

To: Administration and Finance Committee

Date: December 30, 2014

From: Anne Muzzini, Director of Planning and Marketing

Reviewed by:

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**Subject: Shadelands Shuttle Route Fare Subsidy**

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Summary

The Shadelands Business owners have successfully formed a public benefit improvement district (PBID) and will begin collecting fees for projects January 1<sup>st</sup> 2015. One of the top priorities of the PBID board was to fund a direct shuttle from Shadelands to BART. Last year Route #7 was realigned to provide more direct and frequent service from Shadelands to BART as recommended in the Adaptive Service Plan. In November the PBID board authorized the Chamber to execute an agreement on their behalf to fund the fares on Route #7. This is the same type of arrangement we have with the City of Walnut Creek for Route #4 and Route #5.

Fare Subsidy Amount

The amount of the fare subsidy was calculated based on a productivity of 10 passengers per hour and an average fare of \$1.40 per passenger. Currently the route is only carrying 8 passengers per hour.

$10 \text{ pass/RHr} \times 20.5 \text{ RHr/Day} \times 255 \text{ days/yr} \times \$1.40 \text{ per pass} = \$73,185$

Agreement

The agreement attached is based on the agreement executed with the City of Walnut Creek for similar services. The Shadelands PBID Board has expressed an interest in wrapping the buses used on the shuttle and the cost for that (\$6,000 per bus) has been included as an option. In addition they are interested in equipping the buses with WiFi and that option has been included as well.

The Chamber of Commerce for the City of Walnut Creek is acting and the financial management entity for the PBID at this point and the agreement will be executed with them.

Next Steps

The agreement needs to be reviewed by the Chamber attorney then a start date determined. They are anxious to begin, and it will be possible to initiate free service on Route #7 mid driver bid.

## SHADELANDS FARE REIMBURSEMENT AGREEMENT

This Agreement is entered into effective the \_\_\_\_ day of \_\_\_\_, 2014 by and between the CENTRAL CONTRA COSTA TRANSIT AUTHORITY (County Connection), a joint exercise of powers entity created, existing and in good standing under California Government Code Sections 6500 et seq.; and THE CHAMBER OF WALNUT CREEK who is acting on behalf of the Shadelands Business owners (Shadelands).

WHEREAS, County Connection engaged a consultant to conduct an Adaptive Service Analysis Plan to evaluate and develop recommendations for maximizing the effectiveness of its public transit service;

WHEREAS, the Adaptive Service Analysis Plan was adopted by the Board of Directors in December 2013, and staff was directed to proceed with soliciting public input and conduct further analysis to implement service changes recommended by the Plan, which included modifications to Route 7;

WHEREAS, in April 2014, following consideration of public comment, the Board of Directors authorized implementation of the recommended changes to Route 7 to provide more frequent and direct service from Shadelands to the Pleasant Hill BART station;

WHEREAS, the Shadelands desires to provide a fare subsidy for the passengers of Route 7 so that all passengers ride free, not to exceed \$73,200 a year.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties set forth herein, County Connection and the Shadelands agree as follows:

1. **Definitions.** Unless the context otherwise requires, the terms defined in this section shall, for the purposes of this document and any amendments thereto, have the following meanings:
  - (a) **Bus** - means a 30 to 40 foot long diesel motor coach (bus), equipped with destination signage and equipment to allow handicapped access.
  - (b) **Headways** - means the interval of time between the departure of a bus from a specific stop and the arrival of the immediately succeeding bus at the same stop.
  - (d) **Level of Service** - means the number of trips and the headways between them at a given stop. An increase in the Level of Service shall be an increase in the number of trips and/or a decrease in the headways

between them. A decrease in the Level of Service shall be a decrease in the number of trips and/or an increase in the headway between them.

2. **Term.** The term of this Agreement shall commence on January 1, 2015, and continue until terminated by either party as provided herein.
3. **Route 7.** County Connection shall initially provide Route 7 service as described in Exhibit A, which is attached and incorporated by this reference. County Connection retains full discretion and control over the method and means for operation of Route 7 as fixed route public transportation service.
4. **Level of Service.** Initially, County Connection shall provide Route 7 service weekdays during the hours of 7:00 a.m. and 10:30 a.m. and between 3:00 p.m. and 7:30 p.m. During these periods, Route 7 service will be operated with approximately twenty minute headways.
5. **Changes to Level of Service.** County Connection reserves the right to make changes in Route 7 service in response to ridership and demand. The opportunity to make changes occurs four (4) times a year in March, June, August or December. Shadelands may request changes in Route 7 service for County Connection's consideration no later than three (3) months prior to the date the change is to be implemented. Service changes may be made during the term of the agreement at County Connection's reasonable discretion, following consultation with the Shadelands.
6. **Public Transportation Service.** The Route 7 service covered by this Agreement shall be open to all members of the general public.
7. **Fare.** So long as the Shadelands provides the fare subsidy as specified herein, County Connection will waive the applicable fare to ride Route 7 for all passengers. No transfers shall be issued to passengers riding these services.
8. **Buses.**
  - (a) **Maintenance.** County Connection shall service and perform preventative maintenance on all buses used in Route 7 service pursuant to its standard operating policies for buses used in mass transit services, and shall keep the interior and exterior of such buses clean and in attractive condition. COUNTY CONNECTION shall replace any buses used in the service as needed pursuant to its standard operating policies for buses used in mass transit services.

- (b) **Sign.** The destination signs on the buses will read "Shadelands Shuttle - Route 7."
9. **Drivers.** County Connection shall supply drivers necessary to perform the services required under this Agreement. Drivers shall be County Connection employees and shall meet all conditions of employment by County Connection for bus operation, including but not limited to holding a valid California class 2 motor vehicle license.
10. **Interruption.** County Connection shall maintain readily available at all times sufficient buses, drivers and supervisors to be able to perform the service in accordance with its standard procedures.
11. **Compensation.**
- (a) **Fare Subsidy.** The Shadelands shall pay County Connection an annual subsidy of \$73,200 a year to offset the fare revenue lost by providing all Route 7 passengers with a free ride. County Connection will monitor Route 7 ridership . If the foregone fare revenue is substantially less than the fare subsidy, the parties will confer to determine whether a reduction in the fare subsidy amount is justified.. If the fare subsidy is not sufficient to offset the fares lost, then County Connection may adjust the service levels so that the fare subsidy substantially replaces the foregone fares. County Connection assumes responsibility for all other cost and expense for providing Route 7 service.
- (b) **Optional Services.**
- Bus Wraps: Shadelands has expressed interest in bus wraps for the three (3) buses that operate on the Route #7 to identify the Shadelands route with a special look. If Shadelands wishes to exercise the option of wrapping the buses, they will be responsible for layout and design, subject to County Connection review and approval, and assume the cost of production and installation at \$6,000 per bus. County Connection will arrange for services to produce and install the wrap. Shadelands will pay for the wraps after design and prior to production and installation.
- WiFi: Shadelands has expressed interest in having WiFi for the convenience of passengers on the three (3) buses that operate on the Route #7. If Shadelands wishes to exercise the option of installing WiFi on the buses, County Connection will arrange for installation of WiFi

service at Shadelands' expense, consisting of a one time fee of \$1,050 to install three routers, and an ongoing cost of \$1,800 a year for the cellular service. The one time fee will be paid in advance of the installation. The ongoing annual fee will be added to the fare reimbursement invoice at a rate of \$150/month or \$450 per quarter.

- (c) **Limitation in Compensation.** In no event shall Shadelands be responsible to pay more than \$73,200 annually for the fare reimbursement of Route #7 without an amendment to this agreement. Optional service described in Section 11. (b) shall be in addition to the fare subsidy amount and shall be billed as described in Section 11.(b).
  - (d) **Records.** County Connection shall maintain accurate records of the number of buses operated in the service, the schedule, hours, miles, and ridership for the route and will provide monthly ridership reports to the Shadelands.
12. **Payment.** The Shadelands shall pay County Connection an annual amount of \$73,200 in equal monthly (\$6,100/mo.) or quarterly (\$18,300/quarter) increments. County Connection shall invoice the Shadelands by the 20<sup>th</sup> of the following month in which services are rendered, or the 20<sup>th</sup> of the month after the close of the quarter (Oct 20<sup>th</sup>, Jan 20<sup>th</sup>, March 20<sup>th</sup>, July 20<sup>th</sup>). Invoices will be prorated to account for the service start date. The Shadelands shall submit payment within ten days of receipt of the County Connection invoice.
13. **Compliance with Laws.** County Connection shall comply with all laws, regulations and orders of any federal, state, county, regional or municipal authority applicable to the service.
14. **Insurance.** County Connection shall procure and maintain, at its sole cost, for the duration of this Agreement the following insurance:
- (a) **General Liability and Automobile Liability.** County Connection shall maintain General Liability insurance and Automobile Liability insurance covering "any auto" in the same form and in at least the same amount as the coverages for all other operations of County Connection. The foregoing coverage is currently provided through the CALTip insurance pool.
  - (b) **Workers' Compensation Insurance.** County Connection shall maintain Workers' Compensation insurance in the amounts required by law.

16. **Independent Contractor.** In performing under this Agreement, County Connection shall act at all times as an independent contractor. Nothing contained herein shall be construed or applied so as to create the relationship of principal and agent, or of employer and employee, between the Shadelands and County Connection.
17. **Communications.** All required payments, reports, and notices may be sent by ordinary mail. Until notified otherwise, in writing, County Connection shall send all such communications relating to this Agreement to the following address:

Chamber of Walnut Creek (Shadelands)  
Attention:

and the Shadelands shall send all communications to the following address:

Central Contra Costa Transit Authority  
Attention: Anne Muzzini  
2477 Arnold Industrial Way  
Concord, CA 94520

18. **Assignment and Subcontracting.** Neither the Shadelands nor County Connection may assign any rights or subcontract for performance of any duties under this Agreement without the prior written consent of the other. Any attempts to assign or subcontract without the necessary consent shall be void. This Agreement benefits and burdens the successors and assigns of both the Shadelands and County Connection.
19. **Records.** County Connection shall maintain true and complete records in connection with the service and all transactions related thereto, and shall retain all such records for a least thirty-six (36) months after the end of the calendar year in which the service is performed.

[Make this a new Section 20 and renumber) No Gifts, Commissions or Fees. Except as otherwise expressly provided herein, neither County Connection nor any director, officer, employee or agent of County Connection, its subcontractors or vendors, shall give to or receive from any director, employee or agent of the Shadelands any gift or entertainment of significant value or any commission, fee, or rebate in connection with this Agreement.

20. **Termination of Agreement.**

(a) **Termination for Cause.**

(1) **Termination by County Connection.** County Connection may, by fifteen (15) days' prior written notice of default to the Shadelands, terminate this Agreement if the Shadelands fails to make payments as provided in Section 12 of this Agreement within five (5) days of receipt of County Connection's notice of delinquency. If the Shadelands fails to make such overdue payment to County Connection within five (5) days of receipt of County Connection's notice of delinquency, County Connection shall be entitled to a late charge equal to three percent (3%) of the amount overdue, and for the actual and reasonable costs incurred by County Connection to effect such termination.

(2) **Termination by Shadelands.** The Shadelands may terminate the Agreement for cause under any of the circumstances set forth below:

(a) **Breach of Agreement.** If County Connection fails to perform any of the services or violates any provisions of the Agreement, in accordance with its terms; or

(b) **Non-Compliance With Law.** Failure or refusal of County Connection to comply with applicable Federal, State and local governing laws or codes.

Shadelands shall first provide written notice of the deficiencies in County Connection's performance and shall allow at least ten (10) days of County Connection's receipt of such notice for County Connection to rectify the deficiencies. If County Connection fails to correct the deficiencies within the stipulated period, Shadelands may terminate the Agreement upon giving fifteen (15) days' prior written notice.

(b) **Termination for Convenience.** Either County Connection or the Shadelands may terminate the Agreement for convenience by giving the other party notice one hundred twenty (120) days prior to the subsequent

driver sign-up date. If Shadelands terminates the Agreement for convenience, County Connection shall be paid for all months in which service was provided, and the actual and reasonable costs incurred by County Connection to effect the termination.

- (c) **Notices.** All notices of termination shall be given by certified mail or personal service to the party at the address specified in the Agreement as amended in writing.
  - (d) **Closing Statement.** Upon termination, County Connection shall submit a written closing statement to the Shadelands to specify the costs of service, and the costs of services actually performed to the date of termination for which the Shadelands has not previously paid.
21. **Entire Agreement.** This Agreement is the entire agreement of this matter between the parties, and supersedes all prior negotiations and understandings with respect thereto. County Connection and the Shadelands each acknowledge that it has not relied upon any promise, representation, or warranty not expressly set forth in this Agreement in executing this Agreement. If any provision of this Agreement is void or otherwise unenforceable, the remainder of the Agreement shall continue in full force and effect. This Agreement shall not be modified except by a writing signed by both parties.
22. **Severability.** If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired, or invalidated.
23. **Captions and Article Letters.** The captions and article letters appearing in this Agreement are inserted as a matter of convenience and in no way define or limit the provisions of this Agreement.
24. **Time.** Time is of the essence of this Agreement.
25. **Attorneys' Fees.** In any action which the Shadelands or County Connection bring to enforce its respective rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.
26. **Applicable Law.** This Agreement shall be construed in accordance with California law.



**IN WITNESS WHEREOF**, County Connection and the Shadelands have executed this Agreement as of the date first-above written.

**CENTRAL CONTRA COSTA TRANSIT  
AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_  
Rick Ramacier, General Manager

By: \_\_\_\_\_  
Name/Title

Approved as to Legal Form and Content

By: \_\_\_\_\_  
Madeline Chun, Legal Counsel

By: \_\_\_\_\_  
Name/Title

**EXHIBIT A**

<b>Route 7 Pleasant Hill BART Mitchell Park 'n Ride</b>			
<b>Leave BART Pleasant Hill</b>	<b>Arrive Mitchell Park 'n Ride</b>	<b>Leave Mitchell Park 'n Ride</b>	<b>Arrive BART Pleasant Hill</b>
<b>bART</b>	<b>A</b>	<b>A</b>	<b>bART</b>
7:07	7:23	7:23	7:40
7:22	7:38	7:38	7:55
7:37	7:53	7:53	8:10
7:52	8:08	8:08	8:25
8:07	8:23	8:23	8:40
8:22	8:38	8:38	8:55
8:37	8:53	8:53	9:10
8:52	9:08	9:08	9:25
9:07	9:23	9:23	9:40
9:22	9:38	9:38	9:55
9:37	9:53	9:53	10:10
9:52	10:08	10:08	10:25
3:07	3:23	3:23	3:40
3:22	3:38	3:38	3:55
3:37	3:53	3:53	4:10
3:52	4:08	4:08	4:25
4:07	4:23	4:23	4:40
4:22	4:38	4:38	4:55
4:37	4:53	4:53	5:10
4:52	5:08	5:08	5:25
5:07	5:23	5:23	5:40
5:22	5:38	5:38	5:55
5:37	5:53	5:53	6:10
5:52	6:08	6:08	6:25
6:07	6:23	6:23	6:40
6:22	6:38	6:38	6:55
6:37	6:53	6:53	7:10
6:52	7:08	7:08	7:25
7:07	7:23	7:23	7:40

