

**SERVICES AGREEMENT
BY AND BETWEEN
EL PASO COUNTY, TEXAS
AND
EAN HOLDINGS, LLC
(COMMUTER VANPOOL PROGRAM SERVICES)**

This AGREEMENT is made and entered into this _____ day of _____, 2020, by and between El Paso County, having its principal office at 800 E. Overland Ave., Rm. 200, El Paso, Texas 79901, hereinafter referred to as COUNTY, and EAN Holdings, LLC, with its principal office at 4601 Columbine Ave NE, Albuquerque, NM 87113, and a regional office at 4115 N Mesa, El Paso, TX 79902, hereinafter referred to as CONTRACTOR, (the “AGREEMENT”).

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the El Paso County Vanpool Program; and

WHEREAS, Federal and State laws require local governments to meet certain contract standards relating to the management and administration of federal and state funds providing for the El Paso County Vanpool Program (“Vanpool Program”); and

WHEREAS, the State of Texas, acting by and through the Texas Department of Transportation has entered into funding agreements with COUNTY (collectively, “GRANTS”) to establish the Vanpool Program; and

WHEREAS, the COUNTY issued a Request for Proposal (RFP) #20-022, Management, Operation and Marketing of a Commuter Vanpool Program in order to identify a qualified company to successfully operate and market a commuter Vanpool Program based on origin and destination within the jurisdictional boundaries of the COUNTY; and

WHEREAS, CONTRACTOR submitted a Response to the RFP and the COUNTY awarded the RFP, on an exclusive basis, to CONTRACTOR on August 31, 2020;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter expressed, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I ATTACHMENTS

The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

1. Attachment “A” – Request for Proposal #20-022, Management, Operation and Marketing of a Commuter Vanpool Program (“RFP”)
2. Attachment “B” – CONTRACTOR’S Response to RFP (“CONTRACTOR’S RFP Response”)
3. Attachment “C” – Monthly Progress Report for El Paso County Vanpool Program

ARTICLE II PURPOSE OF THE CONTRACT

The purpose of the Vanpool Program is to reduce the number of single occupant vehicles on the highway during rush hour and provide an alternative means of commuting to and from work. The Vanpool Program will provide an alternative means of commuting to and from work. The Vanpool Program will provide for trips that have their origin or destination within the jurisdictional boundaries of El Paso COUNTY.

ARTICLE III CONTRACTOR’S DUTIES; SCOPE OF WORK

A) PROGRAM ADMINISTRATION

1. CONTRACTOR will provide full-size vehicles capable of carrying 7 to 15 passengers for the Vanpool Program
2. CONTRACTOR will set up a custom landing page for El Paso County, to include information on its new ride matching capabilities where interested individuals can access information regarding the Vanpool Program and register as a possible participant. The El Paso County custom landing page will be linked to the County website and to the County-established domain pertaining to the El Paso County Vanpool Program. .
3. CONTRACTOR will provide vanpool matching results to inquiring individuals within 48-hours of an inquiry via fax, phone, website, social media, or email through the El Paso County custom landing page, accessible through the County website or County-established domain pertaining to the El Paso county Vanpool Program.

4. CONTRACTOR will provide an Emergency Ride Home Benefit Program and Procedures to minimize the participant's concern of not being able to leave work and get home in the case of an emergency by providing a ride home during the day when necessary. CONTRACTOR will provide Emergency Ride Home benefits as stated in CONTRACTOR'S RFP Response.
5. CONTRACTOR will ensure each coordinator and driver sign the coordinator/driver agreement to take part in this program.
6. CONTRACTOR will have an office in El Paso COUNTY as the central operations office for this program. The office shall have equipment, staff to answer questions from participants, provide reporting to the COUNTY, and maintain daily vanpool operations and customer service. The office shall maintain office hours Monday-Friday 8:00am – 5:00pm or as otherwise agreed to by the COUNTY in writing. CONTRACTOR will provide emergency contact phone numbers for after-hours emergencies. In addition, CONTRACTOR will provide adequate storage accommodations for vans waiting to be placed in service.
7. CONTRACTOR will provide on-site office staff with the appropriate education and experience to administer the COUNTY Vanpool Program. Subcontractors – All subcontractors hired by CONTRACTOR will be subject to the same federal, state, and local requirements as described in this AGREEMENT. CONTRACTOR will not knowingly do business with any party that is currently debarred, suspended, or otherwise excluded from receiving federal grant funds. Any proposed subcontractor will certify its eligibility to receive federal funds prior to entering into a subcontract with CONTRACTOR, and when requested by the State, to finish a copy of the certification.

B) PROGRAM MARKETING AND RIDE-MATCHING SERVICES

1. CONTRACTOR will be responsible for marketing of the Vanpool Program and be responsible for actively promoting the Vanpool Program to commuters, employers and other organizations within the El Paso COUNTY service area. CONTRACTOR will provide quarterly reports to COUNTY regarding the program marketing and ride-matching services as further described in this section.
2. CONTRACTOR will attend or host 12 promotional events in the El Paso COUNTY service area every year of the program for marketing of the Vanpool Program. At these events, CONTRACTOR will make presentations, hand out brochures, and other marketing activities.

3. CONTRACTOR will contact 20 new and existing companies/businesses in the El Paso COUNTY service area in person to develop or expand the Vanpool Program every year of the program regarding the benefits.
4. CONTRACTOR will be required to provide custom marketing to employers and the public using mapping technology for the purpose of assisting CONTRACTOR in vanpool formation efforts.

CONTRACTOR will maintain a database of employers and interested commuters. This database will support CONTRACTOR'S employer outreach efforts and contain employers located within the COUNTY service area. The employer database shall include information about employers who have received information/calls from CONTRACTOR regarding the COUNTY Vanpool Program's products and services and/or are interested in receiving calls regarding the Vanpool Program.

5. CONTRACTOR will actively provide services and incentives as follows to encourage employers to offer alternative transportation benefits and services at their worksites:
 - a. Marketing and outreach will be accomplished through the use of the vanpool website as reasonably determined by the Parties. The website will remain available for the term of the contract, including extensions for the general public to receive information concerning the operation of the program, the ability to register for the Vanpool Program, the Emergency Ride Home Benefit Program and to receive information for existing vanpools.
 - b. Promotional efforts are to include working through distributing promotional materials and establishing personal contact with employers and other community groups.
 - c. CONTRACTOR is also expected to develop and offer program participation incentives, to attract both drivers and passengers
 - d. The COUNTY will pre-approve in writing all marketing materials.
6. CONTRACTOR will participate in government and community transportation related efforts, assist government agencies in an advisory capacity, and may serve on task forces .
7. CONTRACTOR will furnish a telephone line to provide information and assistance regarding the vanpool vehicles.
8. CONTRACTOR will furnish and install appropriate identifying decals, with prior approval from the COUNTY, on all vans provided.

C) MONTHLY REPORTING REQUIREMENTS

1. CONTRACTOR will provide Monthly Progress Reports in the form provided in Attachment C and other information as otherwise provided herein.
2. CONTRACTOR will provide monthly progress reports to the COUNTY to include documentation of monthly emission reductions as required by Federal Highway Administration (FHWA).
3. CONTRACTOR will submit to the COUNTY monthly invoices based on the approved COUNTY standard, to include a transmittal letter from CONTRACTOR to COUNTY certifying that the “information provided is true and accurate and eligible for reimbursement”; date of services provided; invoice number; and date of invoice. The invoices shall comply with the Office of Management and Budget (OMB) 2 Code Federal Regulations (CFR) Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award” and specify that all reimbursed costs are allowable, reasonable, and allocable to the project.
4. CONTRACTOR’S indirect rate for the Vanpool Program is zero percent (0%). CONTRACTOR’S indirect rate includes the following items: office support personnel, office lease, equipment and office supplies, utilities and a management fee per federal and state financial management requirements. The indirect rate will be included in the monthly invoice.
5. CONTRACTOR will submit National Transit Data (NTD) for the El Paso COUNTY Vanpool Program to the Federal Transit Administration (FTA).
6. CONTRACTOR will provide a copy of FTA National Transit Data (NTD) for every month of the program.
7. CONTRACTOR will provide data required for Texas Department of Transportation (TxDOT) PTN-128 Report on a monthly basis.
8. CONTRACTOR will provide the following monthly reports that document changes to vanpools and undertake the following related processes to ensure updated and accurate information:
 - a. Route Report – the Route Report will include, for each vanpool and for the reporting month, the following information; CONTRACTOR must update this report every month by establishing a process/mechanism for each driver coordinator to update the CONTRACTOR with any changes:

- i. Vanpool number
 - ii. Vehicle type
 - iii. Vehicle capacity
 - iv. Operating days
 - v. Number of operating days in the reporting month
 - vi. Daily commute miles (based on a GIS analysis)
 - vii. Monthly commute miles (number of operating days X daily commute miles)
 - viii. Monthly allowable miles (monthly commute miles plus 200 non-commute miles)
 - ix. Origin address
 - x. Address of each stop
 - xi. Destination address
- b. Allowable vs. Actual Miles Report – This monthly report will compare monthly allowable miles for the reporting month (see 8.a.vii above) with the actual miles as reported by drivers. The report shall highlight violations where actual miles exceeds allowable miles and document associated actions taken by CONTRACTOR.
- i. Contractor will make reasonable efforts to ensure that driver records are complete, accurate and timely, to include: All changes to a vanpool and their effective date, must be communicated to the CONTRACTOR prior to the change date.
 - ii. Non-commute miles, including personal use of the vehicle, shall not exceed 200 miles in any given month
 - iii. If total actual miles exceed total allowable miles for three consecutive months or three non-consecutive times in a rolling 12-month period, the vanpool coordinator's agreement may be suspended or terminated.

Contractor will make a reasonable effort to provide accurate data to the County in order to respond to any audit.

- c. Passenger Miles Accuracy Report – The number of daily passenger miles for each passenger as reported by the driver/coordinator should be in synch with the addresses of each stop on the Route Report. This report shall identify instances where driver reported passenger miles are inconsistent with the stops as identified by the driver and documented in the Route Report. The report will also document associated actions taken by the Contractor.
- d. Contractor will make reasonable efforts to work with drivers/coordinators and answer questions related to NTD reporting.

9. CONTRACTOR will also make reasonable efforts to ensure that:

- a. Drivers will submit a manual report to CONTRACTOR staff reporting instances of non-commute miles separately and for the date they occur, differentiating them from commute miles. A manual report will be provided to each coordinator for their tracking purposes. CONTRACTOR will work with NTD to attempt to add this feature to the online tracking portal.
- b. CONTRACTOR's MIS will check to see that non-commute mileage for each vanpool does not exceed 200 miles for a given month and will identify any overage. Contractor to refer to preventative maintenance records to verify mileage.
- c. CONTRACTOR's MIS will also check to see that the difference in starting and ending odometer reading is consistent with the total of actual commute miles and actual non-commute miles for the month and will report any differences. Contractor to refer to preventative maintenance records to verify mileage.
- d. Monthly commute miles (consistent with the Route Miles Report) can be entered into CONTRACTOR's MIS so that the MIS can automatically compare actual commute miles as entered by the driver coordinator with the commute miles from the Route Report, to identify differences. Contractor will refer to preventative maintenance records to verify mileage.

10. CONTRACTOR will provide documentation of the guaranteed rides home provided every month of the program.

11. CONTRACTOR will provide copies of promotional information used for marketing for every month of the program.

12. CONTRACTOR will provide documentation of promotional events attended for dissemination of information regarding the Vanpool Program every month of the program.
13. CONTRACTOR will provide documentation of the companies/businesses contacted regarding the benefits of the Vanpool Program every month of the program.
14. CONTRACTOR will share information with El Paso COUNTY concerning vanpools that are added, switched, or terminated within 30 days.
15. Federal Transit Administration National Transit Database Reporting –
CONTRACTOR will be responsible for collecting financial and operating information by a uniform system of accounts and records, and shall be responsible for providing timely and complete reports or information to the COUNTY.
CONTRACTOR will be responsible for providing all required data to the County to report to the National Transit Database (NTD) of the Federal Transit Administration (FTA). CONTRACTOR will gather such information continually during the terms of this Agreement and submit the same required NTD data submitted to the FTA to the COUNTY on a monthly basis. Contractor will make reasonable efforts to work with COUNTY in response to any audit related to NTD reporting. .
16. At the request of the COUNTY, CONTRACTOR will provide any information as requested by the State.

D) VEHICLES

1. CONTRACTOR will supply the vehicles used in the Vanpool Program with no capital outlay from the COUNTY.
2. CONTRACTOR will provide vehicle licensing, vehicle registration and a vehicle maintenance program.
3. The fleet will consist of passenger vans (mini and maxi) configured to seat from 7 to 15 passengers, as required by the demand of the vanpool groups. Once a group is formed, CONTRACTOR will deliver the vehicle(s) not later than forty-five (45) days after the effective date of a fully executed driver agreement.
4. Following identification of a prospective vanpool, the vanpool driver (and passengers) will select a van based on model availability, ridership, and price. In the event that the vanpool group requires a van accessible to individuals with a disability, CONTRACTOR will supply that van within 45 days.

5. CONTRACTOR will assume full risk as renter (or lessor, if applicable) for any deficiency between vehicle selling prices and residual values as well as full responsibility for vehicles at the termination of any rental agreements or amortization schedules. Neither the COUNTY, nor any other agencies shall be required to become obligated in any vehicles rental agreements.
6. CONTRACTOR will render such other reasonable assistance as may be required for the functioning of the vanpool.

E) VEHICLE TECHNICAL SPECIFICATIONS

1. ENTERPRISE will arrange for preventative maintenance and inspections of vanpool vehicles. According to Original Equipment Manufacturer (“OEM”) standards, each van will be eligible for a regular, routine service and safety inspection including lubrication, and oil and filter change. During this service visit, a comprehensive safety inspection will be performed and include monitoring all major and mechanical systems including wear/air pressure of tires, brakes, belts, hoses, water pump, fluids, suspension, wheel bearings and exhaust.
- 2.
3. The vans supplied by CONTRACTOR must conform to all applicable FMVSS, Environmental Protection Agency (EPA), and to all other industry standards in effect at the time of delivery. .

F) MODIFIED VEHICLES

Any Original Equipment Manufacturer (OEM) vehicle, which is subsequently modified, converted, altered, or completed by anyone (subsequently referred to as a Qualified Vehicle Modifier or QVM), with respect to the vehicle seating configuration, in any manner, will affix a Modifier/Converter or Final Stage Manufacturers label to the “B” pillar as outlined in the standards. Any future vehicle deliveries will be subject to applicable FMVSS standards as they may apply at the time of vehicles manufacture.

1. The QVM will provide:
 - a. (1) documented verification that the modifier/converter of the QVM vehicle has been approved for such work by the OEM and (1A) documentation demonstrating the Modifier/Converter of Final Stage Manufacturer has performed prior conversions in conformance with ISO 9001 and QS 9000 requirements and will perform requested conversions in this bid under the same guidelines and requirements, or documentation that the Modifier/Converter of Final Stage Manufacturer has demonstrated the engineering, production and quality processes equivalent to those standards mentioned in (1) and (1A), and will perform the requested conversions to

make the vehicles in compliance with the requirements in the RFP under those same guidelines and requirements.

- b. Companies will be requested to submit an “in vehicles pull test” certification to show conformance of current vehicle chassis to FMVSS 207, 208 and 210 for seats and hardware. In addition, companies will be required to show certification of “in vehicles pull” testing to FMVSS 225, child restraint and certification conformance to FMVSS 105, 201 and 209. All material utilized will require certification to show conformance to FMVSS 302 for flammability of materials. If any additional equipment is added, certification will be required showing the OEM certification has not been altered or effected.

G) EQUIPMENT FOR THE PHYSICALLY CHALLENGED

As needed, CONTRACTOR will provide lift-equipped vehicles for commuter vanpool service, meeting American with Disabilities Act specifications. Enterprise will comply with all such reasonable requests within thirty (30) calendar days from the time the request is made. These vehicles shall have a minimum of seven (7) passenger capacity (including driver). The number of vehicles will be specified as needed by the participants, and any modifications to the vehicles shall be adequate and appropriate, and conform to federal regulations and specifications, in order to accommodate the wheelchair inside the vans. The vehicles shall adhere to all code specifications and comply with all federal regulations where appropriate.

H) FLEET MAINTENANCE & ADMINISTRATION

CONTRACTOR will provide both preventative maintenance and vehicle repair for all vehicles throughout the duration of the contract, as described below:

1. PREVENATIVE MAINTENANCE

CONTRACTOR will be responsible for developing a preventative maintenance schedule for all vehicles. This preventative maintenance schedule shall at a minimum thoroughly outline maintenance responsibilities based on the manufacturer’s preventative maintenance program. Unscheduled maintenance shall be coordinated by the vanpool coordinator with CONTRACTOR, as needed.

2. Vehicle Repair and Repair Procedures

CONTRACTOR will be responsible for developing and implementing vehicle repair procedures, including a list of all service establishments where repair work and preventative maintenance will be done. CONTRACTOR will assure that all vehicle repairs are accomplished in a timely manner. A back-up van will be made available

to the vanpool group whenever the regularly assigned van is out of service due to scheduled or unscheduled maintenance or repair.

3. LICENSING & TITLE

All vanpool vehicles which are to be placed in service shall be inspected, licensed and registered in accordance with applicable State of Texas and local laws. This shall be the responsibility of the CONTRACTOR.

I) ACCIDENT AND SUBROGATION MANAGEMENT SERVICES

CONTRACTOR accident and subrogation management services will be as described under the title in Attachment B – CONTRACTOR’S RFP Response, unless otherwise agreed to in writing by the COUNTY.

J) FLEET RECORDKEEPING

CONTRACTOR will maintain appropriate accounting and auditing records and controls. Financial records related solely to the program shall be made available to the COUNTY for audit inspections upon reasonable notice by the COUNTY, not more than twice per year, or in the event of a State or Federal audit. Records will be kept for the term of the AGREEMENT and for at least 3 years subsequent to the contract period, unless required to be kept longer for the purposes of pending claims or as otherwise required by law.

K) DRIVER SELECTION & SAFETY

CONTRACTOR will submit their requirements for vanpool participant drivers, selection of drivers, driver safety and related policies and procedures for the Vanpool Program and CONTRACTOR will ensure the following responsibilities are included in its vanpool policies and procedures. In addition, if the GRANT requires additional provisions, upon notice to CONTRACTOR, they will be included as well.

1. Contractor will take reasonable steps to ensure vanpool drivers comply with the following: The vanpool driver will participate in the Vanpool Program and will use the van to pick up, transport and deliver other vanpool participants to and from their residences (or other agreed upon locations), and their places of employment (or other agreed upon locations).
2. Vanpool drivers are not allowed to use vans as a source of additional income, such as: jitneys, taxicabs, commercial carriers, etc. Any violation in this area may result in a suspension of the driver’s benefits and/or suspension of the Vanpool Program.
3. The vanpool driver will, when requested, be available to participate in basic driver training/safety awareness orientation, and will cooperate with respect to obtaining the motor vehicles record of driver.

4. The vanpool driver shall not consent to the use of the vanpool vehicle by anyone other than an authorized driver.
5. The vanpool driver will return the vehicles in the same condition and with all the equipment and documents, as when delivered, except for ordinary wear and tear and damage which is subject of pending collision or comprehensive insurance claim.
6. The vanpool driver is responsible for the scheduling and ensuring the van's availability for maintenance service when needed and will maintain a clean vehicle – exterior and interior.
7. The vanpool driver will operate the vehicle in accordance with all applicable laws, ordinances, rules and regulations.
8. The vanpool driver shall in case of accidents or other loss or damage to or involving the vehicle, immediately report to CONTRACTOR any accident involving bodily injury or loss.
9. The vanpool driver shall complete and file a written accident report; and cooperate fully with CONTRACTOR in all accident investigations and/or settlements.
10. The vanpool driver will forward payments to CONTRACTOR in the amount due for the monthly fee as may be determined by CONTRACTOR, excess mileage charges, late fees, or returned check charges.
11. CONTRACTOR will credit the vanpool driver on a prorated basis, based upon a 30-day month, for the period of time that the vehicles is inoperable due to accident damage or mechanical failure, until such time as a back-up vehicle is made available by CONTRACTOR.
12. CONTRACTOR will be responsible for the cost of arranging to have the vehicle towed to the nearest authorized service facility when the vehicle is inoperable.
13. CONTRACTOR will, in each agreement with a vanpool driver or coordinator, contractually provide a waiver of responsibility for damage to a vanpool vehicle subject to compliance with the applicable terms of such agreements.
CONTRACTOR will, at its expense, for each vanpool driver or vanpool coordinator, obtain third party bodily injury and property damage liability insurance coverage of \$1,000,000 combined single limit per occurrence and Uninsured/Underinsure Motorist Coverage in the amount of \$100,000 combined single limit per occurrence. CONTRACTOR will maintain said insurance coverage for each vanpool during the term of this AGREEMENT.

14. A vanpool driver will be required to provide 30-days written notice to CONTRACTOR of their intent to terminate.

ARTICLE IV COMPENSATION

The COUNTY makes no guarantee as to the number of vanpools, number of participants or subsidies that will result from this AGREEMENT.

- A) CONTRACTOR indirect rate for the Vanpool Program is zero percent (0%).
- B) CONTRACTOR is responsible for all billing, invoicing, and collections, including assuming any associated risk related to uncollectable accounts. A responsible party is defined as a person, entity, employer, or organization that enters into an agreement with CONTRACTOR to take responsibility for the vehicles in the Vanpool Program, and does not include the COUNTY.
- C) CONTRACTOR will not bill the COUNTY for any costs outside those eligible for and funded by the GRANT or as otherwise agreed upon by the parties in writing. Billable costs are limited to previously approved marketing expenses and any vanpool subsidies that continue as stated below.
- D) Subsidy rate is set at a flat rate of \$500 and will be paid monthly for each vanpool prior to the vanpools operating for three years.

Any subsidies authorized by the CONTRACTOR are dependent on adequate federal Congestion Mitigation and Air Quality Improvement (CMAQ) Program or other state or federal funds being available. COUNTY shall notify CONTRACTOR in writing within seven (7) calendar days in the event COUNTY determines there to be a possibility to any subsidy hereunder to be unpaid. Payment by COUNTY to CONTRACTOR for the above subsidy, as well as any approved market expenses or other agree-upon costs shall be made within thirty (30) days of delivery by CONTRACTOR of an invoice for such amounts to be paid by COUNTY.

- E) Except as specifically described in this Agreement, all costs related to the completion of the services requested herein will be borne by CONTRACTOR and not passed on to the COUNTY or otherwise paid by the COUNTY, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

ARTICLE V

TERM & TERMINATION

A) EFFECTIVE DATE; TERM

The Effective Date of this AGREEMENT is January 1, 2021, regardless of the date of execution. The term of this AGREEMENT shall be for a period of three (3) years from the Effective Date, unless earlier terminated as provided below. The COUNTY has the option to extend the contract period for two additional one-year terms, at the COUNTY'S discretion. Any extensions of the contract period will be in writing and signed by both parties.

B) TERMINATION

This AGREEMENT may be terminated as provided herein.

1. Termination for Loss of Funding

If the COUNTY does not receive federal or state funding for the Vanpool Program, the COUNTY will provide notice within fourteen (14) calendar days of the same and the AGREEMENT may be terminated at the option of either party with no liability to either party except for those amounts due and payable prior to the notification by the COUNTY.

2. Termination for Convenience

It is mutually understood and agreed by CONTRACTOR and COUNTY that the either Party may terminate this Agreement, in whole or in part for convenience , upon ninety (90) calendar day's written notice. Nothing contained herein, or elsewhere in this AGREEMENT shall require the COUNTY to pay for any services that are not in compliance with the terms of this AGREEMENT.

3. Termination by Either Party

It is further understood and agreed by CONTRACTOR and COUNTY that either party may terminate this AGREEMENT in whole or in part for failure of one party to substantially fulfill its contractual obligations, pursuant to this AGREEMENT, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of thirty (30) calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, either Party retains the right to immediately terminate this AGREEMENT for default if the other Party violates any local, state, or federal laws, rules or regulations that relate to the performance of this AGREEMENT.

ARTICLE VI INSURANCE & INDEMNIFICATION

A) INSURANCE

CONTRACTOR shall not commence work under this AGREEMENT until CONTRACTOR has obtained the required insurance and such insurance, to cover CONTRACTOR in the event of a loss, has been approved by the COUNTY. CONTRACTOR shall maintain the required insurance throughout the term of this AGREEMENT. Failure to maintain said insurance shall be considered a material breach of this AGREEMENT.

GENERAL LIABILITY

\$1,000,000 – Each Occurrence
\$1,000,000 – General Aggregate
\$1,000,000 – Personal & Advertising Injury
\$1,000,000 – Products/Completed Operations – Aggregate
\$5,000 – Premises Medical Expense
\$500,000 – Fire Legal Damage Liability

COUNTY named as “Additional Insured” for liabilities arising directly out of CONTRACTOR’s performance under this Agreement.

Waiver of Subrogation

AUTOMOBILE:

\$1,000,000 – Each Occurrence

COUNTY named as “Additional Insured” for liabilities arising directly out of CONTRACTOR’s performance under this Agreement.

Waiver of Subrogation

CONTRACTOR shall be permitted to self-insure for automobile liability for liabilities of CONTRACTOR. Coverage for vanpool drivers shall be set forth in Article III hereinabove.

WORKERS COMPENSATION for CONTRACTOR’S employees:

\$1,000,000 – Employers Liability – Each Accident
\$1,000,000 – Employers Liability – Each Employee
\$1,000,000 – Employers Liability – Disease – Policy Limit

Statutory Limits

Waiver of Subrogation

CERTIFICATE OF LIABILITY INSURANCE

In the Certificate of Liability, the remarks section should include job description or project name and/or number.

B) INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the County and its affiliates, officers, directors, employees, agents, successors and permitted assigns (each, an “Indemnitee”) from and against any and all losses, damages, liabilities, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees (each a “Loss”), incurred by the County in connection with any claim, action, cause of action, demand, lawsuit, arbitration, proceeding or litigation, of any nature (each an “Action”) by a third party solely to the extent such loss arises from the Contractor’s negligence or more culpable act or omission.

To the extent permitted by law, COUNTY shall indemnify, defend and hold harmless the Contractor and its affiliates, officers, directors, employees, agents, successors and permitted assigns from and against any and all losses, damages, liabilities, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees (each a “Loss”), incurred by the Contractor in connection with any claim, action, cause of action, demand, lawsuit, arbitration, proceeding or litigation, of any nature (each an “Action”) by a third party solely to the extent such Loss arises from the County’s negligence or more culpable act or omission...

To the extent allowed by state law, the COUNTY will be responsible for its own actions.

ARTICLE VII COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS

Each Party agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, COUNTY and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the COUNTY or CONTRACTOR with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, CONTRACTOR agrees that to the extent required by any agreement between the COUNTY and any Federal agency, and if applicable, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over the Vanpool Program, including but not limited to:

1. The State of Texas, acting through the Texas Department of Transportation (TxDOT), through a Grant or Funding Agreement with the COUNTY.
2. The Federal Transit Administration (FTA) through a Grant Agreement or Funding Agreement with the COUNTY, or supported by FTA through a Loan, Loan Guarantee, or Lone of Credit with the COUNTY.
3. Copies of grant assurances will be made available to CONTRACTOR. However, provided copies shall in no way be a limitation on CONTRACTOR'S obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

COUNTY will notify CONTRACTOR of the source of funding for this Agreement at the time of execution. If COUNTY later alters the funding source at any time during the term of the Agreement, COUNTY will notify CONTRACTOR with a minimum of ninety (90) days prior notice and discuss with CONTRACTOR. If CONTRACTOR asserts that it will be able to comply with requirements, the parties will negotiate in good faith bilateral written changes in the terms and conditions of this Agreement necessary to comply with any additional requirements of the specific funding source. CONTRACTOR shall be entitled to an equitable adjustment in the price, the time of performance or schedule, and other terms of this Agreement due to a change in funding source during the performance of the Agreement.

The CONTRACTOR, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the COUNTY deems appropriate. The above language must also be included in any subcontract the CONTRACTOR enters into relating to this AGREEMENT.

ARTICLE VIII GENERAL PROVISIONS

A) AUDITING RECORDS FOR THE SPECIFIC PROJECT

CONTRACTOR'S records subject to audit shall include but not be limited to records which, in the COUNTY'S reasonable discretion, have a bearing on matters of interest to the COUNTY in connection with CONTRACTOR'S work under this AGREEMENT for the COUNTY and shall be open to inspection and subject to audit and/or reproduction by COUNTY'S agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of CONTRACTOR'S compliance with contract requirements and in accordance with applicable privacy laws and Contractor's Privacy Policy.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where CONTRACTOR'S records have been generated from computerized data, CONTRACTOR agrees to provide COUNTY'S representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The COUNTY or its designee shall be entitled, at its expense, to audit CONTRACTOR'S records related to this Project, and shall be allowed to interview any of CONTRACTOR'S employees, pursuant to the provisions of this section throughout the term of this contract and for a period of three (3) years after final payment or longer if required by law. For the purposes of record retention, each contract renewal period will be considered a new contract term. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

Upon reasonable notice, the state may conduct an audit or investigation of CONTRACTOR, and CONTRACTOR will provide the state auditor with access to any reasonable information the state auditor considers relevant to the investigation or audit, in accordance with applicable privacy laws and Contractor's Privacy Policy.

B) SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the COUNTY and the CONTRACTOR, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other which shall not be unreasonably withheld, conditioned or delayed.

C) VENUE

For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and COUNTY of El Paso, the State of Texas, and

shall be governed by the laws of the State of Texas. Venue shall be in the COUNTY of El Paso, Texas.

D) GOVERNING LAW

Each Party shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

E) CAPTIONS

The captions of this Agreement are for information purposes only and shall in no way affect the substantive terms or conditions of this Agreement.

F) SEVERABILITY

Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

G) NOTICES

Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt to the following addresses:

To the COUNTY: El Paso County
Attn: El Paso County Judge
500 E. San Antonio, Room 301
El Paso, Texas 79901

With a Copy to: El Paso County Planning & Development
Attn: Transportation Division
800 E. Overland Ave., Room 200
El Paso, Texas 79901

To CONTRACTOR: EAN Holdings, LLC.
4601 Columbine Ave NE
Albuquerque, New Mexico 87113

With a Copy to: Office of General Counsel
Attn: General Counsel
600 Corporate Park Drive
St. Louis, Missouri 63015

Changes may be made to the names and addresses noted herein through timely written notice to the other party.

H) ENTIRE AGREEMENT

This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives the day and year first above written.

EL PASO COUNTY, TEXAS

By: _____
RICARDO A. SAMANIEGO
County Judge

Date: _____, 20____

EAN HOLDINGS, LLC

By: _____
JOHN PERITORE
Group Vice President/General Manager

Date: _____, 20____