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GOD BLESS AMERICA

OF COUNSEL

THOMAS W. POLASKI
GERALD A. DIENST

September 5, 2006

The Honorable Arnold Goldman
Judge of Compensation
954 Route 166
Toms River, New Jersey 08753

RE: **Charlotte Johnson-Mincey vs. State of New Jersey**
Claim Petition No. 2003-9077

Dear Judge Goldman:

Please accept this letter brief as part of Petitioner's contention that Petitioner's accident on May 15, 2001 is covered by the Workers' Compensation Act and she should be awarded benefits.

FACTUAL BACKGROUND

Petitioner Charlotte Johnson-Mincey was employed as a clerk for the State of New Jersey in the Department of Treasury. On May 15, 2001, she was injured in a motor vehicle accident on her way to work. The vehicle in which Petitioner was riding was owned by Van Pool of New Jersey Inc. (**hereinafter Van Pool**). Van Pool is a ridesharing company which provides employees with a van for the employees to pick each other up and share a ride to work. The employees split the cost for the commute.

There was a contract executed between the State of New Jersey, through New Jersey Transit Corporation and Van Pool (Pa1) dated January 1, 1998. To promote the rideshare arrangement to as many state employees as possible, Van Pool was advertised

200 Main St., Toms River, NJ 08753

Reply to Red Bank Office

on the State of New Jersey's website through New Jersey Transit for State employees. Petitioner learned of the ridesharing services through the State website and signed on to Van Pool's Services. While riding to work under this arrangement, Petitioner was injured in a motor vehicle accident. Clearly, Petitioner's accident falls within the statutory requirements that workers' compensation benefits must be provided to the Petitioner by the State of New Jersey.

LEGAL ARGUMENT

POINT I

THE TRAVELING ARRANGEMENT BETWEEN THE STATE AND VAN POOL OF NEW JERSEY, INC. IS COVERED BY THE RIDE SHARE STATUE.

N.J.S.A. 34:15-36 states as follows:

Employment shall also be deemed to commence when an employee is traveling in a ridesharing arrangement between his or her place of residence or terminal near such place and his or her place of employment, if one of the following conditions is satisfied: The vehicle used in the ridesharing arrangement is owned, leased or contracted for by the employer, or the employee is required by the employer to travel in a ridesharing arrangement as a condition of employment.

There is no doubt that Ms. Johnson-Mincey was in a ridesharing arrangement. This is clear from literature provided by Van Pool. At the request of the State of New Jersey the van was provided by Van Pool to be operated by the State employees to assist in transporting the employees to and from their employment at the State offices. (Pa2) A review of the contract (P 1) shows the vehicle used in the ridesharing arrangement was contracted for by Petitioner's employer, the State of New Jersey. The State of New Jersey, through New Jersey Transit, entered into a contract with Van Pool to provide a

ridesharing service, and as such, the plain meaning of the statute requires that Petitioner's accident be deemed compensable.

It makes no difference that technically the State of New Jersey entered into the contract through New Jersey Transit rather than the State of New Jersey Department of Treasury. For purposes of Workers' Compensation, the State of New Jersey is responsible to provide workers' compensation benefits to an injured employee for both New Jersey Transit and The Department of the Treasury. Therefore, both entities are co-employees for workers compensation purposes. (See **Maggio v. Migliaccio**, 266 N.J. Super. 111 (App. Div. 1993))

It is further obvious that the State's entry into the written contract with Van Pool comports with the intent of the statute as outcome with the legislative history of Assembly Bill No. 3152 which reads as follows:

The purpose of this Bill is to encourage the formation of ridesharing arrangements, particularly for commuting to and from work, as an energy efficient alternative to individuals traveling alone by private automobile. One of the most efficient ways to organize ridership programs is through employer sponsorship and promotion. However, employers' uncertainties about their legal liabilities have hampered their promotion and sponsorship of ridesharing programs. The legislation makes clear that worker compensation laws do not apply, and the employer is not liable for injuries sustained by individuals participating in a ridesharing arrangement sponsored or organized by the employer unless the employer owns, leases, or contracts for the vehicle used in the arrangement or requires participation in a ridesharing arrangement as a condition of employment.

The language in the contract between the State of New Jersey through New Jersey Transit and Van Pool is almost a carbon copy of this language and it is also very clear from the language that the State of New Jersey sponsored and encouraged the ridesharing arrangement for its employees.

Public policy requires the Courts to construe and apply Workman's Compensation Act liberally in order to bring as many cases as possible within its coverage. **Grant vs. Blozer Coordinating Counsel of Youth Development**, 111 N.J.Super 125 (County CO. 1970) modified on other grounds 116 N.J.Super 460. The general policy underlying the Workers' Compensation Act favors coverage. (See **Brower vs. ICT Group** 164 N.J. 367, 373 (2000)). In support of these contentions, I am attaching the unreported case of **Luis Rivera vs. Dubell Lumber Company**, decided December 31, 2003, a copy of which I am providing to my adversary with this letter brief.

In addition, the word "contract" in the American Heritage Dictionary defines the word as an agreement between two or more parties. This was an agreement between the State of New Jersey and Van Pool to provide these services to State employees.

It is for the above-mentioned reasons, it is respectfully submitted that this matter must be deemed compensable.

POINT II

**PETITIONER IS ALSO ENTITLED TO WORKERS'
COMPENSATION BENEFITS BY VIRTUE OF AN
ADDITIONAL SECTION OF N.J.S.A. 34:15-36.**

Petitioner is also covered by Workers' Compensation, an additional section of N.J.S.A. 34:15-36 which states:

Employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment...but the employment...of any employee who utilized an employer authorized vehicle shall commence and terminate with the time spent traveling to and from a job site.

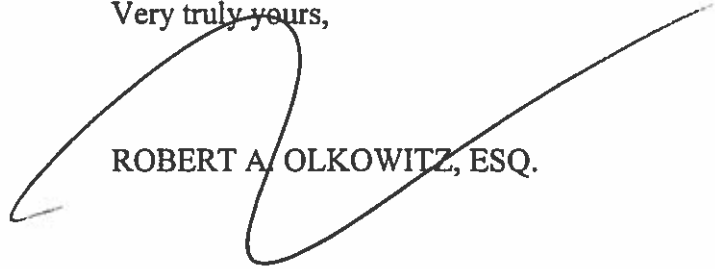
In that the State of New Jersey authorized the ridesharing arrangement, the vehicle provided by Van Pool is an authorized vehicle. By the clear language of the statute, the accident must be held compensable. Keeping in mind there exists a public policy consideration to cover ride sharers and to include as any accidents as possible under Workers' Compensation provisions (supra.) Petitioner was in fact riding in an employer authorized vehicle at the time of the accident which brings her injuries under the workers compensation umbrella.

Conclusion

For the above stated reasons, it is respectfully submitted that the Court must find the employee was in the course of her employment when the accident occurred.

If you have any further questions, please contact me.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'ROBERT A. OLKOWITZ', is written over the typed name.

ROBERT A. OLKOWITZ, ESQ.

RAO/dms
cc: Jane Slowinski, D.A.G.
Charlotte Johnson-Mincey

VANPOOL SPONSORSHIP CONTRACT

BETWEEN

THE NEW JERSEY TRANSIT CORPORATION

AND

VANPOOL OF NEW JERSEY, INC.

98CX060A

This Contract is made as of January 1, 1998 between the New Jersey Transit Corporation (hereinafter "NJ TRANSIT") and Vanpool of New Jersey, Inc., having its principal place of business at 2700 Brunswick Pike, Lawrenceville, New Jersey (hereinafter "Provider").

WITNESSETH:

WHEREAS, the use of vanpools as a commute option helps to reduce vehicular congestion and air pollution in the state, and allows NJ TRANSIT to reach a market and offer a travel alternative in areas where traditional public transit has not been available or has not proven feasible to operate; and

WHEREAS, there currently exists in the state, private companies which provide, operate and administer vanpools services for commuters; and

WHEREAS, partial sponsorship of vanpooling by NJ TRANSIT would lower a commuter's cost of participation in vanpooling and thereby increase its attractiveness as a commute option;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto covenant and agree with each other as follows:

1. INTENT & PURPOSE:

This Contract between NJ TRANSIT and the Provider is for the non-exclusive provision by the Provider of vanpool services under the partial sponsorship of NJ TRANSIT. The purpose of NJ TRANSIT's Vanpool Sponsorship Program (hereinafter "Program") is to provide a financial incentive to commuters to select vanpooling as their means of traveling to and from the work site.

2. DEFINITIONS:

- a. "Vanpool" shall mean a voluntary commuter ridesharing arrangement, providing transportation to a group of individuals traveling directly between their homes and

their regular places of work within the same geographical area, in a van with a seating capacity greater than seven persons, including the driver, or as subsequently may be defined by the Federal Transit Administration for National Transit Database purposes.

- b. "NJ TRANSIT" shall include NJ TRANSIT and its subsidiaries, and their respective Boards of Directors, officers, agents and employees.
- c. "Sponsorship" shall mean a financial contribution by NJ TRANSIT to reduce the cost of vanpooling for NJ TRANSIT-approved participating vanpool groups.

3. **SERVICES TO BE PROVIDED:**

The Provider, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, agrees to do and perform all work and labor required to furnish and deliver vanpool services in conformity with the Scope of Services included herein as Attachment A.

4. **PAYMENT:**

Subject to the availability of funds, NJ TRANSIT agrees to pay the Provider within thirty (30) days of receipt of proper invoices for the vanpool services provided hereunder. Payment shall initially be at the rate of \$150 per month for each approved participating vanpool group. Participating vanpool groups are eligible for an additional \$150.00 per month, if approved by NJ TRANSIT as using a High Vehicle Occupancy (HOV) Lane. The entire payment must be passed along in full to the participating vanpool group. Such amount may be reset from time to time by NJ TRANSIT at its sole discretion upon 45 days written notice to the Provider. The Provider shall submit a single monthly invoice, which lists the full amount of payment, the NJ TRANSIT sponsorship and the resulting reduced net amount due from the vanpool group, for each vanpool group approved for participation by NJ TRANSIT.

5. **TERM OF AGREEMENT:**

This Contract shall take effect on the date of execution by NJ TRANSIT and continue in full force and effect through December 31, 1999; provided, however, this Contract shall continue upon the same terms and conditions, for further terms of one year unless or until terminated as provided herein.

6. **CHARGES, FEES, AND EXPENSES:**

The Provider shall be responsible for the payments for any and all expenses, taxes, charges, assessments, license fees, inspection fees, or other costs, including but not limited to gross receipts taxes, highway use taxes or vehicle excise taxes, imposed upon the equipment or the operation thereof, whether such taxes, charges, fees, or other costs are levied against the operator or the owner. The Provider agrees that during the term of the Contract it will duly and timely pay all charges due to the State of New Jersey, and its agencies.

7. INDEMNIFICATION:

The Provider shall defend, indemnify, protect, and save harmless the State of New Jersey, NJ TRANSIT and its subsidiaries, and their respective Boards of Directors, officers, agents and employees from any and all claims of injury to or death of persons or damage to property or violation of any law caused by or claimed to be caused by, or arising from, or claimed to arise from the possession, maintenance or operation of the equipment or the performance of services provided under this Contract, regardless of fault or negligence, including but not limited to, costs of investigation, court costs, counsel fees, settlements, judgments, or otherwise. In the event of any claim, demand, or suit against or joining any of the Indemnities listed above, the Provider shall assume and take over the investigation and defense thereof at its own cost and expense as set forth above.

This indemnification does not apply to workers compensation claims filed against NJ TRANSIT by employees of NJ TRANSIT.

8. INSURANCE, SETTLEMENT AND RISK OF LOSS.

The Provider shall maintain the following minimum levels of insurance:

Comprehensive General Liability	\$1,000,000 per occurrence for bodily injury and property damage.
Comprehensive Automobile Liability	\$1,000,000 per accident/occurrence for bodily injury and property damage.
Workers Compensation	As required by law.

With respect to said liability insurance, NJ TRANSIT shall be named as an additional insured at no additional cost to NJ TRANSIT. Prior to the execution of this Contract and throughout the term of this Contract, the Provider shall furnish NJ TRANSIT with written evidence from its insurer of the insurance coverage described within this Section. No cancellation or material change in any of the insurance required under the terms of this Contract shall be effective except upon thirty (30) days advance written notice to NJ TRANSIT from the insurer. The Provider shall not take any action to cancel or materially change any of the insurance required under this Contract without NJ TRANSIT's prior written approval of such cancellation or change.

The foregoing insurance coverage is not intended to nor does it limit the liability of the Provider to hold the State and NJ TRANSIT harmless.

Each insurance company issuing a policy referred to in this Section shall be licensed to transact such business in the State of New Jersey.

9. Assignment

This Contract shall not be assigned by the Provider without the prior written consent of NJ TRANSIT, which consent may not be unreasonably withheld.

10. Subcontracting

The Provider shall not subcontract any portion of this Contract without the prior written consent of NJ TRANSIT, which consent may not be unreasonably withheld.

11. Changes

Any change in this Contract proposed by the Provider shall be submitted to NJ TRANSIT for its prior approval, and, if approved, NJ TRANSIT will make the change by a Contract modification. Oral change orders are not permitted. The Provider shall be liable for all costs resulting from and/or for satisfactorily correcting any change not proven ordered by written modification to the Contract signed by the Contracting Officer.

NJ TRANSIT may, at any time, by a written order, make changes, within the general scope of this Contract. If any such change causes an increase or decrease in the cost of the work, whether changed or not changed by any such order, an equitable adjustment shall be made in the Contract price and the Contract shall be modified in writing accordingly.

Within five (5) working days after receipt of the proposed written change order, the Provider shall provide the Contracting Officer a detailed price proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Provider and the Contracting Officer. At that time, a modification shall be executed in writing by both parties. Disagreements that cannot be resolved through negotiations shall be resolved in accordance with Section 14, "Disputes". Regardless of any disputes, the Provider shall proceed with the work ordered.

If price adjustment is indicated either upward or downward, it shall be negotiated between NJ TRANSIT and the Provider for changes that are mandated as a result of legislation or regulation that are promulgated and become effective during the life of the contract. Such price adjustment may be audited by NJ TRANSIT.

12. Termination for Convenience

The Provider's services may be terminated by NJ TRANSIT or the Provider, upon sixty days written notice to the other party in accordance with this clause in whole, or in part, whenever the Contracting Officer or the Provider determines that such termination is in the best interest of NJ TRANSIT or the Provider. Any such termination shall be effected by delivery to the other

party of a notice of termination specifying the extent to which performance of services is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by the Contracting Officer, the Provider shall: stop work under the Contract on the date and to the extent specified in the notice of termination; take no further action except as may be necessary for completion of such portion of the work under the Contract as is not terminated; and terminate all orders and/or subcontracts to the extent that they relate to the performance of work terminated by the notice of termination. If NJ TRANSIT acts under this section of the Contract, the Provider shall be paid for all work completed up to the time of termination. All costs incurred after the date of termination must be reasonable and documented. NJ TRANSIT reserves the right to audit such costs, and not to pay costs which could have been avoided or are unreasonable.

13. Termination for Default:

NJ TRANSIT may, by written notice of default to the Provider, terminate the whole or any part of this Contract if the Provider fails to perform the services as specified herein; or if the Provider fails to perform any of the provisions of the contract, so as to endanger performance of this Contract in accordance with its terms, and in either of these two (2) circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

If the Contract is terminated in whole or in part for default, the Provider shall remain responsible for fulfilling the NTD database reporting requirements as specified in Article 8 of Attachment A, Scope of Services.

If, after Notice of Termination of this Contract under the provisions of this clause, it is determined for any reason that the Provider was not in default under the provisions of this clause, or the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 12, "Termination for Convenience".

14. Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final unless within ten (10) days from the date of receipt of its copy, the Provider mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Provider shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Provider and the Provider shall abide by the decision. The New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., shall govern any action which may be brought by the Provider as a result of NJ TRANSIT's decision.

15. Governing Law

The Parties hereto stipulate that the provisions of this Agreement shall be governed by and interpreted pursuant to the laws of the State of New Jersey.

16. NJ TRANSIT Representatives:

The individuals authorized by NJ TRANSIT to order services and to act for NJ TRANSIT are the Contracting Officer, and his designee.

The Senior Director of Procurement, NJ TRANSIT, or his designee, shall be the Contracting Officer.

17. Provider Representatives

The individual(s) authorized by the Provider to act on its behalf are:

Name: Mark E. Tornquist
Title: General Manager
Address: 2700 Brunswick Pike
Lawrenceville, NJ 08648

Phone: (609) 882-5900

18. Equal Employment Opportunity:

The provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127) as amended and supplemented and the rules and regulations promulgated pursuant thereto, and the provisions set forth in Exhibit 1 are hereby made a part of this Contract.

The Provider shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or affectional or sexual orientation. The Provider shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, or affectional or sexual orientation. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

19. Audit, Inspection and Record Retention:

The Provider shall retain all records, data, documents, reports, and materials relating to the Contract and contract services and shall permit authorized representatives of NJ TRANSIT,

the Comptroller General of the United States, the U.S. Department of Transportation (USDOT) and the state of New Jersey, to inspect and photograph all project work, materials, payroll, and all data and records of the Provider relating to its performance and its subcontracts under this Contract from the date of the Contract and for three years after completion of the Contract.

The Provider further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that it shall retain all contract records and that NJ TRANSIT, the Comptroller General of the United States, the USDOT, and the state of New Jersey, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontractor" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of the Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation or the State of New Jersey or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

20. Out-of-State Corporations:

If the Provider is a corporation organized under laws of a state other than New Jersey, the Provider, pursuant to N.J.S.A. 14A:4-1 et seq., shall maintain a registered agent having a business office in New Jersey and shall file with the Secretary of State the name of said agent and address of said office and provide a copy thereof to NJ TRANSIT.

Inquiries regarding obtaining certifications or submitting a "Notification of Filing" should be directed to:

State of New Jersey
Department of State
Division of Commercial Recording
CN-308
Trenton, New Jersey 08625
(609) 530-6400

21. NJ TRANSIT Code of Ethics:

a) No Provider may employ any NJ TRANSIT officer or employee in the business of the Provider or in professional activity in which the Provider is involved with the NJ TRANSIT

officer or employee.

No Provider may offer or provide any interest, financial or otherwise, direct or indirect, to any NJ TRANSIT officer or employee, in the business of the Provider or professional activity in which the Provider is involved with the NJ TRANSIT officer or employee.

No Provider may cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgement of that NJ TRANSIT officer or employee.

No Provider may cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that Provider or for any other person.

No Provider may offer any NJ TRANSIT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJ TRANSIT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, or any other item which would be construed as having more than nominal value.

NOTE: NJ TRANSIT employees and officers may accept food or refreshments of relatively low monetary value provided during the course of a meeting, conference or other occasion where the employee is properly in attendance (for example, coffee, tea, danish or soda served during a conference break). Acceptance of unsolicited advertising or promotional materials of nominal value (such as inexpensive pens, pencils, or calendars) is also permitted.

- b) In accordance with N.J.A.C. 16:72-4.1, the Provider may be suspended and/or debarred if the Provider:
1. Makes any offer or assignment to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any NJ TRANSIT Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee or any partnership, firm, or corporation with which they are employed or associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A., 52:13D-13g;
 2. Fails to report to the Attorney General and to the Executive Commission of Ethical Standards in writing forthwith the solicitation of any fee,

commission, compensation, gift, gratuity or other thing of value by any NJ TRANSIT Board member, officer, or employee;

3. Undertakes, directly or indirectly, any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such Contractor to, any NJ TRANSIT Board member, officer, or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or service by or to NJ TRANSIT, or with any person, firm, or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the NJ TRANSIT Board member, officer, or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;
4. Influences or attempts to influence or causes to be influenced, any NJ TRANSIT Board member, officer, or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of such Board member, officer, or employee; or
5. Causes or influences or attempts to cause or influence, any NJ TRANSIT Board member, officer, or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Provider or any other person.

22. Ineligible Providers:

The Provider certifies that it is not listed on the "Record of Suspensions, Debarments and Disqualifications" published by the N.J. State Treasury in accordance with New Jersey Executive Order No. 34 (Exhibit 2).

23. Federal Requirements:

In the future, NJ TRANSIT may receive substantial funds from the United States Department of Transportation, Federal Transit Administration for the performance of the vanpool services. It is obligated to comply with various legal and programmatic requirements of the federal government in the use of these public funds. Consequently, the Provider agrees to comply with all applicable federal, state and local laws and other requirements that may be applicable to the use of such funds, at the time that such funds are received.

24. **Exhibits:**

Exhibits 1, and 2 attached hereto are incorporated into this Contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective the date set forth above. The representative signing on behalf of the Provider shall have the authority to contractually bind the Provider.

Provider

Van Pool of New Jersey Inc

ATTEST:

JEFFREY G. REEB
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES 12/31/1998

[Signature]
Signature

Date

By: Maria Walker 2/24/98
Signature see Date

NEW JERSEY TRANSIT CORPORATION

ATTEST:

Ronald Martin 3/16/98
Signature Date

By: Vincent J. Saler 3/2/98
Signature Date

This Contract has been reviewed and approved as to form by the Office of the Attorney General of New Jersey.

Peter Verniero
Attorney General of New Jersey

By: [Signature]
Deputy Attorney General 3/11/98

PAID

ATTACHMENT A
SCOPE OF SERVICES

1. Authorization - NJ TRANSIT authorizes the Provider to enter into individual month-to-month lease agreements with vanpool groups approved by NJ TRANSIT for participation in its sponsorship program.

The Provider shall procure vehicles, provide all required insurance, handle vehicle maintenance and management, coordinate the qualification of volunteer vanpool drivers, and assume the vehicle responsibilities and liabilities of the vanpool program. These activities shall be conducted by the Provider at its sole cost and expense, and no additional reimbursement or other compensation shall be paid by NJ TRANSIT to the Provider other than as set forth in this Contract. The Provider shall bill the vanpool group directly for the balance, according to its normal payment procedures.

The Provider may provide directly or indirectly through subcontractors such equipment, maintenance facilities, supplies and other materials, employees, management and any other items as may be necessary in order to enable the Provider to provide the services in accordance with the terms of this Contract.

2. Management - The Provider shall be in total charge of the management of the vanpool fleet. NJ TRANSIT shall have no responsibility for fleet administration, including interface with drivers, passenger payment computation and collection, record keeping and accounting, as well as the legal and financial responsibility for vehicle operations.

The Provider agrees to maintain, during the entire term of this Contract and any renewals, a vanpool management office in the state of New Jersey which will be open weekdays with regular business hours, during which times the Provider shall provide trained personnel available for; vanpool marketing, assistance in route planning and scheduling, vanpool group formation and launching, and continuous liaison with the vanpool drivers and groups.

3. Vehicles - The Provider shall provide vans which seat at a minimum eight (8) passengers, or at a maximum, fifteen (15) passengers, including the driver. The vans shall not exceed five years of age or 120,000 miles of operation.

The vans are to be used primarily for commuting trips except that an allowable personal use may be negotiated by the Provider and the vanpool driver.

All vehicles used in the Program shall be in compliance with applicable Federal Motor Vehicle Safety Standards (FMVSS) and New Jersey Division of Motor Vehicles (NJDMV) requirements. The Provider is responsible for vehicle inspections, licensing and registration requirements in accordance with applicable federal and state laws.

4. Driver Agreements - The Provider shall provide commuter vanpool application forms and volunteer driver agreement forms sufficient to address the needs of the Program. The Provider and each vanpool driver shall enter into a written agreement which stipulates:

- 1) the condition of agreement pertaining to the Provider, the vanpool driver and any other related parties;
- 2) a method for collecting monthly passenger payments and submittal to the Provider;
- 3) the full amount of the monthly payment, the amount of sponsorship provided by NJ TRANSIT, and the net reduced amount due from the vanpool driver;
- 4) the requirements for sponsorship provision; and
- 5) the shared cost nature of the vanpool arrangement.

The initial period of such an Agreement must be at least one (1) month from the day of acceptance of the van by the vanpool driver. The Provider shall submit to NJ TRANSIT a sample of each Driver Agreement in use.

5. Fuel and Other Expenses - Fuel costs will be defrayed in accordance with procedures adopted by the Provider for its services. Any other incidental expense or emergency repairs incurred by vanpool groups will be treated in accordance with procedures adopted by the Provider for its services. These procedures will be reflected in the driver agreement or other Provider literature.

6. Maintenance and Repair - The Provider shall employ a scheduled maintenance and unscheduled repair program to assure continued reliability and performance of the vehicles used in the Program. The Provider shall provide substitute vehicles to vanpool groups during times of unscheduled repairs. If a substitute vehicle cannot be provided, the Provider shall reduce the vanpool group's bill accordingly, by a prorated amount

7. Risk Management - The Provider shall establish a vanpool driver selection, screening and orientation program. The Provider shall arrange for a Motor Vehicle Driving Record check on all driver applicants. Additionally, vanpool drivers must meet the following minimum criteria:

- 1) must be at least twenty-one (21) years of age,
- 2) must have at least five (5) years of licensed driving experience,

8. Statistics and Reporting Data - The Provider shall be responsible for collecting financial and operating information by uniform systems of accounts and records, and shall be responsible for providing timely and complete reports or information to NJ TRANSIT, in order to fully meet the requirements of submission to the National Transit Database (NTD) of the Federal Transit Administration (FTA). The Provider shall gather such information continuously during the term of this contract, and shall submit with its invoice, monthly information to the satisfaction of NJ TRANSIT for those vanpools participating in this program.

If NTD reporting requirements call for the Provider to forward sampled data or other information to NJ TRANSIT to process and report, such information shall be submitted monthly, including any backup sampling which may have been done. If NTD reporting requirements call for the Provider to gather information, plus process and report such information, the Provider shall submit such completed reports either directly to FTA after review and concurrence by NJ TRANSIT, or to NJ TRANSIT for inclusion in NJ TRANSIT's NTD submission to FTA. If FTA requires independent audit and certification with respect to NTD submissions by the Provider, the Provider shall give NJ TRANSIT for its prior approval a name and a cost estimate for the proposed auditor. NJ TRANSIT shall reimburse the Provider for the actual approved cost.

9. Cooperation - The Provider shall work cooperatively with NJ TRANSIT, Transportation Management Associations (TMAs) in New Jersey and other agencies to foster and promote the formation and continuation of vanpools in New Jersey.

EXHIBIT 1
P.L. 1975, C. 127 (N.J.A.C. 17:27)
MANDATORY AFFIRMATIVE ACTION LANGUAGE
PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the performance of this contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The Contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the American with Disabilities Act.

The Contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

Once the successful bidder/proposer is identified, NJ TRANSIT will need from the Contractor, to whom the contract is awarded, one (1) of the following:

- a. A photocopy of the valid letter from the office of Federal Contract Compliance Programs if the Contractor has a Federal Affirmative Action Plan Approval; or
- b. A photocopy of the Certificate of Employee Information Report if the Contractor has one; or
- c. If the company has none of the above, NJ TRANSIT has to provide the Contractor with a Affirmative Action Employee Information Report, A.A. 302.

The appropriate Affirmative Action document must be submitted by the seventh (7th) day after the notification of intent to award a contract. NJ TRANSIT as a public agency may extend the time period to the fourteenth (14th) calendar day. If by the fourteenth (14th) calendar day the Contractor does not submit the affirmative action document, NJ TRANSIT must declare the Contractor as being non-responsive and award the contract to the next lowest bidder.

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EXHIBIT 2

INELIGIBLE CONTRACTORS CERTIFICATE

VAN Pool of New Jersey Inc (Name of Company), hereby certifies that it is not listed on the "Record of Suspensions, Debarments and Disqualifications" published by the N.J. State Treasury in accordance with New Jersey Executive Order No. 34.

Van Pool of New Jersey Inc

Company

By: Manu Walker

Sec

Title

Date: 2/24/98