

**AMENDMENT NO. 1 TO AGREEMENT NO. C43540 FOR SERVICES TO
OPERATE THE EL PASEO COURTESY CART SERVICE
BETWEEN THE CITY OF PALM DESERT AND CIRCUIT TRANSIT, INC.**

1. Parties and Date.

This Amendment No. 1 to the Agreement for Services to Operate the El Paseo Courtesy Cart service is made and entered into as of this 13th day of July 2023, by and between the City of Palm Desert ("City") and Circuit Transit, Inc., a Corporation with its principal place of business at 501 E. Las Olas Blvd, Suite 300, Fort Lauderdale, FL 33301 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 The City and Contractor entered into Contract No. C43540 dated July 14, 2022 ("Agreement"), under which Contractor operated the City's seasonal, on-demand shuttle service along El Paseo for the period dating mid-October 2022 through May 2023.

2.2 The City and Contractor now desire to amend the Agreement to extend the term of the Agreement, and to update the operations schedule for shuttle service.

3. Terms.

3.1 The introductory paragraph of the Agreement is hereby amended to delete the reference to the period October 14, 2022 through May 29, 2023, and to read as follows:

"This Agreement dated July 14, 2022 is entered into between the City of Palm Desert (CITY) and Circuit Transit, Inc. (CONTRACTOR), for the operation of the El Paseo Courtesy Cart Service, a non-fixed route public transit service within the City of Palm Desert ("Project")."

3.2 Section 2 (Vehicle Operation) of the Agreement is hereby renamed and amended in its entirety, to read as follows:

"2. Scope of Services and Term:

A. General Scope of Services: CONTRACTOR promises and agrees to furnish to CITY all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services necessary for the Project described in the CONTRACTOR'S Proposal dated June 29, 2022, attached hereto as Exhibit B ("Services"). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

B. Vehicle Operation: Vehicles shall be in regular service seven days per week, 11:00 a.m. through 6:00 p.m. daily, (days subject to change by the CITY), including holidays, except Christmas Day and Thanksgiving Day, as follows:

Initial contract operating period: October 14, 2022 - May 29, 2023

First Amendment operating period: October 13, 2023 - May 27, 2024

CONTRACTOR shall operate the vehicles in accordance with the applicable operating schedule, attached hereto as Exhibit "A" ("Schedule").

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Vehicles are permitted to be out of service for one half-hour plus two 15-minute breaks during each seven-hour operating period. No breaks shall be taken consecutively or concurrently. At the direction of the CITY, more hours may be added to the schedule described herein or may be reduced from this schedule. In the event that the number of hours is changed, the contract amount will be adjusted accordingly by application of the unit rates contained in Exhibit B. The CITY retains the right to increase, decrease, or, with thirty (30) days' notice, to suspend or cancel the service for any period at any time.

The CONTRACTOR shall provide neatly-attired professional drivers whose appearance is appropriate for the context in which they will be working (company golf shirts, for example).

- C. Term: The term of this Agreement shall be from **July 14, 2022, to May 27, 2024**, unless earlier terminated as provided herein. CONTRACTOR shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services. Further renewal(s) would be subject to a CPI increase. Execution is completed when all parties have signed the agreement. Agreement is subject to annual budget approval by the City Council. If not approved during the budget process the agreement will be cancelled according to the termination procedures outlined below.
- D. Termination Prior to Expiration of Term: CITY may terminate this Agreement at any time, with or without cause, upon thirty (30) day's written notice to the CONTRACTOR. Upon receipt of the notice of termination, the CONTRACTOR shall immediately cease all work or services hereunder except as may be specifically approved by the Contract Officer. In the event of termination by the CITY, CONTRACTOR shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by CITY. CITY shall be entitled to reimbursement for any compensation paid in excess of the services rendered. CONTRACTOR may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to the CITY only in the event of substantial failure by the CITY to perform in accordance with the terms of this Agreement through no fault of CONTRACTOR.

- 3.3 A New Section 2.5 (Independent Contractor; Control and Payment of Subordinates) is hereby added to the Agreement, to read as follows:

"2.5 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by CONTRACTOR or under its supervision. CONTRACTOR will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. CITY retains CONTRACTOR on an independent contractor basis and not as an employee. Any personnel performing the Services shall not be employees of CITY and shall at all times be under CONTRACTOR'S exclusive direction and control. Neither CITY, or any of its officials, officers, directors, employees or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR'S officers, employees or agents, except as set forth in this Agreement. CONTRACTOR shall

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pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance."

3.4 Section 4 (Fees and Payment) of the Agreement is hereby amended in its entirety to read as follows:

- A. Operation of the El Paseo Courtesy Cart Service: CONTRACTOR shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement per Exhibit "B". The total compensation shall not exceed Two Hundred Nineteen Thousand Two Hundred and Forty-One Dollars and Two Cents (\$219,241.02) per year, without written approval of the City Council or City Manager, as applicable.
- B. Payment of Compensation: CONTRACTOR shall submit to CITY monthly invoices which provide a detailed description of the Services and hours rendered by CONTRACTOR. CITY shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the CITY disputes any of CONTRACTOR'S fees, the CITY shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. CONTRACTOR shall submit its final invoice to CITY within thirty (30) days from the last date of provided Services or termination of this Agreement and failure by the CONTRACTOR to submit a timely invoice may constitute a waiver of its right to final payment. Payment shall not constitute acceptance of any Services completed by CONTRACTOR. The making of final payment shall not constitute a waiver of any claims by the CITY for any reason whatsoever.
- C. Reimbursement for Expenses: CONTRACTOR shall not be reimbursed for any expenses unless authorized in writing by CITY or included in Exhibit "B".
- D. Extra Work: At any time during the term of this Agreement, CITY may request that CONTRACTOR perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. CONTRACTOR shall not perform, nor be compensated for, Extra Work without written authorization from CITY."

3.5 A new Section 7 (Amendment; Modification) is hereby added to the Agreement, to read as follows:

"7. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties."

- 3.6 A new Section 8 (Delivery of Notices) is hereby added to the Agreement, to read as follows:

“8. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Circuit Transit INC
501 E Las Olas Blvd, Suite 300
Fort Lauderdale, FL 33301
ATTN: Daniel Kramer, Vice President, Operations & Business
Development, Circuit

City: City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260
ATTN: Economic Development Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.”

- 3.7 Exhibit “A” is hereby amended to add the 2023 – 2024 City of Palm Desert Neighborhood Electric Vehicle (NEV) Operations Schedule, attached hereto and incorporated herein by reference.
- 3.8 Exhibit “B” page 18 is hereby amended to add the 2023-2024 Compensation schedule, attached hereto and incorporated herein by reference.
- 3.9 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term “Agreement” or “Contract” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.
- 3.10 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.
- 3.11 Severability. If any portion of this Amendment No. 1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.12 Counterparts. This Amendment No. 1 may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.


[SIGNATURES ON FOLLOWING PAGE]

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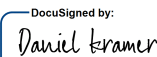
**SIGNATURE PAGE FOR AMENDMENT NO. 1 TO CONTRACT NO. C43540
BETWEEN THE CITY OF PALM DESERT
AND CIRCUIT TRANSIT, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 to the Agreement for Services to Operate the El Paseo Courtesy Cart service as of the day and year first above written.

CITY OF PALM DESERT


By: 
L. Todd Hileman
City Manager

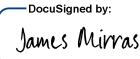
CIRCUIT TRANSIT, INC.

By: 
Its: Vice President

Printed Name: Daniel Kramer

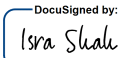
ATTEST:

By: 
Anthony J. Mejia
City Clerk

By: 
Its: Chief Operating Officer

Printed Name: James Mirras


APPROVED AS TO FORM:

By: 
Best Best & Krieger LLP
City Attorney

QC: MN

Insurance:


Initial Review


Final Approval

“EXHIBIT A”**2023 – 2024 City of Palm Desert Neighborhood Electric Vehicle (NEV) Operations
Schedule****Regular**

Month	# of Days	Hours Per Day	Total Hours Per Cart
October 13 – 31, 2023	19	7	133
November 1-30, 2023 (excluding Thanksgiving)	29	7	203
December 1-31, 2023 (excluding Christmas)	30	7	210
January 1-31, 2024	31	7	217
February 1-29, 2024	29	7	203
March 1-31, 2024	31	7	217
April 1-30, 2024	30	7	210
May 1-27, 2024	27	7	203
Total Annual Regular Hours - One (1) Cart			1596
Total Annual Regular Hours - Two (2) Cart			1596
Total Annual Regular Hours - Three (3) Cart			1596
Total Annual Regular Hours for all Three (3) Carts			4788

Potential Overtime Hours – (At the direction of the City, but not to exceed)

Month(s)	Hours Per Month	Number of Months	Total Hours Per Cart
October 2023 – February 2023	4	5	20
March 2024	55	1	55
April – May 2024	3	2	6
Potential Overtime Hours - One (1) Cart			81
Potential Overtime Hours - Two (2) Cart			81
Potential Overtime Hours - Three (3) Cart			81
Total Potential Overtime Hours for all Three (3) Carts			243

Contract No. C43540**“EXHIBIT B”
COMPENSATION****Standard Vehicle**

Straight Time: \$42.57/car/hr

Overtime: \$53.64/car/hr

ADA Vehicle

Straight Time: \$43.99/car/hr

Overtime: \$55.06/car/hr

Annual Straight Time Standard (based on two vehicles)	3,192	\$42.57	\$135,883.44
Annual OT Standard (based on two vehicles)	162	\$53.64	\$8,689.68
Annual Straight Time ADA (based on one vehicle)	1,596	\$43.99	\$70,208.04
Annual OT ADA (based on one vehicle)	81	\$55.06	\$4,459.86
Annual Total	5,031	-	\$219,241.02

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Riverside-San Bernardino-Ontario.