

CITY ORDINANCE NO. CO-106-2021

AN ORDINANCE OF THE LAFAYETTE CITY COUNCIL AUTHORIZING THE LAFAYETTE MAYOR-PRESIDENT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT AND THE UNIVERSITY OF LOUISIANA AT LAFAYETTE FOR TRANSPORTATION SERVICES

BE IT ORDAINED by the Lafayette City Council, that:

WHEREAS, Lafayette City-Parish Consolidated Government (“LCG”), provides transportation services to the general public within the City of Lafayette, owns a fleet of motor vehicles equipped to carry passengers and has a maintenance facility equipped and staffed to maintain the buses and equipment; and

WHEREAS, University of Louisiana at Lafayette (“UNIVERSITY”), among other activities, also provides transportation services for its students and other individuals within the territorial boundaries of its campus, also owns a fleet of buses, and also has a maintenance facility equipped and staffed to maintain the buses and equipment; and

WHEREAS, an agreement to utilize buses, equipment and services between LCG and the UNIVERSITY is beneficial to both parties and the general public; and

WHEREAS, LCG currently has three (3) retired buses that are available for use by the UNIVERSITY; and

WHEREAS, both LCG and UNIVERSITY have special events from time to time necessitating the need to secure Transit Charter Service; and

WHEREAS, both Parties desire to set out the method and manner of utilizing buses, equipment and services that could be provided by either the UNIVERSITY or LCG.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Lafayette City Council, that:

SECTION 1: All of the aforescribed “Whereas” clauses are adopted as part of this ordinance.

SECTION 2: The Lafayette Mayor-President is hereby authorized to enter into the Agreement in substantially the same form as is attached hereto. Furthermore, the Lafayette Mayor-President is hereby authorized to amend, modify and sign any and all other documents and take any and all other actions in connection therewith.

SECTION 3: This transfer of funds shall be as reflected in any pertinent documents which are attached hereto and made part thereof and filed in the Office of the Lafayette Clerk of the Council.

SECTION 4: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 5: This ordinance shall become effective upon signature of the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon an override of a veto, whichever occurs first.

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INTERGOVERNMENTAL TRANSPORTATION AGREEMENT

THIS INTERGOVERNMENTAL TRANSPORTATION AGREEMENT ("Agreement") is made as of this ____ day of _____, 2021, (the "Effective Date") by and between **Lafayette City-Parish Consolidated Government** ("LCG"), and the **University of Louisiana at Lafayette**, (the "UNIVERSITY"). (LCG and UNIVERSITY are collectively referred to herein as the "Parties")

RECITALS

Whereas, LCG, among other activities, provides transportation services to the general public within the Parish of Lafayette, owns a fleet of motor vehicles equipped to carry passengers ("Buses", as that term is more particularly defined below), and has a maintenance shop equipped and staffed to maintain the Buses ("Physical Plant", as that term is more particularly defined below);

Whereas, UNIVERSITY, among other activities, also provides transportation services for its students and other individuals within the territorial boundaries of its campus, also owns a fleet of Buses, and also has a Physical Plant;

Whereas, LCG has three (3) Buses that are available for use by the UNIVERSITY ("Supplied Equipment" as that term is defined below and in Schedule 1);

Whereas, both LCG and UNIVERSITY have special events from time to time necessitating the need to secure Transit Charter Service, as that term is defined herein, and LCG has adopted an ordinance outlining the rates applicable to Transit Charter Services;

Whereas, both LCG and UNIVERSITY require repairs to their respective Buses at times when there are backlogs at the Physical Plant, and LCG and UNIVERSITY desire to access the other party's Physical Plants to facilitate more efficient repairs to the Buses;

Whereas, the Parties desire to enter into this Agreement to allow the UNIVERSITY to utilize the Supplied Equipment, to provide a mechanism for the UNIVERSITY to utilize other Buses from time to time that may be made available by LCG, for each party to make use of the other party's excess Buses and Physical Plant capacity should either be available, and to provide for the charges related to the use of the Supplied Equipment and Transportation Services;

Whereas, the Parties desire to set out the method and manner of utilizing the Supplied Equipment, requesting and utilizing the other party's Transit Charter Services and Physical Plant, and to provide for related matters; and

Now therefore, the Parties agree as follows:

1. Definitions

"Bus" means a motor propelled vehicle designed for carrying more than ten persons other than a taxicab constructed and designed for transporting persons for commercial purposes as set out in La. Sec. 32:1

"Item" means one of the Buses listed on Schedule 1.

"Physical Plant" means the maintenance facility where a party performs repairs and maintenance to a Bus.

"Providing Entity" means the party providing the Transportation Services.

"Requesting Entity" means the party requesting the Transportation Services.

"Supplied Equipment" means the Buses listed on Schedule 1.

"Transit Charter Services" means the use of Buses to provide Transportation Services.

"Transportation Services" means the supplying of Transit Charter Services, services performed at the Physical Plant, or any other service set out in Schedule 2.

Words which have a well-known technical or trade meaning, unless otherwise specifically defined in this Agreement, shall be construed in accordance with such well-known meaning, recognized by the transportation professions and trades.

The Supplied Equipment which this Agreement covers is listed in Schedule 1, of which there may be one (1) or many and which may be amended from time to time. The Schedules are integrated into this Agreement upon their execution. The term "Agreement" refers to this Agreement as well as all documents and agreements executed pursuant hereto by LCG and UNIVERSITY. Except as otherwise stated, Section references herein are to Sections in this Agreement.

2. Performance of Services.

2.1 LCG will make available to the UNIVERSITY the Supplied Equipment commencing on the Effective Date. UNIVERSITY agrees to take possession of the Supplied Equipment for the periodic payment amount listed in Schedule 1 subject to the terms and conditions set forth herein and in such Schedule. UNIVERSITY shall be responsible for the maintenance, operation, and use of each Item comprising the Supplied Equipment while in its possession, and shall return each Item of the Supplied Equipment to LCG at the termination of its possession pursuant to the terms of this Agreement.

2.2 Commencing on the Effective Date, a Requesting Entity may request Transportation Services from a Providing Entity. If the Providing Entity has (or does not have) the capacity to provide the Transportation Services, the Providing Entity will advise the Requesting Entity as soon as possible, but in no event later than 48 hours after request.

2.3 The Providing Entity shall perform the Transportation Services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. The Providing Entity will be responsible for securing any necessary agreements, permits or approvals, from all federal, state, and local governmental bodies having jurisdiction or authority over the Transportation Services. Providing Entity shall be responsible for all costs associated with securing such agreements, permits or approvals. Providing Entity shall further comply with all lawful policies, health, sanitary, and other regulations imposed by public bodies having jurisdiction or authority during the term of this Agreement.

2.4 The Providing Entity will bear all costs of performing the Transportation Services including, but not limited to, all maintenance costs required to maintain the Buses. All operating costs, whether for the Buses or personnel, and permit and license fees, shall be borne by Providing Entity except as provided in Section 7.

3. **Supplied Equipment.**

3.1 LCG will cause the Supplied Equipment to be tendered to UNIVERSITY at _____ [insert Physical Plant address] Upon such tender, UNIVERSITY will inspect the Supplied Equipment. If the Supplied Equipment is satisfactory to UNIVERSITY, it will accept delivery. UNIVERSITY's acceptance of delivery of the Supplied Equipment shall constitute UNIVERSITY's acknowledgement that, as between LCG and UNIVERSITY, (a) it appears each Item comprising the Supplied Equipment is suitable for its purpose and fit for its intended use; (b) LCG is not a manufacturer thereof nor a dealer in any Item of the Supplied Equipment; and (c) UNIVERSITY accepts said Items AS IS AND WHERE IS. LCG may require a Certificate of Acceptance to be signed by UNIVERSITY for any Item, but LCG's failure to require such documentation shall not indicate that inspection or acceptance of delivery has not occurred.

3.2 UNIVERSITY shall pay to LCG the periodic payments (herein "Payments") for each Item of the Supplied Equipment in the amounts and at the times specified in Schedule 1 for such Item. The Parties agree that the Payments and other amounts payable by UNIVERSITY hereunder shall continue to be payable in all events for the period specified for each Item, unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement or by agreement of the parties. UNIVERSITY shall not be entitled to any abatement of the Payments and other charges payable hereunder by UNIVERSITY or withholding thereof from LCG or any reduction thereof, for such matters including, but not limited to, abatements or reductions due to any present or future claims of UNIVERSITY against LCG, or against the manufacturer, vendor or dealer of the Supplied Equipment; nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the

respective obligations of LCG or UNIVERSITY be affected, by reason of any defect in or damage to or loss or destruction of all or any Item of the Supplied Equipment from whatever cause, the interference with use by any private person, corporation or governmental authority, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding.

3.3 After the expiration of the term set out in Schedule 1 with respect to each Item, UNIVERSITY shall at its expense and risk return the Item to the location designated by LCG. As to any Item of Supplied Equipment, if for any reason, UNIVERSITY neither returns such Item or purchases such Item, LCG may treat UNIVERSITY's obligations under the Agreement as continuing in full force and effect as to such Item and UNIVERSITY will continue to pay the current Payments for such Item, but LCG shall be entitled to immediate possession of such Item, and UNIVERSITY shall have no rights with respect to it and UNIVERSITY shall be in default hereunder.

3.4 LCG hereby assigns to UNIVERSITY and UNIVERSITY shall have the benefit of any and all manufacturer's warranties and service agreements with respect to the Supplied Equipment; provided, however, that UNIVERSITY's sole remedy for the breach of any such warranty, indemnification or service agreement shall be against the manufacturer, and not against LCG, nor shall any such breach have any effect whatsoever on the rights and obligations of either party with respect to this Agreement. Any amount received by LCG or UNIVERSITY as payment under any such warranty shall be applied to restore the Item of Supplied Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to UNIVERSITY hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over by UNIVERSITY.

3.5 LCG SHALL AND HEREBY DOES RETAIN FULL LEGAL TITLE TO THE SUPPLIED EQUIPMENT notwithstanding the delivery thereof to and for the possession and use thereof by UNIVERSITY.

3.6 UNIVERSITY agrees to comply in all material respects with all applicable governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of each Item of the Supplied Equipment. In case any Item or part on any Item shall be required to be changed or replaced, or in case any additional or other equipment or part is required to be installed on any Item in order to comply with such laws, regulations, requirements and rules, UNIVERSITY agrees to make such changes, additions and replacements at its own cost.

3.7 UNIVERSITY will at its expense maintain, service and repair any damage to any Item of Supplied Equipment in a manner consistent with prudent industry practice and LCG practice so that the Supplied Equipment is always (a) in the same condition as when accepted by UNIVERSITY under the Agreement, except for ordinary wear and tear resulting from proper use, (b) in good operating order, and (c) in compliance with all LCG policies and recommendations to the extent provided by LCG.

3.8 UNIVERSITY shall provide LCG on a monthly basis the mileage, ridership, service hours, and all other information reasonably requested by LCG with respect to each Item of the Supplied Equipment. Upon the request of LCG, UNIVERSITY shall advise LCG as to the location of each Item of Supplied Equipment and shall, at any reasonable time, make the Supplied Equipment available to LCG or LCG's agent for inspection at the place where it is ordinarily located, and shall make UNIVERSITY's records pertaining to the Supplied Equipment available for LCG's inspection.

3.9 UNIVERSITY hereby assumes the entire risk of loss of each Item of Supplied Equipment, from any and every cause except those caused by LCG. In the event any Item of Equipment shall be lost, stolen, destroyed, damaged beyond repair, or permanently rendered unfit for use for any reason whatsoever ("Event of Loss"), UNIVERSITY shall promptly, but in any event within ten (10) days of the Event of Loss, give written notification to LCG of said loss and of the facts pertaining thereto.

3.10 The term "Casualty Loss Value," as to any Item of Supplied Equipment means an amount equal to the sum of: (a) all Payments and other amounts due and owing under this Agreement with respect to such Item at the time of the Event of Loss, plus (b) the value of LCG's residual interest in such Item. Residual value is to be determined by agreement between LCG and UNIVERSITY, and if they cannot agree, then by an independent, appropriately credentialed and qualified third-party appraiser with experience in the valuation of assets such as the Supplied Equipment (a "Qualified Appraiser") selected by LCG. The cost of any such appraisal shall be borne by UNIVERSITY.

3.11 UNIVERSITY shall pay to LCG, on the next date a Payment is due for such Item following such Event of Loss, the Casualty Loss Value of such lost or destroyed Item. The obligation of UNIVERSITY to make the Payment with respect to such Item (including the installment due on such next rental payment date) shall continue undiminished until the payment of such Casualty Loss Value. After the payment of such Casualty Loss Value, UNIVERSITY's obligation to make Payments for such Item shall cease, but UNIVERSITY's obligation to pay rental for all other Items of Supplied Equipment shall remain unchanged. After the payment of such Casualty Loss Value, LCG will transfer to UNIVERSITY and/or UNIVERSITY's insurer, without recourse or warranty, all of LCG's right, title, and interest, if any, in and to such lost or destroyed Item.

3.12 At its own expense, UNIVERSITY shall maintain All-Risk Property Insurance on each Item of Supplied Equipment for the replacement cost of such Item, and shall maintain the following coverages with respect to each Item:

Worker's Compensation. Statutory limits of liability and minimum employer's liability limits of \$1,000,000.00.

Automobile Liability. This insurance shall include coverage for owned autos, hired autos and non-owned autos with a combined single limit per occurrence set forth below:

Bodily injury - \$1,000,000 each person

	-	\$1,000,000 each accident
Property damage	-	\$1,000,000 each accident

Comprehensive General Liability. This insurance shall include coverage for premises-operations, products and completed operations, use of contractors and subcontractors, personal injury, pollution coverage, and broad-form property damage with a combined single limit per occurrence set forth below. "Claims made" form shall not be acceptable. The "occurrence form" shall not have a "sunset clause."

Bodily injury	-	\$5,000,000 each occurrence
	-	\$5,000,000 aggregate
Property damage	-	\$5,000,000 each occurrence
	-	\$5,000,000 aggregate

Fire Insurance. This insurance shall include fire and extended coverage insurance. Such policy shall contain a replacement cost endorsement.

Said insurance to be in an amount not less than the amount specified and, in any event, in an amount sufficient to provide full coverage against all loss and liability. All such insurance shall name LCG as an additional insured and shall provide that it may be altered or canceled by the insurer only after thirty (30) days prior written notice to, and that losses shall be adjusted only with and paid to, LCG and its assignee, if any, and UNIVERSITY, as their interest may appear. Said insurance shall also contain a waiver of subrogation claims against LCG, and shall be primary coverage for the perils insured. All insurance required by this Agreement shall be placed with insurers that are authorized to do business in the states where the Items are located and have a rating of no less than A in the most current edition of the A. M. Best Insurance Report, AAA in Moody's, and AAA in Standard and Poor (or any equivalent ratings applicable to the rating services). Certificates or other evidence satisfactory to LCG showing the existence of such insurance, the terms and conditions of the policy, and payment of the premium therefore shall be delivered to LCG forthwith and periodically prior to each expiration of such insurance. In the event UNIVERSITY shall fail to obtain and/or maintain insurance in accordance with the provisions of this paragraph, LCG shall have the right to obtain such insurance as LCG deems necessary, and UNIVERSITY shall be obligated to reimburse LCG for the payment by LCG of all premiums therefore. As between LCG and UNIVERSITY, it is agreed that if any such insurance proceeds are received with respect to an occurrence which does not constitute an Event of Loss under Section 3.9, proceeds will be applied in payment for repairs as required pursuant to this Agreement, or to reimburse UNIVERSITY for having made such payments. The Worker's Compensation coverage shall contain an express waiver of all rights against LCG and their agents and employees, for losses arising from the Supplied Equipment covered under this Agreement. LCG and UNIVERSITY hereby agree that LCG shall be deemed a statutory employer of LCG's employees, as the term is defined in La. R.S. 23:1061. UNIVERSITY (for itself and its insurer) waives any rights, including rights of subrogation, each may have against LCG for compensation of any loss or damage occasioned to UNIVERSITY arising from any risk generally covered by the "all risks" insurance required to be carried by LCG. The foregoing waiver shall be effective whether or not UNIVERSITY maintains the insurance required to be carried pursuant to this Agreement. The providing of any

insurance required herein does not relieve UNIVERSITY of any responsibilities or obligations assumed by UNIVERSITY in this Agreement, or for which UNIVERSITY may be liable by law or otherwise.

4. Operational Responsibility for Transportation Services.

4.1 The Providing Entity shall accept and transport all passengers in accordance with all rules and procedures applicable to the Requesting Entity's operations, and applicable standards of the United States Department of Transportation and of any other governmental entity.

4.2 All Buses utilized by a Providing Entity to provide Transportation Services shall be clean, both inside and out, upon arrival at the location designated by the Requesting Entity.

4.3 Providing Entity, at its cost and expense, shall furnish all labor, equipment, materials, supplies, tools, appliances, machinery, appurtenances, permits, licenses, and other items necessary to perform the Transportation Services for the Requesting Entity.

4.4 In performing Transportation Services, The Providing Entity shall conduct its operations in a reasonable, prudent, and good and workmanlike manner, with due diligence and dispatch, in accordance with good practices prevalent in the transportation industry, and in strict and full compliance with all applicable Federal, state and municipal laws, regulations or ordinances.

5. Compensation.

5.1 The Payment amounts for the Supplied Equipment shall be in accordance with Schedule 1 attached hereto and made a part hereof.

5.2 All rates charged by a Providing Entity for Transportation Services shall be in accordance with Schedule 2 attached hereto and made part hereof.

5.3 Providing Entity will invoice the Requesting Entity quarterly and payment shall be due on or before the 30th day after date of the invoice.

5.4 In the event of a *bona fide* billing dispute, the Requesting Entity and the Providing Entity, as the case may be, shall pay (or credit) to the other party all amounts not in dispute, and the parties shall negotiate in good faith to resolve the amount in dispute as soon as reasonably practicable. In the event a party has withheld payment (or credit) of a disputed amount, and the dispute is resolved in favor of the other party, the party against whom the dispute is resolved shall pay to the other party the amount determined to be due such other party, together with interest accrued thereon at the lesser of the rate of 1 1/2% per month, or the maximum interest rate permitted by law, if any, prorated by the number of days from the date the payment (or credit) was due to the date of payment (or refund).

5.5 If either party is required to pay an amount to the other party in the same billing period for transactions under this Agreement, then such amounts with respect to each party may be aggregated and the parties may discharge their obligations to pay through netting of the respective amounts due, in which case the party, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. Each party reserves to itself all rights, set-off, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such party has or may be entitled to arising from or out of this Agreement.

6. Term; Termination.

6.1 The initial term of this Agreement will commence on the Effective Date and will expire on the first anniversary of the Effective Date, unless sooner terminated pursuant to the terms of this Agreement. Thereafter this Agreement will renew for four (4) successive one year periods, but may be terminated by either party by giving the other party written notice of cancellation at least ninety (90) days prior to the termination date, unless sooner terminated pursuant to the terms of this Agreement.

6.2 A party may terminate this Agreement upon the occurrence of a Default as provided in Section 11 that is not cured.

7. Indemnification.

7.1 With respect to the Transportation Services, LCG shall DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY and its "Related Persons" (as defined below), from and against any and all liabilities or claims, injuries or illnesses (including death resulting therefrom), or property damage, or fines, penalties or assessments by any "Governmental Authority" (as defined below) (insofar as not prohibited by law), or losses, costs or expenses (including costs of defense, settlement and reasonable attorneys' fees), which are directly or indirectly caused by (a) the actual or alleged error, omission, negligence or strict liability, in whole or in part, of any of the LCG or LCG's Related Persons associated with, or arising from, this Agreement; (b) the breakage, malfunction or defect of any tools or Equipment provided by LCG or LCG's Related Persons; (c) the inaccuracy of any representation or warranty made by LCG in this Agreement; (d) the breach by or nonperformance of LCG of any agreement or covenant contained in this Agreement; or (e) LCG's or any of LCG's Related Persons' failure to comply with any law, ordinance, rule or regulation. LCG shall DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY and its "Related Persons" (as defined below), from and against any and all liabilities or claims, injuries or illnesses (including death resulting therefrom), or property damage, or fines, penalties or assessments by any "Governmental Authority" (as defined below) (insofar as not prohibited by law), or losses, costs or expenses (including costs of defense, settlement and reasonable attorneys' fees), which are directly or indirectly caused by (a) the actual or alleged error, omission, negligence or strict liability, in whole or in part, of any of LCG or LCG's Related Persons associated with, or arising from, this Agreement; (b) the breakage, malfunction or defect of any tools or Equipment provided by LCG or LCG's Related Persons; (c) the inaccuracy of any representation or warranty made by LCG in this Agreement; (d) the breach by or nonperformance of LCG of any agreement or

covenant contained in this Agreement; or (e) LCG's or any of LCG's Related Persons' failure to comply with any law, ordinance, rule or regulation. **THE INDEMNITY PROVIDED IN THIS SECTION 7 IS AN INDEMNITY BY LCG INDEMNIFYING AND PROTECTING UNIVERSITY AND ITS RELATED PERSONS FROM THE CONSEQUENCES OF THE NEGLIGENCE, FAULT OR STRICT LIABILITY, OF LCG OR ANY OF LCG'S RELATED PERSONS, WHETHER THAT NEGLIGENCE, FAULT OR STRICT LIABILITY IS THE SOLE, JOINT OR CONCURRING CAUSE OF THE CLAIM, LOSS OR EXPENSE.**

7.2 With respect to the Transportation Services, UNIVERSITY shall DEFEND, INDEMNIFY AND HOLD HARMLESS LCG and its "Related Persons" (as defined below), from and against any and all liabilities or claims, injuries or illnesses (including death resulting therefrom), or property damage, or fines, penalties or assessments by any "Governmental Authority" (as defined below) (insofar as not prohibited by law), or losses, costs or expenses (including costs of defense, settlement and reasonable attorneys' fees), which are directly or indirectly caused by (a) the actual or alleged error, omission, negligence or strict liability, in whole or in part, of any of the UNIVERSITY or UNIVERSITY's Related Persons associated with, or arising from, this Agreement; (b) the breakage, malfunction or defect of any tools or Equipment provided by UNIVERSITY or UNIVERSITY's Related Persons; (c) the inaccuracy of any representation or warranty made by UNIVERSITY in this Agreement; (d) the breach by or nonperformance of UNIVERSITY of any agreement or covenant contained in this Agreement; or (e) UNIVERSITY's or any of UNIVERSITY's Related Persons' failure to comply with any law, ordinance, rule or regulation. UNIVERSITY shall DEFEND, INDEMNIFY AND HOLD HARMLESS LCG and its "Related Persons" (as defined below), from and against any and all liabilities or claims, injuries or illnesses (including death resulting therefrom), or property damage, or fines, penalties or assessments by any "Governmental Authority" (as defined below) (insofar as not prohibited by law), or losses, costs or expenses (including costs of defense, settlement and reasonable attorneys' fees), which are directly or indirectly caused by (a) the actual or alleged error, omission, negligence or strict liability, in whole or in part, of any of UNIVERSITY or UNIVERSITY's Related Persons associated with, or arising from, this Agreement; (b) the breakage, malfunction or defect of any tools or Equipment provided by UNIVERSITY or UNIVERSITY's Related Persons; (c) the inaccuracy of any representation or warranty made by UNIVERSITY in this Agreement; (d) the breach by or nonperformance of UNIVERSITY of any agreement or covenant contained in this Agreement; or (e) UNIVERSITY's or any of UNIVERSITY's Related Persons' failure to comply with any law, ordinance, rule or regulation. **THE INDEMNITY PROVIDED IN THIS SECTION 7 IS AN INDEMNITY BY UNIVERSITY INDEMNIFYING AND PROTECTING LCG AND ITS RELATED PERSONS FROM THE CONSEQUENCES OF THE NEGLIGENCE, FAULT OR STRICT LIABILITY, OF UNIVERSITY OR ANY OF UNIVERSITY'S RELATED PERSONS, WHETHER THAT NEGLIGENCE, FAULT OR STRICT LIABILITY IS THE SOLE, JOINT OR CONCURRING CAUSE OF THE CLAIM, LOSS OR EXPENSE.**

7.3 If any Person covered by the foregoing indemnities (the "Indemnified Party") shall notify the other (the "Indemnitor") with respect to any matter (a "Third Party Claim") that may give rise to a claim for indemnification under this Agreement or if the Indemnified Party otherwise

becomes aware of any matter that may give rise to such a claim or wishes to make such a claim (whether or not related to a Third Party Claim), then the Indemnified Party shall promptly notify the Indemnitor in writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnitor shall relieve the Indemnitor from any obligation hereunder unless (and then solely to the extent) the Indemnitor is prejudiced by such delay.

7.4 The Indemnitor will have the right to defend the Indemnified Party against a Third Party Claim with counsel of its choice so long as: (a) the Indemnitor notifies the Indemnified Party in writing within a reasonable time after the Indemnified Party has given notice of the Third Party Claim that the Indemnitor will indemnify the Indemnified Party from and against any "Claims, Losses and Expenses" (as defined below) the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim; (b) the Indemnitor provides the Indemnified Party with evidence acceptable to the Indemnified Party that the Indemnitor will have the financial resources sufficient to defend against the Third Party Claim and fulfill its indemnification obligations hereunder; (c) the Third Party Claim involves only monetary damages and does not seek an injunction or equitable relief or involve the possibility of criminal penalties; (d) settlement of, or adverse judgment with respect to the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice adverse to the continuing business interests of the Indemnified Party; and (e) the Indemnitor conducts the defense of the Third Party Claim actively and diligently.

7.5 Even though the Indemnitor is conducting the defense of the Third Party Claim in accordance with this Section 7: (a) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; (b) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnitor (which consent will not be unreasonably withheld) and (c) the Indemnitor will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (which consent will not be unreasonably withheld).

7.6 In the event or to the extent that any of the conditions set forth in Section 7.4 above are or become unsatisfied: (a) the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim and any matter it may deem appropriate in its sole discretion and the Indemnified Party need not consult with, or obtain any consent from, the Indemnitor in connection therewith (but will keep the Indemnitor reasonably informed regarding the progress and cost and expenses thereof); (b) the Indemnitor will remain responsible for any and all Claims, Losses and Expenses, or any thereof, the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this Section 7; (c) the Indemnitor shall be deemed to have waived any claim that its indemnification obligation should be reduced because of the manner in which the counsel for the Indemnified Party handled the Third Party Claim; and (d) the Indemnitor shall be liable for all costs and expenses incurred by the Indemnified Party in enforcing its rights to indemnity pursuant to this Section 5.

7.7 In the event of a Third Party Claim, the Indemnified Party shall use its "Reasonable Efforts" (defined below) to make available to the Indemnitor those Persons under the Indemnified

Party's control whose assistance, testimony or presence is necessary to assist the Indemnitor in evaluating and in defending such legal proceeding, claim or demand; provided, however, that any such access shall be conducted in such a manner as not to interfere unreasonably with the operations of the business of the Indemnified Party (but failure to use Reasonable Efforts to provide such necessary witnesses or access to information shall excuse the Indemnitor's performance).

7.8 Except as provided for in Section 8 with respect to the Supplied Equipment, the provisions of this Section provide the exclusive remedy of the Indemnified Party and the Indemnified Party's Related Persons with respect to all Third-Party Claims arising out of or occurring in connection with this Agreement.

7.9 The provisions of this Section shall survive the termination or expiration of this Agreement.

7.10 As used in this Agreement: "Claims, Losses and Expenses" means any and all settlements, losses, damages, costs, counsel fees, expert witness fees, and all other expenses relating to or arising from any and all claims of every nature or character (including, but without limitations, claims for personal injury, death, illness, disease, damage to property, clean-up costs from commodity spills or damage to the environment) relating to or arising from the subject matter of this Agreement; "Reasonable Efforts" means, when used with reference to an Indemnified Party, such prompt, substantial and persistent efforts of the Indemnified Party as are reasonable under the circumstances in the purpose of Indemnified Party. Reasonable Efforts shall not require an Indemnified Party to expend unlimited resources or amounts of money, but only such amounts as are commercially reasonable in the applicable circumstances; "Governmental Authority" means any nation or government, any state or political subdivision thereof, any Federal, state, municipal, local, territorial or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government; and "Related Person" means, as in regards to each party, any officer, director, shareholder, member, partner, agent, employee, contractor, subcontractor, licensee or invitee of such party or its parent, affiliates or subsidiaries.

8. Supplied Equipment Indemnification.

8.1 UNIVERSITY shall defend, indemnify and save harmless LCG and their respective agents and servants, from and against any claim, cause of action, damages, liability, cost, fee or expense (including counsel fees and costs in connection therewith) to the extent arising from (a) the Supplied Equipment or any part thereof including without limitation the construction, purchase, delivery, installation, ownership, leasing or return of the Supplied Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by LCG or by the UNIVERSITY), (b) UNIVERSITY's failure or refusal to accept the Supplied Equipment as is when delivered to UNIVERSITY, (c) any act or omission of UNIVERSITY (d) claims for patent or trademark infringements to the extent caused by UNIVERSITY, (e) any event which results in any claim for negligence or strict liability in tort, or (f) any injury to person or

property or business caused by the Supplied Equipment; and whether or not caused in whole or part by any act or omission of LCG or its agents or assigns. This Section shall become and be effective and in full force and effect from the date the first Item of Supplied Equipment is ordered even though the Supplied Equipment has not yet been accepted by UNIVERSITY and even though the Term has not yet commenced, and shall remain in effect notwithstanding the expiration or other termination of this Agreement with respect to any one or more Items of Supplied Equipment insofar as it relates to an event which occurred prior to such expiration or termination. UNIVERSITY agrees to give LCG prompt notice of any claim or liability hereby indemnified against as well as any incident involving the Supplied Equipment. Subject to the above, LCG agrees to cooperate with UNIVERSITY in any defense or other action which UNIVERSITY is by this Section obligated to undertake.

8.2 UNIVERSITY shall give LCG notice of any incident involving the Supplied Equipment within seventy-two (72) hours of the incident.

9. Personnel.

9.1 Providing Entity shall utilize a sufficient number of qualified employees to perform the Transportation Services under this Agreement. Providing Entity shall comply with all provisions of the law regarding the employment of workers.

9.2 Each of Providing Entity's employees assigned to drive any of the Buses shall, at all times, carry a valid driver's license for the type of vehicle being driven. Drivers must also have a Commercial Driver's License ("CDL") with Class B Passenger and air brake endorsements all as required by applicable law, including, without limitation, the Commercial Vehicle Safety Act of 1986.

9.3 UNIVERSITY shall provide LCG with a listing of all personnel operating the Supplied Equipment. Such personnel shall comply with the requirements in Section 9.2, together with any other criteria utilized by LCG with respect to its employees as a Providing Entity under the terms of this Agreement.

10. Record Keeping.

10.1 In addition to any other record requirements specified in this Agreement, each Party shall also maintain books and records relating to the performance of the Transportation Services in accordance with the following minimum requirements.

10.2 Each Party shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records, documents, and information evidencing or associated with charges for Transportation Services, expenditures or disbursements, and any other financial transactions related to this Agreement, for a minimum period of five years from the date of final payment to a Party pursuant to this Agreement or the applicable governmental record retention standard, whichever is longer.

10.3 Each Party shall forward to the other Party no later than thirty (30) days after the end

of each three-month period during the term of this Agreement, summaries reflecting the gross charges for services provided during the preceding three-month period pursuant to this Agreement.

10.4 Any records or documents to be maintained pursuant to this Agreement shall be made available for inspection or audit after ten (10) days advance written request therefor.

11. Default; Remedies.

11.1 As used in this Agreement, "Default by Providing Entity" means any one or more of the following:

- a. Providing Entity fails to provide Transportation Services requested by the Requesting Entity three or more consecutive times;
- b. Providing Entity violates or breaches any other term or provision of this Agreement;
- c. Providing Entity shall fail to duly observe, perform, or comply with any agreement with any Person or with any term or condition of any instrument, if such agreement or instrument is materially significant to the Requesting Entity, and such failure is not remedied within the applicable period of grace (if any) provided in such agreement or instrument;

11.2 As used in this Agreement, "Default by Requesting Entity" means any one or more of the following:

- a. Requesting Entity violates or breaches any other term or provision of this Agreement;
- b. Requesting Entity fails to pay any indebtedness to Providing Entity when due and payable, whether at a date for the payment of an invoice or as a contingent or other payment becomes due and payable or as a result of acceleration or otherwise;
- c. Any representation or warranty previously, presently, or hereafter made in writing by or on behalf of Requesting Entity shall prove to have been false or incorrect in any material respect on any date on or as of which made.

11.3 As used in this Agreement, "Default by UNIVERSITY" means any one or more of the following:

- a. UNIVERSITY violates or breaches any other term or provision of this Agreement with respect to the Supplied Equipment;
- b. UNIVERSITY fails to pay any indebtedness to LCG when due and payable, whether at a date for a Payment or as a contingent or other payment becomes due and payable or as a result of acceleration or otherwise with respect to the Supplied Equipment;
- c. Any representation or warranty previously, presently, or hereafter made in writing by or on behalf of UNIVERSITY with respect to the Supplied Equipment shall prove to have been false

or incorrect in any material respect on any date on or as of which made.

12. Miscellaneous.

12.1 Providing Entity shall be an independent contractor in performing the Transportation Services and will not be deemed an employee, agent, or representative of Requesting Entity, nor shall Providing Entity hold itself out as the agent of Requesting Entity with authority to bind it to any obligation or liability assumed or incurred by Providing Entity. Furthermore, Providing Entity's subcontractors, employees or agents shall not be considered employees, agents, or servants of Requesting Entity for any purposes whatsoever. Subject to the further provisions of this Agreement specifying the minimum requirements for employees of Providing Entity, Providing Entity shall have exclusive control of and the exclusive right to control the details of the Transportation Services performed hereunder and all acts and omissions of its officers, agents, employees, and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint venture between Requesting Entity and Providing Entity. Nothing in this Agreement shall be construed as establishing any duty of Requesting Entity to supervise or control any acts or omissions of any person, entity, or party, which acts or omissions are in any way connected with or related to the performance of Transportation Services under this Agreement.

12.2 In addition to the any other remedies set out in this Agreement, if any legal action or any other proceeding is brought for the enforcement of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, including reasonable expert witness fees, in addition to any other relief to which it may be entitled.

12.3 This Agreement may not be assigned by either party in whole or in part without the prior written consent of the other party. The parties acknowledge that the unauthorized assignment of this Agreement shall constitute a material breach.

12.4 All notices required in this Agreement (other than requests for Transportation Services by a Requesting Party and responses to those requests by a Providing Party), shall be made in writing and delivered (a) in person or by registered or certified mail postage prepaid (followed by telecopy), or (b) by nationally recognized overnight courier, or (c) telecopy (followed by mail) addressed as follows:

Lafayette Consolidated Government
Purchasing Department
PO Box 4017-C
Lafayette, LA 70502

or to such other address and person as either party may, from time to time, specify in writing to the other. All notices properly given in accordance with this Section 12.4 shall be effective when received.

12.4.1 All requests for Transportation Services and all responses to such requests shall be made in writing and delivered (a) in person, or (b) by telephone, or (c) by telecopy addressed as follows:

Lafayette Consolidated Government
Traffic, Roads and Bridges Department
Lafayette Transit System
101 Jefferson Street, Suite 202
Lafayette, LA 70501

or to such other address and person as either party may, from time to time, specify in writing to the other in accordance with Section 12.4.

12.5 This Agreement will be governed by and construed in accordance with the laws of the State of Louisiana.

12.6 If any provision of this Agreement is, becomes or is deemed invalid, illegal, or unenforceable under the applicable laws or regulations of any jurisdiction, that provision will be deemed amended to the extent necessary to conform to applicable laws or regulations or, if it cannot be amended without materially altering the intention of the parties, it will be stricken, and the remainder of this Agreement will remain in full force and effect.

12.7 No failure or delay (whether by course of conduct or otherwise) by either party in exercising any right, power, or remedy which it may have under this Agreement shall operate as a waiver thereof or of any other right, power, or remedy, nor shall any single or partial exercise by either party of any such right, power or remedy preclude any other or further exercise thereof or of any other right, power, or remedy. No waiver of any provision of this Agreement and no consent to any departure therefrom shall ever be effective unless it is in writing and signed by the party against whom the waiver is raised, and then such waiver or consent shall be effective only in the specific instances and for the purposes for which given and to the extent specified in such writing.

12.8 This Agreement constitutes the entire agreement and understanding between the parties with respect to the matters contained herein, and supersedes any prior agreement and understandings relating to the subject matter hereof. This Agreement may be modified or amended only by a written instrument signed by both parties.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES ARE ON
NEXT PAGE.]**

EXECUTED on _____, 2021, TO BE EFFECTIVE, HOWEVER AS OF the
Effective Date.

SCHEDULE 1

Supplied Equipment

LCG Bus 7072-VIN #15GGB291441074014	Payment of \$200/month for 12 months
LCG Bus 7090-VIN #15GGB211081079499	Payment of \$200/month for 12 months
LCG Bus 7091-VIN #15GGB211381079500	Payment of \$200/month for 12 months

SCHEDULE 2

Transportation Services Provided by a Providing Entity

Charter Transit Service	Billed in accordance with the ordinance in effect for LCG as of the Effective Date of the Agreement
Physical Plant	Repairs & Maintenance to Buses on a Time and Materials. Actual cost of materials used plus 10% together with labor at a rate of \$____/per hour



RECEIVED

JUL 20 2021

Lafayette Consolidated Government
Chief Administrative Officer

Internal Memorandum
Traffic, Roads and Bridge Department
TRB Director's Office (5102)

TO: Cydra Wingerter
THRU: Thomasina Oliver 
FROM: Warren Abadie
SUBJ: City Council Ordinance
INTERGOVERNMENTAL TRANSPORTATION AGREEMENT
BETWEEN LCG AND ULL
Agenda Item

DATE: July 20, 2021

Please find attached a city ordinance authorizing the Mayor-President to enter into an IGA between LCG and UL for transportation buses, equipment and services. The IGA provides a process and cost for both parties to use equipment and service that will benefit both parties and the general public.

The subject agreement outlines the mutual desire between both agencies and would allow the following:

- LCG and/or ULL to utilize buses and other equipment that is owned by the other party
- LCG and/or UL to utilize transportation services to be provide by the other party
- Provide a mechanism for both parties to work together to be benefit of both parties as well as the general public
- To provide for the charges and requirements related to the use of Buses and Transportation Services.

If you concur, please place the attached ordinance on the next appropriate Council agenda for introduction.

Should you have any questions, please don't hesitate to contact our office.



Warren Abadie
Director Traffic, Roads & Bridges

WA:cs

Attachments

cc: Pam Hollier
Scott Joubert

LAFAYETTE CITY COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

1) JUSTIFICATION FOR REQUEST: The ordinance of the Lafayette City Council authoring the Lafayette Mayor-President to enter into an Intergovernmental Agreement between the Lafayette City-Parish Consolidated Government and the University of Louisiana at Lafayette for Transportation Services.

2) ACTION REQUESTED: Adoption of ordinance

3) COUNCIL DISTRICT(S) (if applicable): _____

4) REQUESTED ACTION OF COUNCIL:

A) INTRODUCTION: August 3, 2021

B) FINAL ADOPTION: August 17, 2021

5) DOCUMENTATION INCLUDED WITH THIS REQUEST:

A) Cover Memo from Director (1 page)

B) Submittal Item Justification Form (1 page)

C) Joint Ordinance (2 pages)

D) Draft Intergovernmental Agreement (17 pages)

6) FISCAL IMPACT:

 X Fiscal Impact

Increase in revenue of \$1,200 for FY20-21

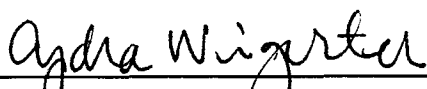
 No Fiscal Impact

RECOMMENDED BY:

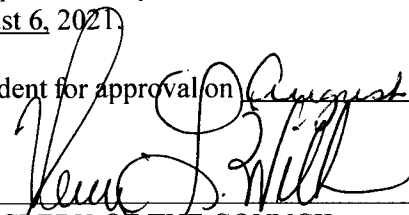
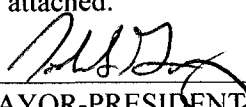
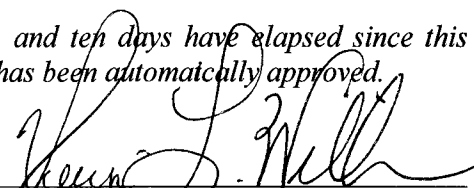


DIRECTOR of TRAFFIC, ROADS & BRIDGES

APPROVED FOR AGENDA:


CHIEF ADMINISTRATIVE OFFICER

DISPOSITION OF ORDINANCE NO. CO-106-2021

1. This ordinance was introduced: August 3, 2021
YEAS: Lewis, Naquin,
Hebert, Cook, Lazard
NAYS: None
ABSENT: None
ABSTAIN: None
- Final disposition by Council:
August 17, 2021
YEAS: Lewis, Naquin,
Hebert, Cook, Lazard
NAYS: None
ABSENT: None
ABSTAIN: None
2. Notice of Public Hearing: This ordinance was published by Title and Notice of Public Hearing was published in the Advertiser on August 6, 2021.
3. This ordinance was presented to the Mayor-President for approval on August 18, 2021, at 9:45 o'clock a.m.
- 
CLERK OF THE COUNCIL
4. Disposition by Mayor-President:
- I hereby:
- A. Approve this ordinance, the 26 day of August, 2021, at 3:48 o'clock p.m.
- B. Veto this ordinance, the _____ day of _____, 2021, at _____ o'clock _____.m., veto message is attached.
- C. Line item veto certain items this _____ day of _____, 2021, at _____ o'clock _____.m., veto message is attached.
- 
MAYOR-PRESIDENT
5. Returned to Council Office ~~with~~/without veto message on August 26, 2021, at 4:18 o'clock p.m.
6. Reconsideration by Council (if vetoed):
- On _____, 2021, the Council did/refused to adopt this ordinance after the Mayor-President's veto.
7. Returned to the Council Office without signature of Mayor-President (*unsigned*) on _____, 2021, at _____ o'clock _____.m.
- If not signed or vetoed by the Mayor-President, and ten days have elapsed since this ordinance was presented to him for action, same has been automatically approved.*
- 
CLERK OF THE COUNCIL
8. Full publication of this ordinance was made in the Advertiser on August 20, 2021.