exclusive Discussions.** Provided that Roadrunner continues to provide all services required pursuant to the Transit Services Agreement and this Interim Agreement, the Commission agrees that prior to January 1, 2016, the Commission will not engage in any discussions with third-party providers of transit services related to the services that Roadrunner is required to provide pursuant to Transit Services Agreement. Roadrunner agrees that any time after January 1, 2016, the Commission may engage in discussions with third party providers of transit services related to the services that Roadrunner is required to provide pursuant to Transit Services Agreement if the Commission reasonably determines that Roadrunner may not be able to provide the services required pursuant to the Transit Services Agreement within the following six (6) months. Roadrunner further agrees that after March 1, 2016, the Commission may engage in discussions with third party providers of transit services related to the services that Roadrunner is required to provide pursuant to the Transit Services if the Commission determines, in its sole discretion, that Roadrunner may not be able to provide the services required pursuant to the Transit Services Agreement.

SECTION 3. RELEASE OF CLAIMS

- 3.1. **Release by Roadrunner.** Roadrunner generally releases, absolves, disclaims, and forever discharges the Commission and all Related Parties (as defined in Section 4.3 of this Agreement) from any and all claims, demands, obligations, actions, causes of action, damages, losses, costs or expenses, based in tort, fraud, contract, statute or of any other nature whatsoever, known or unknown, past, present or future, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, which the releasing party now has had, now has, or may hereafter have against the other party arising out of or related to:

- (a) Any communications made by the Commission to other transit providers arising out of the circumstances giving rise to this Interim Agreement, as partly defined in the Recitals above, that occurred on or before the date of this Interim Agreement;
- (b) Any communications made by the Commission to any third party transit provider in accordance with Section 2.2 of this Interim Agreement.

3.2. **Release by the Commission.** Except for the consideration set forth above in Section 1.1, the Commission generally releases, absolves, disclaims, and forever discharges Roadrunner and all Related Parties (as defined in Section 4.3 of this Agreement) from any and all claims, demands, obligations, actions, causes of action, damages, losses, costs or expenses, based in tort, fraud, contract, statute or of any other nature whatsoever, known or unknown, past, present or future, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, which the releasing party now has or has had against the other party arising out of or related to:

- (a) Roadrunner's failure to timely complete its obligations to construct a maintenance facility, as required under Transit Services Agreement and Exhibit H to that agreement; and
- (b) The release in this Section 3.2 relates only to actions, events, and circumstances that occurred prior to the Effective Date of this Interim Agreement.

SECTION 4. MISCELLANEOUS PROVISIONS

- 4.1. **No Alteration or Novation of the Transit Services Agreement.** Except as otherwise expressly stated herein, the Parties agree this Agreement shall in no way alter, amend, novate, or modify the Transit Services Agreement, all of the terms of which remain in full force and effect. This Agreement shall in no way prejudice any other rights and obligations of either Party under the Transit Services Agreement, including but not limited to the Commission's right to exercise remedies in the event of Roadrunner's default.
- 4.2. **Incorporation of Recitals into this Agreement.** The Recitals set forth above are fully and completely incorporated into this Agreement.
- 4.3. **Related Parties.** This Agreement shall apply to all **Related Parties** of the Commission and Roadrunner. As used herein, the term "**Related Parties**" shall mean any heir, executor, administrator, successor, successor-in-interest, corporation, limited liability company, partnership, joint venture, parent, affiliate, assignee, assignor, vendee, lessee, subsidiary, agent, contractor, employee, officer, director, member, shareholder of either party. When used in this Agreement, the term Related Parties shall include past, present, or future persons and entities.

- 4.4. **Binding Effect.** This Agreement shall be binding on, and inure to the benefit of the successors and assigns of the Parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the Parties hereto or their Related Parties, any rights or benefits under or by reason of this Agreement.
- 4.5. **Disclaimer of Liability.** The Parties acknowledge and agree that the payment and acceptance of the Interim Payments and the execution of this Agreement are given solely as a compromise and are entered into in good faith and shall never for any purpose be considered an admission of fault, culpability, liability or any kind of responsibility whatsoever, and no past or present wrongdoing on the part of any of the Parties shall be implied by such payment or execution.
- 4.6. **Integration Clause.** This Agreement, along with the Transit Services Agreement, represents and contains the entire agreement and understanding among the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the Parties unless incorporated herein. This Agreement may not be amended or modified except by an agreement in writing signed by all Parties.
- 4.7. **Construction.** Because each party and the counsel for each party have reviewed this Agreement, it is agreed that the rule that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. In the event that one or more of the provisions or portions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law. This Agreement is entered into in the State of California and shall be construed and interpreted in accordance with its laws.
- 4.8. **Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument. Facsimile signatures shall be as valid as original signatures.
- 4.9. **Fees and Costs in Event of Breach.** In the event of any breach of this Agreement, any party aggrieved shall be entitled to recover from the breaching party, in addition to other relief awarded, all such damages, costs, reasonable attorneys fees, and experts fees, incurred by such defense, defending against, or seeking to obtain an abatement of or injunction against such action or proceeding, or in establishing or maintaining the applicability or validity of this agreement, or any provision thereof, or in prosecuting any claim or cross-claim based thereon.
- 4.10. **Captions.** Paragraphs, titles, or captions are designated for convenience only and shall in no way define, limit, extend, or describe the scope of this Agreement.

4.11. **Effective Date.** The effective date of this Agreement (“Effective Date”) shall be the latest date appearing opposite the signatures below.

[signatures follow next page]

Ventura County Transportation Commission

Roadrunner Management Services, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____, 2015

Date: _____, 2015

ATTEST:

Donna Cole
Clerk of the Commission

APPROVED AS TO FORM:

Steven Mattas
General Counsel of the Commission

APPROVED AS TO CONTENT:

Darren Kettle
Executive Director of the Commission
2517992.1