

RESOLUTION NO.: 104 - 2008
INTRODUCED BY: Roche

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH SENIOR TRANSPORTATION CONNECTION OF CUYAHOGA COUNTY TO PROVIDE SENIOR CITIZEN AND DISABLED PERSON TRANSPORTATION IN THE CITY.

WHEREAS, on July 10, 2007, and January 15, 2008, this Council adopted Resolutions 68-2007 and 2-2008, respectively, which authorized the Mayor to enter into agreements with Senior Transportation Connection of Cuyahoga County ("STC"), a non-profit corporation in Ohio, for a transportation van for senior citizens and disabled persons and to coordinate and schedule such transportation; and

WHEREAS, the City has been providing transportation for senior citizens and disabled persons since 2007 and wishes to continue its cooperative services relationship with STC for 2009 through 2012 for the provision of transportation to senior citizens and disabled persons and related services;

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is hereby authorized to enter into the Contract with Senior Transportation Connection of Cuyahoga County substantially in a form as set forth in Exhibit 1 to this Resolution, attached hereto and incorporated herein, for certain services related to the provision of transportation for senior citizens and disabled persons and that the cost to the City shall be as set forth in this Contract.

Section 2: The Director of Finance is authorized and directed to appropriate to a proper account the sum sufficient to cover the costs of the Contract authorized in Section 1 of this Resolution.

Section 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

EXHIBIT 1

Senior Transportation Services Contract

This Senior Transportation Services Contract (the “Contract”), made and entered into as of the _____ day of _____, 2008, by and between the City of Richmond Heights, a municipality of the State of Ohio, after this called “City,” and Senior Transportation Connection of Cuyahoga County, an Ohio non-profit corporation, after this called “Contractor”.

WHEREAS, the City desires to retain the services of competent and qualified Contractor to provide certain senior transportation services to the City, and

WHEREAS, the Contractor is competent and qualified to furnish services to the City and has provided a responsive and responsible proposal, and desires to provide transportation services according to the terms and conditions stated herein. Now, therefore, in consideration of the mutual covenants, agreements and considerations contained herein, the City and Contractor agree as hereinafter set forth:

SECTION 1: CONTRACTOR AS AN INDEPENDENT CONTRACTOR

The Contractor shall provide the services required herein strictly under a contractual relationship with the City and is not, nor shall be, construed to be an agent or employee of the City. As an independent Contractor, the Contractor shall pay any and all applicable taxes required by law. In performing the services hereunder, the Contractor shall comply with all pertinent Federal, State, and local statutes including, but not limited to, the Fair Labor Standards Act, The Americans with Disabilities Act, the Federal Civil Rights Act, and any and all relevant employment laws. The Contractor shall be responsible for all income tax, social security and Medicare taxes, Federal unemployment taxes, and any other withholdings from its employees’ wages or salaries.

- A) The Contractor shall hire, compensate, supervise, and terminate members of its work force; shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform.
- B) The Contractor shall not be exclusively bound to the City and may provide service to other private and public entities.

SECTION 2: TERM

Subject to the termination provisions contained in this Contract, the term of this Contract shall be for the period beginning December 1, 2008 and ending December 31, 2012, unless either party serves written notice to the other party at least ninety (90) days prior to the end of the term.

SECTION 3: SCOPE OF SERVICES PROVIDED BY THE CONTRACTOR

3.1 Overview; Fees. Contractor shall conduct the day-to-day operation of the City’s Senior Transit operations. The Senior Transit service serves senior residents 60 years of age and older,

Senior Transportation Services Contract|
Senior Transportation Connection and the City of Richmond Heights

ADA certified individuals, and other individuals requiring trips. Services operate Monday through Friday, 8:00 AM to 4:00PM, within the specified service areas. The service does not operate on some holidays. During the term of the Contract, the Contractor reserves the right to adjust service hours, routes, schedules, service area boundaries and operating rules so as to accommodate ridership. The City reserves the right to adjust certain service criteria in order to control expenses and, therefore, its fee obligation to Contractor.

As compensation for the services provided by Contractor hereunder, the City shall pay Contractor no fee for the first twenty-six (26) months of this agreement, a fixed fee beginning in 2011 of \$ 5,000 in a single installment within fifteen (15) days from the first day of 2011, and a fixed fee of \$ 7,500 in a single installment within (15) days from the first day of 2012. The Contractor shall not be required to provide more than 140 one-way passenger trips per month for the first twenty-six (26) months. Upon request, Contractor may provide more than 140 one-way passenger trips for any month, provided that City shall be required to pay Contractor the sum of \$ 12.72 of each one-way trip over 140 for that month. All extra trips (trips in excess of 140 one-way passenger trips per month) shall be invoiced separately by the Contractor, and shall be paid by City within 15 days after invoice. Any payment more than (five) 5 days late, shall include a late fee of \$ 25.00. For all holidays mandated by the City or the STC shall be observed and service shall not be provided.

3.2 SERVICE AREA

Service area is commonly defined as the corporate boundaries of the City of Richmond Heights, however the Service Area as it pertains to the operations of the STC is hereby designated the county of Cuyahoga in its entirety as well as five (5) miles into all adjacent counties.

3.3 SERVICE LEVELS

- A) The City has determined a single contractor system will best serve the needs of the City's transportation population. Contractor should reasonably assume that program participation shall consist of no more than 1,680 trips per Contract year for the base fee.

3.4 OPERATING SCHEDULE

- A) The normal business hours of service are from 8:00 am to 4:00 pm, Monday through Friday. The Contractor may elect, without obligation, to provide extended service at its sole discretion.
- B) The STC maintains a policy on closings in case of weather related conditions and emergencies. This policy is attached as EXHIBIT A to this Contract.

3.5 TRIP RESERVATIONS AND SCHEDULING

- A) The Contractor will accept trip requests up to 4:00 p.m. the day before travel.
- B) Manifests will include the passenger's name, the location of each passenger's pick-up and drop-off point, whether the passenger travels using a wheelchair, whether the passenger travels with a companion or personal care attendant, and any special circumstances or

requirements pertaining to the passenger. This manifest will be available for City's inspection at any time upon reasonable notice.

- C) Some trips may be added to the manifest during the same service day, if schedules permit, as determined by the Contractor in its sole discretion. Added trips will be transmitted either by phone or by other means determined by the Contractor's dispatcher. Trips cancelled prior to service will be handled in the same manner as add-ons. A log shall be maintained to add-ons, cancellations, and no-shows each day.
- D) Allocations of trips will be based on Contractor's equipment, capacity and geographic location for most effective scheduling.
- E) Contractor shall provide brochures for dissemination to the public which detail the services provided by this Contract and the scheduling of trips.

3.6 WILL-CALL RETURNS / ADD-ON TRIPS

Some trips cannot be accurately pre-scheduled. A portion of these will-call returns / add-on trips will be transmitted by phone or other means to the Contractor's driver to insert in their previously transmitted manifests, or taxi service may be used at the discretion of the Senior Transportation Connections dispatcher.

3.7 MONITORING AND SUPERVISION

The Contractor shall be responsible for monitoring and supervising service. The Contractor shall be responsible for dispatching or arranging for back-up vehicles, road service calls, towing and other driver supervisory services as needed. Documentation of these occurrences shall be maintained on a dispatcher's log.

3.8 PERFORMANCE LOG

The Contractor shall maintain a log with information on safety concerns, passenger complaints, passenger behavior problems and any other activity reasonably required by City. The Contractor will provide the log to the City's designee upon request.

3.9 REFUSAL OF SERVICE

The Contractor shall have the ability to refuse service to a passenger referred by City **only** if it is believed the passenger cannot be transported safely or the passenger is disruptive, abusive or intoxicated. All service denials shall be reported to the City's designee as soon as reasonably practical.

3.10 FARES

- A) The Contractor shall collect a fare from each customer only when it is indicated on the manifest. This fare shall be retained by the Contractor. The passenger fare shall be paid according to City's fare structure, unless the Contractor is granted the written authority by

the City to make fare reductions in which case the fare will be adjusted to the lower of the City structure or the adjacent next community operated by the Contractor.

- B) Drivers shall not accept tips or indicate to customers a tip is expected.

3.11 COMPLIANCE WITH REGULATIONS

The Contractor shall be in compliance with all applicable Ohio Department of Transportation Rules and Federal Transit Administration Drug Testing requirements.

3.12 SUBCONTRACTING

- A) Subcontracts and joint ventures are allowable, provided the Contractor assumes the following responsibilities:
- 1) Serves as the sole contact responsible party with the City.
 - 2) Assumes full responsibility for the performance of all its subcontractors.
 - 3) Submits copies to the City of all subcontracts and other agreements proposed to document such arrangement.
- B) The Contractor shall provide an affidavit certifying that all subcontractors meet the requirements of the Contract. Failure of a subcontractor to comply with all requirements can be grounds for termination of the entire Contract.

3.13 FACILITIES

- A) Operating Base
- 1) Contractor shall provide a base of operation with adequate facilities for administration, and unless the Contractor chooses to subcontract these functions, vehicle maintenance and service.
- B) Communications
- 1) The Contractor shall be required to operate a two-way communication system.
- C) Security
- 1) Contractor shall take all reasonable and necessary precautions to provide security for any equipment provided by the City, as well as for records of operations.
- D) Telephone/fax/modem
- 1) Contractor shall equip its administration and supervisory office with a fax machine on a dedicated telephone line and sufficient voice telephone lines to ensure that the supervisors and administrative staff can be reached during service hours.
 - 2) Contractor shall be required to provide, at its own expense, a computer with modem and dedicated phone line in order to perform live dispatching through automated scheduling system and software to download manifests.

3.14 VEHICLES

- A) Use of Existing Fleet. The City hereby agrees to provide its current fleet to the Contractor for operation and facilitation of this Contract. The current fleet is one vehicle, VIN # 1FDWE35L77DA92187.
- B) Acceptance of Fleet. Contractor shall have the right to inspect the condition of the fleet and shall only accept vehicles that are in good mechanical condition. The City hereby agrees to cure any and all mechanical failures of its fleet before the provision of service initially commences under this Contract.
- C) Maintenance. Contractor shall maintain vehicles and equipment in a safe, clean and sanitary condition at Contractor's cost. Contractor shall maintain records of all vehicle maintenance for the life of the contract. Vehicles and equipment shall be maintained in a manner so that they will not leak oil or other fluids. Contractor shall also be responsible for the costs of all fuel, oil, fluids, tires, replacement lights and batteries.
- D) Inspections. City will have the right to conduct inspections on City's vehicles operated by the Contractor under this Contract. Any vehicle or equipment may be inspected upon reasonable advance notice by City to Contractor to determine the operating condition of the vehicle or equipment and compliance with the terms of this Contract. Upon the expiration or termination of this Contract, Contractor shall return the City vehicle to the City in good mechanical conditional with the equipment which was with the vehicle at the commencement of this Contract still intact and in good working condition.
- E) Storage of Fleet. The City agrees to allow the Contractor to store the vehicles owned by the City to facilitate this Contract at the City's service garage within the fenced and secure area, although Contractor is not bound to do so.
- F) Sufficient Number. Contractor shall maintain a sufficient number of vehicles to meet the service levels to be negotiated as part of the Contract with the City. Every effort will be made to include spare vehicles to allow for routine servicing, maintenance, repairs, vehicle breakdowns, and similar occurrences as may reasonably be anticipated. Vehicles used in the provision of service under this Contract shall be no more than ten years old. New and/or refurbished vehicles used in the transport of wheelchairs and other mobility devices shall meet the requirements of 49 CFR Part 38 of the Americans with Disabilities Act (ADA). Upon request, the manufacturer or supplier of the vehicle shall supply evidence of compliance, in the form of a State of Ohio sticker affixed to the vehicle.
- G) Necessary Capacity and Equipment. Vehicles shall be accessible and shall be capable of transporting seated passengers and passengers in wheelchairs. Vehicles shall be equipped with at least one (1) front-facing wheelchair secure station that meets ADA requirements, two-way communications and signage as may be required.

3.15 DRIVERS

- A) Driver Selection. The Contractors shall establish a formal selection process that shall include:
 - 1) Verification that the applicant has an appropriate, valid Ohio State driver's license.

- 2) Verification that the applicant is physically capable of driving the program vehicles; a pre-employment physical and drug screen is required. The Contractor shall be responsible for pre-employment physicals and drug screens.
- 3) A criminal background check. The Contractor shall be responsible for background checks at the date of hire.

B) Driver Training

- 1) The Contractor shall provide an approved training and retraining program, to teach driver proficiency and safety. The driver-training program will commence the first year of employment and shall include but not be limited to the following:
 - a) Defensive driving, using a program approved by the National Safety Council;
 - b) Use of all special equipment associated with the job, such as wheelchair lifts, fire extinguishers and two-way communications devices;
 - c) Operating procedures, including passenger assistance policies, fare collection, vehicle pre-operation checks, use of forms, record keeping and dispatch procedures;
 - d) Familiarization with the service area; passenger assistance techniques, including training in dealing with the disabled and sensitivity training;
 - e) Relevant policies and procedures contained in an Operator's Manual;

In addition, the driver training shall include at least:

- f) Annual reviews of individual driver's responsibilities and performance;
 - g) Semi-annual observations of the driver's on-the-job performance. Supervisors should ride with the drivers to observe their driving techniques.
 - h) Maintaining records for all drivers to verify that the training has been received.
- 2) Drivers shall be retrained in Defensive Driving and Passenger Sensitivity every three years. Individual training records shall be available for inspection by City on request.

C) Drug/Alcohol Testing. All drivers, as well as other safety sensitive positions, shall be subject to Drug/Alcohol Testing for pre-employment, random, post accident and probable cause, as required under Federal Transit Administration (FTA) Regulations. The Contractor shall pay the costs associated with such testing.

D) English Fluency. All drivers shall be sufficiently skilled in English to carry on necessary conversations with passengers and the dispatcher and to read a vehicle schedule and fill out required reports.

3.16 PASSENGER ASSISTANCE POLICY

A) Drivers shall provide assistance as necessary from the door where the trip originates to the door of the destination. If a passenger does not wish assistance, the driver shall visually confirm that the passenger makes it safely inside the building at their destination. Drivers

shall exercise tact at all times to ensure passengers' safety and allow them dignity and pride. Drivers shall provide assistance to passengers who use wheelchairs.

- B) **Unsure Destination.** In the event that any confusion occurs about the correct destination to which a passenger is to be taken (e.g. if the passenger says the location is wrong, the building is vacant or the address cannot be located), the driver shall confer with passenger and obtain instructions from the dispatcher. No passenger shall be boarded at any address other than the one originally given to the operator without prior approval of the dispatcher.
- C) **Waiting for and Notifying Passengers**
 - 1) Drivers shall wait up to five minutes after parking the vehicle in clear view of the customer's residence or other pick up location, or where that is not possible, taking other reasonable steps to notify the customer that the vehicle is waiting.
 - 2) If the customer cannot be located, it will be considered a no-show and indicated on the manifest. The return trip will be cancelled.

3.17 SERVICE INTERRUPTION

In cases where service is interrupted because of vehicle breakdown, accident or similar service interruption, the Contractor shall send a relief vehicle and/or driver to resume service within 90 minutes.

3.18 ACCIDENTS

The Contractor shall report all accidents from the scene to the City. The Contractor is responsible for responding to, investigating, and submitting to the City a detailed written report within twenty-four (24) hours of any accident occurring while a passenger is being transported by vehicles and/or drivers providing service under this Contract. Failure to report an accident/incident involving a City's customer shall constitute grounds for termination of this Contract.

3.19 REPORTING

The Contractor shall provide reports upon request that include:

- A) Information as may be required by Federal Transit Administration, Ohio Department of Transportation and information requested by the Metropolitan Planning Organization (MPO).
- B) A summary of significant incidents and issues based on the Performance Log specified in Scope of Service herein.

3.20 SPECIAL EVENTS

Contractor shall make the vehicle available at no charge at the City's request for up to three special events each year within the City for purposes of publicizing the services provided under this Contract. One of the events shall be the City's annual Family Days Weekend and Parade.

SECTION 4: PAYMENTS

As consideration for the Contractor satisfactorily performing the Scope of Services set forth in Section 3.1 hereof and complying with other terms of this Contract, the City shall pay the Contractor pursuant to the terms set forth in Section 3.1.

SECTION 5: CONTRACTOR'S PERSONNEL

- A) Applicable Laws. The Contractor shall be responsible for ensuring that its employees, agents, and subcontractors comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.
- B) Immigration Reform and Control Act of 1986. The Contractor certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.
- C) Employment Discrimination. During the performance of the Contract, the Contractor agrees to the following:
 - 1) The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an Equal Opportunity Employer.
 - 3) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D) Fair Labor Standards Act. The Contractor and any subcontractor shall pay all employees working on this Contract not less than the minimum wage specified in the Fair Labor Standards Act as amended.

SECTION 6: CONTRACTOR VEHICLES AND EQUIPMENT

- A) Vehicles and Equipment. Contractor shall also maintain vehicles and equipment that are not owned by the City in a safe, clean and sanitary condition at Contractor's cost. Contractor shall maintain records of all vehicle maintenance for the life of the vehicle. Vehicles and equipment shall be maintained in a manner so that they will not leak oil or other fluids. Vehicles and equipment that cannot be maintained in this manner shall not be used to provide the services covered as part of this Contract.
- B) Annual Inspections. City will have the right to conduct annual inspections on all vehicles utilized by the Contractor under this Contract. Any vehicle or equipment may be inspected

upon reasonable advance notice by City to Contractor to determine the operating condition of the vehicle or equipment and compliance with the terms of this Contract.

SECTION 7: ADVERTISING

The Senior Transportation Vehicle(s) shall clearly identify with appropriate signage the name of the City. In addition, the STC logo shall prominently appear on the Vehicle(s), the exact size, type and location of the logo on the Vehicle(s) to be determined by Contractor. Each party shall pay the cost of its own signage. Contractor shall coordinate and be the contracting agency for any and all advertising placed on the Senior Transportation Vehicle(s). All advertising shall be in accordance with the STC's Advertising Policy attached hereto as EXHIBIT B and incorporated herein by reference. All revenues associated with such advertising shall be received by the Contractor and, after deduction of all fees and expenses associated with the advertising ("net revenues"), shall be shared with the City and distributed 60% to the City and 40% to the Contractor.

SECTION 8: COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall observe and comply with all laws, ordinances, rules, regulations, orders, and decrees applicable to Contractor. The Contractor shall protect and indemnify the City and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by the Contractor, its representatives, subcontractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, the Contractor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this Contract from the federal Government, State of Ohio or municipalities when legally required and maintain same in full force and effect during the term of this Contract.

SECTION 9: INSURANCE

- A) Vehicle Insurance. The City shall have no responsibility for any personal injuries or property damage that may arise directly or indirectly from any activity involved in the fulfillment of this Contract. The Contractor shall agree to indemnify, save, and hold the City harmless from any and all claims, demands, actions and suits at law and equity for any death, personal injury or property damage which may arise directly or indirectly from any activity involved in the fulfillment of this Contract. In that connection, the Contractor shall furnish the City with a certificate of Insurance showing a minimum liability insurance coverage in the amount of at least \$1,000,000/\$5,000,000 per occurrence. The Contractor shall supply the City with a copy of the certificate prior to the time this Contract is executed and on each renewal date.
- B) General Liability Insurance. Contractor shall obtain Comprehensive General Liability insurance in the amount of at least \$1,000,000. Said coverage shall be "broad form" and shall specifically cover contractual liabilities including the hold harmless provisions of this Contract. Prior to the start of service under this Contract, the Contractor shall provide the City a certificate of insurance, specifying coverage as required in this paragraph,

underwritten by a carrier acceptable to the City (and having a most recent published rating by A.M. Best Company of "A" or better) indicating that the City and any subcontractor or agent of the Contractor engaged in any work under this Contract are included as additional insured on said policy. Said policy shall contain a provision that the City shall be given thirty (30) days written notice of cancellation.

SECTION 10: INDEMNIFICATION

To the fullest extent allowed under law the Contractor shall indemnify, hold harmless and defend the City, its officers, agents, and employees, from or on account of any and all claims, actions, lawsuits, losses, expenses, injuries, damages, judgments or liabilities of any kind whatsoever resulting from arising out of, or in connection with the Contractor's performance or nonperformance of services pursuant to this Contract, whether said services are performed by the Contractor, its agents, appointees or employees, or on behalf of the Contractor by the City, its agents or employees, unless said claims, actions, lawsuits, losses, expenses, injuries, damages, judgments or liabilities result from, arise out of, or is in connection with the actions of the City, its officers, agents, or employees, for the sole benefit of the City and unrelated to the Contractor's performance or nonperformance of its services under this Contract. Indemnification shall obligate the Contractor to defend any and all claims and/or suits brought against the City which may result from Contractor's performance or nonperformance of services, pursuant to the Contract, as stated herein. This article shall survive the termination of this Contract.

SECTION 11: RECORDS

The Contractor shall maintain such financial records and other records pertaining to this Contract as may be prescribed by applicable federal and state laws, rules, and regulations. The Contractor shall retain these records for a period of three (3) years after final payment. Upon reasonable request, these records shall be made available during the term of the Contract and the subsequent three-year period for examination by the City.

SECTION 12: TERMINATION

Either Party may terminate this Contract without cause upon 60 days advance written notice to the other party. Upon such termination without cause, Contractor shall be entitled to payment, in accordance with the payment provisions, for services rendered up to the termination date and the City shall have no other obligations to Contractor. Contractor shall be obligated to continue performance of Contract services, in accordance with this Contract, until the termination date and shall have no further obligation to perform services after the termination date. Upon termination, the City shall be entitled to a refund from Contractor on a pro rata basis of any advance payments made by the City to Contractor.

SECTION 13: LEGAL FEES AND WAIVER

In the event of legal action brought by either party for breach of this Contract, the prevailing party shall be entitled to reimbursement of all costs, expenses and legal fees incurred in obtaining a remedy to said breach. Failure to enforce the breach of any portion of this Contract by either party shall not constitute a waiver of such right in respect to same or any other breach.

SECTION 14: GOVERNING LAW AND VENUE

All legal proceedings brought in connection with this Contract shall only be brought in a state or federal court located in the State of Ohio. Venue in state court shall be in Cuyahoga County, Ohio. Each party hereby agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against such party arising under or in connection with this Contract. In the event that a legal proceeding is brought for the enforcement of any term of the Contract, or any right arising there from, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such suit. All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Contract shall in all respects be governed by and determined in accordance with the laws of the State of Ohio without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.

SECTION 15: SEVERABILITY

If any provision of this Contract shall be declared illegal, void or unenforceable by a court of competent jurisdiction, or in an arbitration proceeding, the other provisions shall not be affected but shall remain in full force and effect.

SECTION 16: FORCE MAJEURE

The parties will exercise every reasonable effort to meet their respective obligations hereunder, but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any Government law or regulation, acts of God, acts or omissions of the other party, Government acts or omissions, fires, strikes, national disasters, wars, riots, transportation problems and/or any other cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

SECTION 17: ENTIRE CONTRACT

This Contract constitutes the entire agreement between the parties. There are no understandings or promises related hereto other than those which are expressed herein, and all prior negotiations, agreements, and understandings, whether oral or written, are superseded by this Contract, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

[Signature page to follow]

