

**AGREEMENT FOR PROFESSIONAL SERVICES RELATED TO
MICROTRANSIT PUBLIC TRANSPORTATION SERVICES BETWEEN THE CITY OF TWIN
FALLS, IDAHO, AND TWIN FALLS DOWNTOWNER, LLC**

THIS AGREEMENT FOR PROFESSIONAL SERVICES RELATED TO MICROTRANSIT PUBLIC TRANSPORTATION SERVICES BETWEEN THE CITY OF TWIN FALLS, IDAHO, AND TWIN FALLS DOWNTOWNER, LLC (“Agreement”) is made and entered into this 24th day of April, 2023, by and between the City of Twin Falls, Idaho, a municipal corporation of the State of Idaho, 203 Main Ave. East, Twin Falls, Idaho 83301 (“CITY”), and Twin Falls Downtowner, LLC, a Florida Limited liability Company, LLC, 515 N Flagler Drive, Suite P-300, West Palm Beach, FL 33401 (“CONTRACTOR”).

WHEREAS, CITY desires to implement a flexible public transportation microtransit service pilot project that provides on-demand/all-in-one services to the general public in Twin Falls; and

WHEREAS, CITY issued an RFP in 2022, inviting the public to submit proposals to provide a turnkey service, to include all necessary technology, labor, and vehicles for complete operations management for microtransit service; and

WHEREAS, CONTRACTOR’s proposal was evaluated as the highest scoring proposal; and

WHEREAS, CONTRACTOR desires to provide all described elements of such a microtransit service within the City of Twin Falls service area.

NOW THEREFORE, be it agreed, for and in consideration of the mutual covenants and promises between the parties hereto, as follows:

SECTION I. SCOPE OF WORK

CONTRACTOR shall provide all services, technology, labor, marketing, and vehicles necessary to develop and implement a flexible public transit service pilot project in the form of an on demand microtransit service (“Microtransit Services”). CONTRACTOR shall provide Microtransit Services to the general public within the geographic limits of the Twin Falls, Idaho and other areas the CITY desires. Microtransit Services completed by the CONTRACTOR shall include the following:

A. Service Area

1. CONTRACTOR’s service area shall include the geographic limits of CITY, along with other nearby areas the CITY desires. All passenger trips shall begin and end within the service area. In addition, the parties may from time to time administratively expand the service area through mutual written agreement.

2. CONTRACTOR shall schedule Microtransit Services six (6) days per week for at least fourteen (14) hours per day. The parties may, from time to time, administratively adjust this schedule by mutual written agreement.

B. Customer Service – CONTRACTOR’s Microtransit Services shall include the following customer service characteristics:

1. A local field manager who shall be identified to CITY who shall coordinate customer support locally in the Twin Falls geographic area.

2. CONTRACTOR shall provide timely and responsive customer support, including to users and to CITY. This customer service shall be available during all hours of operation.

3. CONTRACTOR shall provide reasonable accommodations, consistent with the Americans with Disabilities Act, to users of the Microtransit Services. Reasonable accommodations under this Agreement include, but are not limited to, to door-to door assistance upon user request. Specifically, CONTRACTOR shall ensure that CONTRACTOR or CONTRACTOR’s employees or agents shall assist users who request accommodation or assistance from the door of their home (or main entrance, if a multi-unit building) to the door of the vehicle. CONTRACTOR shall provide accommodations which include helping disabled users to enter and exit the vehicle, assisting with bags and with stairs, as necessary. Permitting users to travel with a service animal also shall constitute a reasonable accommodation.

4. CONTRACTOR shall hire, train, and supervise all vehicle operators. CONTRACTOR shall also ensure all vehicle operators and vehicles are appropriately licensed and in compliance with all applicable laws and regulations. CONTRACTOR shall provide all vehicle operators with training on serving and accommodating persons with disabilities prior to engaging in work. Disability training shall include training on how to accommodate users with oxygen assistance devices and how to load and unload an oxygen assistance device. CONTRACTOR shall conduct a background check on all vehicle operators.

5. CONTRACTOR shall provide to CITY current versions of its employment policies, including its drug and alcohol policy and background check policy.

C. Level of Service

1. CONTRACTOR shall meet the following level of service parameters (as indicated in the table below) ninety-five percent (95%) of the time.

CONTRACTOR shall provide a monthly level of service parameters report to the CITY for all items listed in the table below.

ITEM	DESCRIPTION	Level of Service
Average wait time	Amount of time between service request and service provision	30 minutes
Average trip time	Amount of time between pick up and drop off.	20 minutes
System Uptime	Uptime of website and app	98%
Customer service	Question/complaint response	24 hours
Safety	Accident/incident reports	In the event of injury or police involvement, report within 24 hours
Missed trips	Percent of trips missed	No more than 1 percent missed trips

2. CONTRACTOR shall provide a vehicle fleet of seven (7) vans. CONTRACTOR shall ensure that the vehicle fleet is maintained, cleaned, and fueled.

3. Each vehicle shall have a minimum capacity for four (4) adult passengers with seat belts.

4. All vehicles will be equipped with the necessary data and voice connectivity, hardware, and software tools to receive customer trip requests on-demand, and passenger pick-up and/or drop-off locations as assigned by the central trip dispatching platform.

5. All vehicles shall be equipped with a dash camera. In addition, if CONTRACTOR accepts cash, voucher, token, punch cards, or similar physical fees, all vehicles shall include a cash box camera.

6. CONTRACTOR shall provide equivalent wheelchair accessible vehicle services upon user request. CONTRACTOR shall either provide an entire vehicle service fleet that is wheelchair-accessible, or ensure that a portion of the fleet be wheelchair accessible vehicles and that there is always a sufficient number of wheelchair accessible vehicles available during service hours to deliver the target level of service as required under this Agreement.

7. CONTRACTOR may, at CITY's request, be required by CITY to affix or attach signage or advertisements on the interior and exterior of the vehicles. In addition, CITY may require CONTRACTOR to provide or display brochures, pamphlets, or leaflets. CITY may also require CONTRACTOR to install interior physical or electronic displays. CONTRACTOR shall not attach signage or advertisements to the interior or exterior of the vehicle without CITY's written consent and approval.

D. Software – CONTRACTOR shall create and maintain a software platform that provides automated scheduling and dispatching of transportation services. The software shall allow customers to book trips, cancel trips, pay for trips, request assistance, ask questions, make complaints, request refunds, or receive general support. CONTRACTOR shall also provide a telephone-based "dial-a-ride" option that provides an alternative, equitable method for the public to have access to Microtransit Services provided by CONTRACTOR. Telephone-based options shall not require internet or smartphone for the general public to access Microtransit Services provided by CONTRACTOR. In addition, the software shall include the following components, at a minimum:

1. Compatibility with General Transit Feed Specifications datasets (GTFS-Flex).
2. A smartphone user app that is compatible with both iOS and Android.
3. An electronic fare payment system that is compliant with Title VI of the Civil Rights Act of 1964.
4. The ability to clearly display for a user the fee cost of a trip in advance of booking the trip.
5. The ability to clearly display or describe to the user the vehicle or vehicle information so that a user can clearly identify the Microtransit Service vehicle prior to booking a trip.
7. The ability to coordinate passenger pre-registration, scheduling, and dispatch processes for paratransit vehicles and services.
8. The ability to apply different rate structures based on rider characteristics or qualifications (i.e., persons with disabilities, elderly, students, veterans, etc.).
9. The ability to request a wheelchair accessible vehicle on-demand.

E. Microtransit User Fees

1. User fees for Microtransit Service shall be set by CITY, from time to time. User fees shall be remitted back to CITY minus any 3rd party processing platform fees.
2. CONTRACTOR shall ensure that gratuities, tips, or donations shall in no way be solicited by the CONTRACTOR or its drivers. No tips will be solicited for services provided either via the app, business cards, decals, tip jars, or in any manner.

F. Program Management

1. CONTRACTOR shall have the primary responsibility to market the Microtransit Services to be provided under this Agreement. However, the parties shall cooperate and agree to any marketing or promotion prior to marketing deployment.

2. CITY shall have the right to independently market or post information about the Microtransit Service provided under this Agreement.

3. CONTRACTOR shall routinely collaborate with the City of Twin Falls Transit Coordinator. CONTRACTOR shall, upon request, make additional coordination efforts with the City of Twin Falls Transit Coordinator.

4. CONTRACTOR shall be responsible for adhering to all regulatory policies, permitting requirements, and approvals pre-launch and while operational. Vendors will be required to understand and adhere to all regional, state, and federal regulations including the needs of riders under the Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, and the Federal Executive Order on Environmental Justice.

5. In addition to any other reporting requirement in this Agreement, CONTRACTOR shall submit a monthly report, due at the end of each month, which shall include the following at a minimum:

- a. Days of operation;
- b. Unlinked passenger trips, including ADA unlinked trips;
- c. Passenger miles traveled;
- d. Peak number of transportation units operating;
- e. Actual odometer/transportation unit miles;
- f. Actual revenue miles per transportation unit miles;
- g. Actual transportation unit hours;
- h. Actual transportation unit revenue hours;
- i. Unique rider accounts;
- j. Percentage of rides shared;
- k. Wait times, to include average wait times, mean wait times, and outliers;
- l. Ride times to include average ride times, mean ride times, and outliers;
- m. Experience ratings;
- n. Wheelchair rides;
- o. No shows;
- p. Percentage of rides more than five (5) minutes outside informed timing;
- q. Breakdown of rides per fare group;
- r. Self-identified ADA, senior citizen, student, veteran ride numbers, and ride data.

The parties may, from time to time, administratively agree to change the items to be included in the monthly reports required under this paragraph by written agreement.

SECTION II: FEES

A. Independent Contractor.

The contracting parties warrant by their signature that no employer/employee relationship is established between CONTRACTOR and CITY by the terms of this Agreement. It is understood by the parties hereto that CONTRACTOR is an independent contractor and as such neither it nor its employees, if any, are employees of CITY for purposes of tax, retirement system, or social security (FICA) withholding.

B. Fees and Conditions for Professional Services.

1. Payment for all services described in this Agreement is provided in accordance with the cost described in Section II.B.2. of this Agreement.

2. The Year 1 not-to-exceed cost for CONTRACTOR's services for Project as described in Section I, Scope of Work, shall be one million four hundred thousand dollars (\$1,400,000), and will include the following:

a. Setup costs in the not to exceed amount of forty-three thousand one hundred fifty-eight dollars (\$43,158). Setup costs will be invoiced according to the schedule in Section 2. B.3. Setup costs include all costs associated with operations and software setup.

b. Fixed costs in the not to exceed amount of six hundred thirty-eight thousand eight hundred twenty-four dollars (\$638,824). Fixed costs will be invoiced in four (4) equal installments according to the schedule in Section 2.B.3. Fixed costs include costs for onsite management, vehicle leases, insurance, maintenance, cleaning, staffing, dispatch, vehicle devices and technology. It is expected that the CITY will provide vehicle parking at no cost to the CONTRACTOR.

c. Variable costs in the estimated amount of five hundred ninety-three thousand three hundred thirty-three dollars (\$593,333). Variable costs will be invoiced on the 15th of each month for the previous month's costs and will be calculated as total vehicle hours (TVH) multiplied by the hourly rate of \$24.94. Variable costs include driver payroll and associated taxes. For example, on August 15th CONTRACTOR will invoice the CITY for variable costs incurred in July.

d. Fuel costs in the estimated amount of eighty-one thousand nine hundred seventy-nine dollars (\$81,979). Fuel costs will be invoiced on the 15th of each month for the previous month's costs. Fuel costs will be invoiced at the actual raw cost incurred by the CONTRACTOR.

3. Payment is due 30 days from invoice date.

Invoice Date	Setup Cost	Fixed Cost
Contract Signing	\$43,158	-
Contract Signing + 1 months	-	\$159,706
Contract Signing + 4 months	-	\$159,706
Contract Signing + 7 months	-	\$159,706
Contract Signing + 10 months	-	\$159,706

C. Term of Agreement.

This Agreement shall become effective upon signature. This Agreement shall expire one (1) year from signature. The parties agree that the Agreement shall automatically renew for another one (1) year term, for a maximum five (5) year period, unless either party has notified the other in writing sixty (60) days prior to the end of the expiring year. Within forty-five (45) days of the automatically renewed term, the parties shall agree to an updated not to exceed cost for the coming year.

SECTION III: Guidelines

A. Termination of Agreement.

This Agreement may be terminated by CONTRACTOR upon thirty (30) days written notice, should CITY fail to substantially perform in accordance with its terms through no fault of CONTRACTOR. CITY may terminate this Agreement with thirty (30) days' notice without cause and without further liability to CONTRACTOR except as designated by this section. In the event of termination, CONTRACTOR shall be paid for services performed to termination date, based upon the work completed. All work including reports, shall become the property of, and shall be surrendered to CITY.

B. Extent of Agreement.

This Agreement may be amended only by a written instrument signed by both parties hereto.

C. Project Timeline.

CITY and CONTRACTOR shall agree upon a start date. CITY shall make available to CONTRACTOR all technical data of record in CITY's possession, including financial, operations, and other information necessary for the Microtransit Service pilot project.

D. Termination of Project.

If any portion of the services covered by this Agreement shall be suspended, abated, abandoned, or terminated, CITY shall pay CONTRACTOR for the services rendered to the date of such suspended, abated, abandoned, or terminated work; the payment to be based, insofar as possible, on the amounts established in this Agreement or, where the Agreement cannot be

applied, the payment shall be based upon a reasonable estimate as mutually agreed upon between the two (2) parties as to the percentage of the work completed.

E. Fund Availability.

Financial obligations of CITY, payable after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If this Agreement contemplates CITY utilizing local, state, or federal funds to meet its obligations herein, this Agreement shall be contingent upon the availability of those funds for payment pursuant to the terms of this Agreement.

F. CONTRACTOR 's Duty of Care.

In performance of professional services, CONTRACTOR will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession; and no other warranty, either expressed or implied, is made in connection with rendering CONTRACTOR's services.

G. CONTRACTOR's Insurance.

CONTRACTOR shall maintain Automobile Insurance and Statutory Workmen's Compensation Insurance coverage, Employer's Liability, Professional Liability Insurance, and Comprehensive General Liability Insurance coverage. The Professional Liability Insurance and Comprehensive General Liability Insurance shall have minimum limits of one million dollars (\$1,000,000) per occurrence.

The Comprehensive Automobile Liability required under this section shall have, at a minimum, combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each CONTRACTOR's owned, hired, and non-owned vehicles assigned to or used in performance of the Scope of Work. The policy shall contain a severability of interests provision. If the CONTRACTOR has no owned automobiles, the requirements of this Section shall be met by each employee of the CONTRACTOR providing services to CITY under this Agreement. CONTRACTOR's insurance shall be endorsed to include CITY and CITY's employees, elected officials, and officers as additional insureds.

H. Indemnification.

CONTRACTOR agrees, to the fullest extent permitted by law, to indemnify and hold harmless CITY against damages, liabilities and costs arising from the negligent acts of CONTRACTOR in the performance of professional services under this Agreement, to the extent that CONTRACTOR is responsible for such damages, liabilities and costs on a comparative basis of fault and responsibility between CONTRACTOR and CITY. CONTRACTOR shall not be obligated to indemnify CITY for CITY's negligence.

I. Jurisdiction and Venue.

It is agreed that this Agreement shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that the proper venue shall be the _____, in and for the County of Twin Falls.

J. Binding of Successors.

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to the other parties to this Agreement and to the partner, successors, assigns, and legal representatives of such other parties with respect to all covenants of this Agreement.

K. Modification and Assignability of Agreement.

This Agreement contains the entire agreement between the parties concerning the professional services, and no statements, promises, or inducements made by either party, or agents of either party, are valid or binding unless contained herein. This Agreement may not be enlarged, modified, or altered except upon written agreement signed by the parties hereto. CONTRACTOR may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent and express authorization of CITY. Any such subcontractor or assignee shall be bound by all of the terms and conditions of this Agreement as if named specifically herein.

L. CITY's Representatives.

CITY shall designate a representative authorized to act on behalf of CITY. The authorized representative shall examine the documents of the work as necessary, and shall render decisions related thereto in a timely manner so as to avoid unreasonable delays.

M. Ownership and Publication of Materials and CITY's Right to Use Delivered Materials.

CITY and CONTRACTOR agree that CITY, with this Agreement, acquires the right to use all written materials, including but not limited to reports, information, data, images, diagrams, plans, and any other written documents prepared and delivered to CITY by CONTRACTOR pursuant to this Agreement, and CITY shall have the authority to release, publish, or otherwise use any written materials delivered to CITY, in whole or in part. The use of written materials (s) may include, but is not limited to, electronic and print promotion of CITY sponsored programs or functions. Written materials(s) may be provided to other entities, such as newspapers or other publishers, for inclusion in print advertisements, without cost to CITY or payment to CONTRACTOR for use of such written materials. Any re-use of written materials shall be at CITY's sole risk and without liability to CONTRACTOR. In addition, through this Agreement, CITY and CONTRACTOR agree that CITY shall own all electronic data collected by CONTRACTOR in providing the Microtransit Services in the Scope of Work. All electronic data collected by CONTRACTOR in providing the Microtransit Services under this Agreement shall be delivered to CITY upon request. CONTRACTOR shall not sell or distribute the electronic data collected under this Agreement.

Nothing in this section shall be constructed to entitle CITY to any materials, software, or data not collected pursuant to this Agreement that are owned by CONTRACTOR which were not delivered or received by CITY, even if those materials were used by CONTRACTOR to produce the written materials delivered to CITY or if the written materials delivered to CITY were used to develop, improve, or add value to anything CONTRACTOR does not deliver or release to CITY. The parties acknowledge that any written materials received by CITY are subject to public disclosure under the Idaho Public Records Law, Chapter 1 of Title 74 of the Idaho Code.

N. Costs and Attorney Fees.

In the event either party incurs legal expenses to enforce the terms and conditions of this Agreement, apart from any costs incurred during any mediation required by this Agreement, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses.

O. No Exclusive Relationship Created.

Nothing in this Agreement shall be interpreted or constructed to create an exclusive relationship with CONTRACTOR. Nor shall this Agreement be interpreted to bestow upon CONTRACTOR any exclusive right to provide Microtransit Services for CITY.

P. Non-discrimination.

CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, gender identity/expression, sexual orientation, or national origin. In addition, CONTRACTOR shall not discriminate against any Microtransit Services user on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, gender identity/expression, sexual orientation, or national origin.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated above.

"CITY"

City of Twin Falls, Idaho

By _____

"CONTRACTOR"

Twin Falls Downtowner, LLC

By _____