City of Benson
City Council Communication

Regular Meeting **June 9, 2014**

To: Mayor and Council Agenda Item # 5

From: Bradley J. Hamilton, P.E., Director of Public Works/City Engineer

Subject:

Discussion and possible action regarding a Standard independent Contractor Agreement with Greyhound Lines, Inc

Discussion:

As discussed in the April 14 Council worksession regarding transit connectivity, Staff would like to enter into an agreement with Greyhound Lines, Inc., LLC to sell and issue tickets, prepare and issue documents required for transportation of baggage and other goods, and load and unload passengers and their baggage as well as goods at the City of Benson Visitor Center.

The City would receive compensation for these services as stated in the agreement.

Staff Recommendation:

Approval of a Standard Independent Contractor Agreement with Greyhound Lines, Inc.

Agency #

GREYHOUND LINES, INC.

STANDARD INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT made as of this ____ day of _____, _____ (the "**Effective Date**").

BETWEEN: **GREYHOUND LINES, INC.**, a body corporate having its head office at P.O. Box 660362, Dallas, TX 75266-0362 (the "**Company**")

-and-

The City of Benson, a body corporate or a partnership validly created, organized and in existence having an office in the City of Benson, in the State of Arizona;

-or-

_____, individual residents in the City of _____, in the State of _____,

(collectively the "**Contractor**");

WHEREAS:
THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

1. COMPENSATION

1.1 The Company agrees to pay, in the manner set out in the Company's policies, the following compensation/commission to the Contractor:

PERCENTAGE AND/OR FLAT FEE	TYPE OF SERVICE		PERCENTAGE AND/OR FLAT FEE	TYPE OF SERVICE
8%	Tickets / Prepaid Ticket Order Sales		**8%**	Outbound Express
8%	Commutation Tickets		**10%**	Inbound Express
3.2%	Will Call Ticket to be printed by the Contractor		**8%**	Excess Baggage
$3.00	Prepaid Ticket Order Honored Fee (Flat rate)		**$6.00**	Pick-Up and Delivery Standard
10%	Charters		**$12.00**	Pick-Up and Delivery Priority
20%	Phone Cards		**$2.00**	Student Advantage Cards

The Contractor is not entitled to receive any amount whatsoever other than the compensation amounts stated above. The percentage amount is based on the amount of actual sales done by the Contractor, before applicable taxes.

2. SERVICES

2.1 The Contractor shall perform the following functions and provide the following services at 249 E. 4th Street _____ (street address) in the City of Benson, in the State of Arizona (the "**Contractor's Premises**"). **Only those functions marked shall apply. Each must be initialed by Contractor if applicable.**

Initials

_____ ☐ Sell and issue Tickets at tariff rates approved by the Company.

_____ ☐ Prepare and issue Transportation Documents required for the transportation of baggage, Express and other goods by the Company and its affiliated and connecting carriers at tariff rates approved by the Company.

_____ ☐ Properly receive, store and deliver to the persons entitled to receive them all goods to be transported by, through or pursuant to the instructions of the Company and its affiliated and connecting carriers.

_____ ☐ Furnish upon request to the public any information contained in tariffs, bulletins, circulars and literature issued by the Company for the transportation of passengers or the handling of Baggage and goods by the Company and its affiliated and connecting carriers.

_____ ☐ Promptly send, after 30 days of storage, any loss or mishandled goods to the Company's lost items warehouse.

_____ ☐ Allow the Company to load and unload passengers and their baggage as well as all goods (including Express) at the Contractor's Premises.

_____ ☐ Provide or arrange for, in those areas so designated by the Company, Pick-Up and Delivery Service within the county boundaries of the City of **Benson**, in the State of **Arizona** ("**P&D Service Area**") in accordance with such tariffs, rates, regulations and accounting procedures as may be issued by the Company from time to time.

_____ ☐ That Contractor will without compensation: Reissue tickets in exchange for tickets or ticket orders issued by another contractor, connecting carrier's contractor, or the Company.

_____ ☐ Provide at the Contractor's Premises, at its sole cost and expense, the following to be of a nature satisfactory to the Company and to be configured, decorated and maintained in an attractive, sanitary, clean and safe manner conducive to the business of the Contractor pursuant to this Agreement:

(i) adequate waiting room space and furnishings;

(ii) attractive and sanitary lavatory facilities;

(iii) convenient facilities for the sale of Tickets, preparation and handling of Transportation Documents and handling of baggage, Express and other goods; and

(iv) all facilities, supplies, furnishings, devices and machinery necessarily incidental to the provision of items (i) to (iii); and

_____ ☐ Place and maintain the sign or signs provided by the Company designating the Contractor's Premises as a Ticket, transportation and Express agency of the Company and its affiliated and connecting carriers.

_____ ☐ Operate the Business with specified hours as agreed upon between the Contractor and Company and communicate alterations to the Company a minimum or fourteen (14) days in advance.

"**Business**" shall mean any of those services marked as applicable in this Section 2 above.

"Ticket" shall mean any document to be commissionable as defined in section 1.1 approved by the Company for use in the provision of passenger transportation services for the Company or its affiliated and connecting carriers.

"Express" shall mean any goods (excluding baggage) accepted for transportation and for which a Transportation Document has been issued by the Company, an authorized agent of the Company, or the Company's affiliated and connecting carriers irrespective of whether such goods are carried, transported or consigned on a standard or priority basis.

"Transportation Documents" shall include busbills, waybills, bills of lading or other shipping documents approved by the Company for the transportation of goods, including Express over the Company's routes or the routes of its affiliated and connecting carriers.

"Pick-up and Delivery Service" shall mean all work, labour and services rendered by the Contractor, at it sole cost and expense, to pick-up or deliver Express, goods or baggage of the Company's customers between the customers' premises and the Contractor's Premises.

"Standard" or "Priority" shall mean transportation of Express along the routes of the Company and/or its affiliated and connecting carriers from an origin point designated by the consignor to a destination point designated by the consignor or consignee (other than the Contractor's Premises).

2.2 In cases where a phone number is listed in the phone directories under the name Greyhound and it's affiliates, such phone number shall belong solely to the Company and be paid by the Company. The Contractor shall have no right whatsoever in connection with that phone number. The Company shall have the absolute right to transfer such phone number to any other facility it so chooses.

In all other cases, the Contractor shall provide, at the Contractor's sole cost and expense, all telephones, telephone lines, fax lines, fax machines, white page telephone and fax directory advertising and telephone and fax number information necessary for the Contractor to perform its obligations herein.

2.3 The Contractor shall pay all state, federal and other taxes which shall be assessed or levied against the Contractor's Premises and/or the Business during the term of this Agreement; to obtain any and all licences necessary or required in connection with the operation of the Contractor's Premises or the Business; and to pay all other charges or levies from third parties in relation to the Contractor's Premises or the Business.

2.4 Under no circumstances whatsoever shall the Contractor or the Contractor's Personnel accept, handle or transport, any product, device, liquid, gas, item, substance or commodity of any nature, description or type whatsoever prescribed or deemed as dangerous by any regulating body governing the transportation of such goods to, from or through the Contractor's Premises, or over the routes of the Company or its affiliated and connecting carriers (the "**Dangerous Goods**") or any other dangerous materials.

2.5 The Contractor shall not solicit or sell or permit to be solicited or sold in the Contractor's Premises, or in any other offices or agencies under the Contractor's control, transportation or Express services via any other carrier to destinations which are competitive to the Company or its affiliated and connecting carriers without Companies authorization.

2.6 Not to use the word "Greyhound" as part of Contractor's business name for any purpose. Contractor acknowledges that the word "Greyhound," together with the various symbols, slogans, logos, and the like ("**Marks**") owned or licensed by the Company are valuable, special and unique assets of the Company. The use of Marks under this Agreement is for the purpose of distinguishing the services of Greyhound Lines, Inc. and its subsidiaries only. Contractor may use Marks only as an aid in informing the public where Greyhound Lines, Inc.'s services may be purchased and that Contractor is authorized to sell Greyhound Lines, Inc.'s services. Contractor shall not use Marks to identify Contractor's services or in any way except as specifically authorized herein. Contractor shall indemnify and hold Company harmless for any costs, fees and expenses (including reasonable attorneys' fees) associated with any breach of this Section, such indemnity to survive any termination of this Agreement. Contractor's internet (worldwide web) sites are strictly prohibited from using the name "Greyhound", the image of the running dog and any other trademarks or service marks associated with Company's transportation business.

3. FINANCIAL MATTERS

3.1 The Contractor shall adopt and comply with all financial, credit, depositing and accounting policies which may be developed and issued by the Company from time-to-time.

3.2 The Contractor shall account to the Company for and pay to the Company the value of all services sold for the transportation of passengers, baggage, Express and goods regardless of whether those transportation charges are actually collected, unless otherwise specifically agreed to in writing by the Company. The Contractor agrees to hold and protect at all times any and all money and/or property of the Company in the care or under the supervision of the Contractor, and to reimburse the Company for any loss of or damage to such money and/or property. The title to all Tickets and Transportation Documents and the proceeds of the sale or issuance thereof shall be at all times in the Company, it being the intention of this Agreement that the Contractor shall at all times be in the position of a trustee of said Tickets and Transportation Documents and the proceeds of sale or issuance thereof for the Company. Failure to remit all monies to Company will result in interest charges to Contractor for funds withheld at the maximum rate allowed by law.

CONTRACTOR(S)'S INITIALS		

The Contractor shall remit to a bank account designated by the Company, in a manner as approved by the Company, all monies belonging to the Company or due to the Company or collected for the account of the Company at such times or at such intervals as may be prescribed by the Company. Failure to properly deposit all monies will result in interest charges to the Contractor for funds withheld at the maximum rate allowed by law.

The Company hereby authorizes the Contractor to deduct the sums to which the Contractor is properly entitled pursuant to this Agreement from the Company's funds in the possession of the Contractor when remittances are made to the Company pursuant to this Agreement.

To render to the Company all required documents to support activity within the facility and to remit to the Company on a daily basis for all monies owed, or as directed by the Company.

3.3 The Company is authorized to deduct from any money that may be due to the Contractor hereunder the compensation previously allowed to the Contractor in respect of Tickets or transportation charges subsequently refunded to patrons or not collectable from patrons and also the full amount of any payment or payments made or expenses incurred by the Company by reason of loss of or damage to baggage and/or Express chargeable to the Contractor, and the Contractor hereby agrees to pay to the Company forthwith on demand any deficiency that may exist with respect to such adjustments, refunds, losses or damages.

3.4 It is expressly understood and agreed that the personnel furnished by the Contractor to perform and render services pursuant to this Agreement shall be and shall remain employees, servants or agents of the Contractor and under no circumstances are such personnel to be considered employees, servants or agents of the Company. Further, the Contractor shall supply and pay all of the Contractor's Personnel during the term of this Agreement and shall be responsible for, among other things but not limited to, all wages, pension plan premiums, workers' compensation premiums, employment insurance premiums, employer health tax remittances and income tax source deductions (collectively, the "**Employment Remittances**").

The Contractor shall indemnify and save harmless the Company from any and all liabilities, losses, claims, expenses, damages, actions, causes of actions and obligations whatsoever incurred or suffered by or made, claimed or brought against the Company arising out of, in connection with or otherwise relating to (i) the Company being deemed to be an employer of the Contractor's Employees for the purposes of applicable employment legislation; or (ii) the failure of the Contractor to pay the Employment Remittances as they become due.

4. INDEMNITY AND INSURANCE

4.1 The Contractor shall save, defend, hold harmless and indemnify the Company, its affiliates, officers, directors, employees, affiliated and connecting carriers and their respective representatives (the "**Protected Parties**") against any claims, losses, death, damages, including property, costs or expenses or attorney's fees of any kind or nature incurred or to be incurred by the Protected Parties arising from:

a) the failure of the Contractor to comply with any covenant or obligation contained in this Agreement;

b) any damage to property or injury to persons of any description, including without limitation illness or death, occurring in, upon or about the Contractor's Premises, or arising directly or indirectly from or out of:

(i) the acts, negligence or omissions of the Contractor, it employees, representatives, contractors, servants or agents (the "**Contractor's Personnel**");

(ii) any act or thing done or permitted to be done upon the Contractor's Premises by the Contractor or the Contractor's Personnel; or

(ii) any default under this Agreement by the Contractor or the Contractor's Personnel;

c) any use or occupancy of Contactor's Premises, automobiles or equipment;

d) accepting, handling or transporting Dangerous Goods or other dangerous materials by the Contractor or the Contractor's Personnel;

e) loss or damage of Baggage or goods while under the care and supervision of the Contractor or the Contractor's Personnel; or

f) any employment-related claim by Contractor Personnel for failure to pay, including but not limited to, salaries, benefits, taxes or Worker's Compensation Board payments as they become due.

The Contractor is not required to indemnify the Protected Parties from and against any claims, losses, damages, costs or expenses of any kind or nature arising from any damages caused by equipment owned by the Company or for which the Company is responsible to maintain, unless said damages result in part from the negligent acts or omissions of the Contractor or the Contractor's Personnel.

4.2 Contractor represents and warrants that its facilities are and will be operated in compliance with all laws applicable to it, including but not limited to, the Americans with Disabilities Act as amended ("ADA"). Contractor agrees to assist Company personnel with boarding or deboarding of customers with disabilities at Contractor's facility and will provide such other assistance or accommodations to Company's customers to the extent required under the ADA.

4.3 To be liable for all charges for transportation services sold regardless of collection of such charges. To be liable for and protect any and all money and/or property of the Company in the care or under the supervision of Contractor and to reimburse Company for any loss or damage to such money and/or property. At Contractor's expense to furnish **a bond or other** security of a type and in an amount satisfactory to Company for the protection of Company funds and/or property. **The Company will waive the requirement for a bond or other security upon the payment by Contractor to Company of an annual waiver fee.** The title to all tickets and busbills and proceeds thereof and of all other monies collected for the Company shall be at all times in the Company, it being the intention of this Agreement that the Contractor shall at all times be in the position of trustee and fiduciary of the same for the Company.

5. TERMINATION

5.1 This Agreement starts on the Effective Date and continues until terminated by either the Contractor or the Company at any time for any reason, without penalty of any kind, effective thirty (30) days after delivery of advance written notice, provided that:

a) in the following events, the Company shall have the right to terminate this Agreement immediately without notice or penalty of any kind whatsoever and that the Company is hereby authorized to do so:

i. any default in the account remittances of the Contractor for monies due to the Company;

ii. any failure to provide competent and continuing service;

iii. in the event that a receiver is appointed in respect of the Contractor, or in the event of an assignment in bankruptcy or receiving order in respect of the Contractor;

iv. in the event the Contractor assigns this Agreement. A change of control of the Contractor shall be deemed to be an assignment.

v. any violation by the Contractor of any provision of this Agreement which is not remedied within ten (10) days after notice thereof is given;

vi. in the event that the Contractor's Premises shall be completely or substantially destroyed by any cause whatsoever during this Agreement, the Company, the Contractor and/or the Principal(s) may terminate this Agreement on seven (7) days written notice;

vii. in the event the Company's right to load and unload passengers and their baggage or any goods (including Express) at the Contractor's Premises, including the right to move and park vehicles to the extent necessary to conduct operations to or from the Contractor's Premises, or the Company's right to carry on its business of transporting passengers, baggage and Express to and from the Contractor's Premises, is restricted, denied or prevented, whether by municipal, provincial or federal law, ordinance or decree or otherwise; or

b) in the event any notice of termination is provided to the Company by any one of the parties comprising the Contractor, the Company shall have the right to terminate this Agreement for the remaining parties.

5.2 Upon termination of this Agreement, the Contractor:

a) shall not be entitled to receive any compensation from the Company in any form whatsoever including without limitation any alleged damages for the impairment of the goodwill associated with the Business, lost profits, loss of potential profits or any other related damages;

b) shall not operate or do business under any name or in any manner that might tend to give the public the impression that the Contractor is either directly or indirectly associated or affiliated with, licensed by or related to the Company or its affiliated and connecting carriers;

c) shall not, either directly or indirectly, use any name, logo, insignia, slogan, copyright, design, symbol or format likely to cause confusion when compared reasonably to those used by the Company;

d) shall jointly and severally continue to be bound to pay to the Company on demand such amounts as may be determined by the Company to be owing by the Contractor pursuant to this Agreement;

e) shall, promptly upon demand by the Company, repaint its vehicles in a colour scheme different from that used by the Company. The Contractor acknowledges that the Company's vehicles have a distinctive colour scheme design;

f) shall remove and return or, if requested by the Company, permit a representative of the Company to remove and return, at the Contractor's cost and expense, all signs, insignia, decals, logos and any and all other documents and equipment in any way whatsoever connected or related to the Company; all such signs, insignia, decals and logos are the property of Company and will remain the property of Company upon termination of this Agreement

g) shall remove from the telephone directory and from any other advertising medium any listing or reference to the fact that the Contractor is or has provided services in accordance with this Agreement; and

h) shall provide the Company with the sales reports required pursuant to paragraph 3.2 for any time period upon request by authorized Company personnel.

5.3 The title to all equipment, signs, insignia or other materials furnished to the Contractor by the Company shall remain the property of the Company at all times, and upon the termination of this Agreement must be returned to the Company.

6. ADDITIONAL COVENANTS

6.1 The Contractor shall have no authority or power to bind the Company by contract or otherwise except as herein provided for the sale and/or issuance of Tickets and Transportation Documents for the transportation of passengers, baggage, Express and other goods.

6.2 The Contractor agrees to adopt and comply with all policies and guidelines developed by the Company from time-to-time in respect of the effective operation and promotion of the Business.

6.3 The rights and privileges of the Contractor granted or created by virtue of this Agreement are not exclusive. The Company reserves the right to engage others to perform the services to be rendered by the Contractor under this Agreement, either within the P&D Service Area or elsewhere.

6.4 All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other (a "**Notice**") shall be done in writing and sent by registered mail, overnight delivery or fax to the following addresses:

a) if to the Company at Greyhound Lines, Inc., 350 North St. Paul, Dallas, TX 75201, Attention: Legal Department (V. Cole);

b) if to the Contractor at: **Contractor's Premises.**

6.5 This Agreement, its obligations and benefits may not be assigned, transferred or subcontracted in whole or in part. Any change in the corporate ownership or the beneficial control of the Contractor shall be deemed to be an assignment of this Agreement.

6.6 This Agreement shall be governed and construed by the laws of the State where the Contractor's Premises are located.

6.7 In the event any provision of this Agreement is determined to be invalid or not enforceable, it shall be considered separate and severable from the balance of this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto.

6.8 If there shall be more than one person referred to as the Contractor herein, then their obligations and liabilities shall be joint and several.

6.9 No amendment to this Agreement will be valid except in writing signed by all of the parties hereto.

6.10 This Agreement contains all of the terms and conditions agreed upon by the parties in connection with the subject matter and this Agreement supersedes any prior agreement, be it in writing or verbal. No director, employee or agent of the Company has the authority to make any representation or promise not contained in this Agreement, and the parties agree that they have executed this Agreement without reliance upon any such representation or promise.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed.

COMPANY **DATE:** _____ GREYHOUND LINES, INC.

_____
Name:
Title:
Authorized Signature

CONTRACTOR **DATE**: _____

_____
Witness to Contractor's Signature

_____
Witness (Print Name)

_____
Witness Address

_____
Contractor's Name:
Signature's Title if contractor is a corporation:

_____
Approved as to form:
Mesch, Clark & Rothschild, by Gary J. Cohen,
City's Attorney

City of Benson

Contractor's Addendum

The City of Benson, designated the "Contractor" in the principal contract, and Greyhound Lines, Inc. (the "Company"), enter into this Addendum, by which the parties intend to modify that Standard Independent Contractor Agreement entered into between the parties (the "Agreement").

The parties agree to modify the Agreement as follows:

1. The second paragraph of Section 2.2 is modified to add the following underlined language:

> "In all other cases, the Contractor shall provide, at the Contractor's sole cost and expense, all telephones, telephone lines, fax lines, fax machines, white page telephone and fax directory advertising and telephone and fax number information <u>the Contractor determines to be reasonably</u> necessary for the Contractor to perform its obligations herein."

2. Contractor is not required to open any package to comply with Section 2.4; Contractor, however, is required to appropriately screen packages to identify whether a customer is attempting to ship Dangerous Goods.

3. Section 3 is modified as follows:

a. Paragraph 3.1 is modified to add the following underlined language:

> "The Contractor <u>shall maintain a separate account and accounting for all financial matters contemplated under the Agreement and</u> shall adopt and comply with all <u>reasonable</u> financial, credit, depositing and accounting policies <u>for that separate account</u> which may be developed and issued by the Company from time-to-time."

b. The Parties agree that the requirement for daily remittances is limited to daily reports of financial activities and not to daily remittance of payments.

4. Notwithstanding anything in the Agreement to the contrary, Contractor's failure to remit or deposit all monies owed to Company will result in interest charges to Contractor for funds withheld at the rate allowed by A.R.S. § 44-1201, which currently is 4.25%.

5. The last sentence of Section 3.2 is modified to add the following underlined language and remove the following language indicated by strikeout:

> "<u>Contractor will</u> ~~To~~ render the Company all required documents to support activity within the facility and to remit to the Company on a daily basis for all monies owed, or as directed <u>in writing</u> by the Company."

6. Deleting Section 5.1(b) in its entirety.

7. Section 5.2(a) is modified to add the following underlined language"

"other than amounts due Contractor at the time of termination, shall not be entitled . . . ."

COMPANY DATE: _____

_____
Name
Title
Authorized Representative

CONRACTOR DATE: _____

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Mesch, Clark & Rothschild, P.C.,
City Attorney, by GARY COHEN

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