



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Contract and Contract Extensions for Fixed Route, ADA Paratransit, and Demand Response Operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation Inc., of Fairfield (\$1,682,365 for Fiscal Year 2012/13)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute contract and contract extensions for fixed route, ADA paratransit, and demand response operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation, Inc., of Fairfield, in the amount of \$1,682,365 for Fiscal Year 2012/13.

BACKGROUND INFORMATION: On June 18, 2008, City Council awarded the Transit Operations contract to MV Transportation, Inc., for a four-year term through 2011/12 with two one-year extensions. In October 2009, due to reduced State funding, City Council approved reduced transit service hours and hours of operations. With the service hour reduction, the contract price was renegotiated. The four-year contract ends June 30, 2012. To receive a more competitive price, City staff felt it would be advantageous to solicit proposals and not exercise the one-year extensions.

Request for Proposals (RFP) for the Transit Operations contract were released on February 1, 2012, with a March 12, 2012 submittal deadline. City staff solicited RFPs by advertising in two newspapers for three days and distributing notifications by mail to several transit contractors. The City held a non-mandatory pre-proposal conference on February 15, which was attended by six potential proposers. City staff presented a summary of requested services and the contractor's responsibilities. All written questions and comments were due February 22, 2012. Staff responded to the written questions via an addendum. Three proposals were received (Bauer Intelligent Transportation, MV Transportation, Inc., and Storer Transit Systems) and found to be responsive.

The proposals were distributed to an evaluation panel for review and were scored based on the evaluation factors provided in Attachment 1. The factors included Organization/Management (30%), Financial (35%), and Technical (35%). The evaluation panel included the City's Transportation Manager and Transit Managers from City of Manteca and City of Tracy. All three firms were interviewed, and the two top firms were requested to provide their Best and Final Offer (BAFO) by March 26, 2012. The BAFOs from the two firms were distributed to the evaluation panel for review, and the panel again scored the firms using the same evaluation factors.

The evaluation panel unanimously scored MV Transportation's proposal as the most advantageous to the City based on the evaluation factors. MV Transportation's proposal presented the lowest cost, proposed to continue with the same General Manager and Safety and Training Manager, retained all current staff (subject to City's background check), and included all required elements of the RFP. The City Council shall have the discretion to: 1) award the Agreement to the Proposer whose proposal is most advantageous to

APPROVED:

Konradt Bartlam, City Manager

Adopt Resolution Authorizing City Manager to Execute Contract and Contract Extensions for Fixed Route, ADA Paratransit, and Demand Response Operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation Inc., of Fairfield (\$1,682,365 for Fiscal Year 2012/13)

April 18, 2012

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the City, or 2) reject any and all proposals. The Council is not bound by the recommendation of the evaluation panel.

A summary of the two BAFOs is provided below:

Best and Final Offer

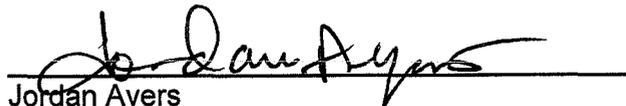
	Year 1	Year 2	Year 3	Total
Storer	\$1,792,271	\$1,837,078	\$1,883,005	\$5,512,354
MV	\$1,682,365	\$1,740,691	\$1,787,597	\$5,210,653
			Difference	\$301,701

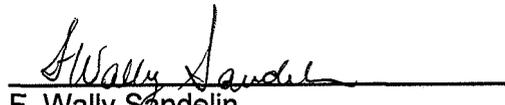
Attachment 2 provides MV Transportation's proposed hourly and fixed monthly costs for the three-year term beginning July 1, 2012 and ending June 30, 2015. Similar to other City franchised contracts, pricing for each of two one-year options is adjusted by a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the U.S. Department of Labor, Bureau of Labor Statistics for the 12-month period ending December 31 of the preceding calendar year.

MV Transportation provided the City with a letter from the labor union representing the drivers, noting their support of the contract renewal with MV Transportation.

FISCAL IMPACT: The proposed contract provides more annual operating hours at a better price per hour than the current contract. There is an estimated savings of \$200,000 per year over the present contract.

FUNDING AVAILABLE: Funds for this contract are from Transportation Development Act (TDA) and Federal Transit Administration (FTA) funds and have been included in the Fiscal Year 2012/13 Transit Operations (1250) budget.


Jordan Ayers
Deputy City Manager/Internal Services Director


F. Wally Sandelin
Public Works Director

Prepared by Paula Fernandez, Transportation Manager/Senior Traffic Engineer

FWS/PJF/pmf

Attachments

cc: Transportation Manager
Fleet Services Supervisor
MV Transportation, Inc. (Mr. Pihl, Mr. Stewman, Mr. Kohlhepp)

PROPOSAL EVALUATION CRITERIA

Responsive proposals will be evaluated in accordance with the following criteria. Category A will each receive thirty percent of the total value, and Categories B and C will be assigned thirty-five percent.

CATEGORY A: ORGANIZATION AND MANAGEMENT (30%)

1. Demonstrated public transit management and operations capabilities and performance.
2. Qualifications and experience of the proposed General Manager, Safety Manager and other personnel.
3. Commitment and approach to maximizing the safety, quality and efficiency of public transit operations.
4. Demonstrated understanding and commitment to equitable labor management practices, Equal Employment Opportunity, and non-discrimination in the selection of subcontractors and in the provision of public transit services.
5. References.

CATEGORY B: FINANCIAL (35%)

1. Financial stability of proposer.
2. Reasonableness of proposed monthly and hourly rates, and allocation of contract resources.

CATEGORY C: TECHNICAL (35%)

1. Demonstrated understanding of requirements.
2. Assessment of submitted programs and plans; equipment provided for computer aided dispatch system, vehicle locating and tracking system, system reservations and dispatch plan, and telephone system.
3. Demonstrated knowledge and experience related to the operation of technical equipment such as automated fareboxes and cameras, vehicle locating/tracking systems and computer aided dispatch system; and experience with use of Compressed Natural Gas (CNG) fueling.
4. Availability of quality technical resources and personnel to assure equipment provided by Contractor is properly maintained and fully utilized to provide required reporting information.

Section VII: CITY PROPOSAL FORM
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This PROPOSAL FORM is to be used to submit the PROPOSER'S firm fixed price proposal for all work described in the DRAFT AGREEMENT and EXHIBIT " A- SCOPE OF WORK.

The PROPOSER'S price proposal must consist of fixed hourly rates by mode of service, fixed cost per mile, and fixed monthly rates, all in accordance with Section 9.1 - Price Formula, of the DRAFT AGREEMENT. Such rates shall be proposed for each of the three years contemplated in this RFP, and shall be based on the levels of service, in terms of vehicle revenue hours (VRH) for Dial-A-Ride/VineLine and fixed route services, as stated below. In the event CITY exercises any option year(s) allowed under this AGREEMENT, rates shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year. The detailed Budget Breakdown on pages 2 and 3 of the PROPOSAL FORM should be consistent with the rates proposed. Refer to Vehicle Revenue Hour definition on page 2 of this PROPOSAL FORM.

LEVEL OF SERVICE	7/1/12 - 6/30/13	7/1/13 - 6/30/14	7/1/14 - 6/30/15
Dial-A-Ride/ ADA Paratransit Vehicle Revenue Hours	15,000 \pm 15%	15,000 \pm 15%	15,000 \pm 15%
Fixed Route Vehicle Revenue Hours	18,000 \pm 15%	18,000 \pm 15%	18,000 \pm 15%
Total Vehicle Revenue Hours	33,000 \pm 15%	33,000 \pm 15%	33,000 \pm 15%

PRICE FORMULA			
Cost/ Vehicle Revenue Hour (Total Cost from Proposal Form, Page 2 divided by Total VRH)	35.131	36.244	37.230
Monthly Fixed Expense (Provide a detailed listing all fixed costs using Proposal Form, Page 3)	43,586.79	45,386.41	46,584.02

TOTAL ANNUAL COSTS BASED ON FIGURES ABOVE	7/1/12 - 6/30/13	7/1/13 - 6/30/14	7/1/14 - 6/30/15
Total CITY Cost/ Vehicle Revenue Hour	1,159,323	1,196,054	1,228,589
Total Monthly Fixed Expense	523,041	544,637	559,008
TOTAL ANNUAL COST	1,682,365	1,740,691	1,787,597

BUDGET BREAKDOWN

VEHICLE REVENUE HOURLY COST ELEMENTS (ANNUAL)	7/1/12 - 6/30/13	7/1/13 - 6/30/14	7/1/14 - 6/30/15
Driver Wages	751,708	773,753	788,868
Driver Fringe Benefits	266,720	277,435	289,704
Scheduler/Dispatch Wages	94,948	96,847	98,784
Scheduler/Dispatch Benefits	35,621	37,410	40,328
Uniform	3,060	3,132	3,216
Hiring/ Training	7,267	7,476	7,687
TOTAL (ANNUAL)	1,159,323	1,196,054	1,228,589

Vehicle Revenue Hourly Cost Elements refers to combined cost for fixed-route, ADA paratransit and demand response services and items listed above.

Vehicle Revenue Hour definition:

Fixed-Route

Vehicle Revenue Hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers. This means from the first scheduled pick up time point to the last scheduled time point. For fixed route services, Vehicle Revenue Hours are defined as the scheduled hours of service, set forth in the current "GrapeLine Fixed Route Maps and Bus Schedules" as shown in Exhibit C, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes as specifically authorized by the CITY under Article 6 of the DRAFT AGREEMENT. See Attachment 11 for current Express route deadhead.

ADA paratransit/Demand Response

For Dial-A-Ride and VineLine ADA paratransit service, Vehicle Revenue Hours are defined as the time from when a vehicle makes its first pick up through the time of its last drop off, regardless of whether the first pick-up is a no-show. "No-show" is defined when a passenger reserves a ride but does not meet the vehicle at the scheduled time and in accordance with CITY'S DAR/VL Rider's Guide.

For all transit services, Vehicle Revenue Hours shall specifically exclude deadhead hours, including time for travel to and from storage facilities, changing routes, downtime for road calls, road tests, fueling, vehicle inspections, driver training, and driver lunches and rest breaks but shall include layover time.

PRICE PROPOSAL	YEAR 1	YEAR 2	YEAR 3
MONTHLY FIXED COST ELEMENTS (ANNUAL)	7/1/12 - 6/30/13	7/1/13 - 6/30/14	7/1/14 - 6/30/15
Management Wages	101,576	103,608	105,680
Management Benefits	29,719	28,454	29,322
Administrative Wages	54,972	56,072	57,192
Administrative Benefits	19,114	20,077	21,651
Office Expense & Supplies	5,370	5,508	5,646
Insurance.	44,973	45,498	46,026
Marketing	6,000	6,150	6,304
Insurance Deductible/Expense	5,516	5,516	5,516
Performance Bond	3,125	3,125	3,125
Communications	7,290	7,476	7,662
Profit	42,059	52,221	53,628
Safety	6,494	6,631	6,779
Other/ Equipment	145,021	151,130	155,827
Maintenance Supplies	2,760	2,832	2,904
Start-Up	-	-	-
Utility Expenses	22,529	23,249	24,257
Other (Specify)	26,523	27,089	27,489
TOTAL (ANNUAL)	523,041	544,637	559,008

PROPOSER shall provide itemized budget detail for each line item shown above.

Itemized Budget Detail for Hourly Expense

	FY 2012/13	FY 2013/14	FY 2014/15
Driver Wages			
Revenue Wages	743,820	765,640	780,592
New Hire Training Wages	2,173	2,226	2,271
Retraining & Safety Meetings	5,715	5,886	6,005

Driver Benefits			
Vacation	18,465	19,026	19,410
Holiday	33,782	34,961	35,667
PTO	13,697	14,175	14,462
Medical/Dental Insurance	60,624	65,368	73,704
Life Insurance	240	252	264
401(k)	115	118	120
Payroll Taxes	76,347	78,203	79,465
Workers' Compensation	63,450	65,333	66,612

Sched/Disp Wages			
Lead Dispatcher	40,642	41,455	42,284
Dispatchers	54,306	55,393	56,501

Sched/Disp Benefits			
Vacation	2,721	2,775	2,830
Holiday	1,632	1,665	1,698
PTO			
Medical/Dental Insurance	18,945	20,428	23,033
Life Insurance	48	50	53
401(k)	36	37	38
Payroll Taxes	9,002	9,154	9,309
Workers' Compensation	3,237	3,302	3,368

PROPOSAL FORM, Page 4 (Cont'd)			
Uniform	3,060	3,132	3,216

Hiring/Training Expenses

Recruiting	1,433	1,474	1,516
Background Checks	3,825	3,927	4,029
Physicals	2,009	2,075	2,142

Other (Specify)

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Total Hourly Expenses

	1,159,323	1,196,054	1,228,589
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Itemized Budget Detail for Monthly Fixed Expense

	FY 2012/13	FY 2013/14	FY 2014/15
Management Wages			
Operations Manager	59,595	60,787	62,002
Safety&Training Manager	41,981	42,821	43,678
Management Benefits			
Vacation	2,910	2,969	3,028
Holiday	1,746	1,781	1,817
PTO	-	-	-
Medical/Dental Insurance	12,260	10,668	11,201
Life Insurance	38	40	42
401(k)	49	50	51
Payroll Taxes	9,251	9,414	9,579
Workers' Compensation	3,463	3,532	3,603
Administrative Wages			
Road Supervisors	14,034	14,315	14,601
Accounting Manager			
Vault Clerk			
BTW Trainers			
Farebox Clerk			
Shuttle Inv Clerk			
Transit Store	40,938	41,757	42,591
Administrative Benefits			
Vacation	1,173	1,196	1,220
Holiday	704	718	732
PTO			
Medical/Dental Insurance	10,230	11,031	12,438
Life Insurance	26	27	29
401(k)	19	20	20
Payroll Taxes	5,108	5,195	5,283
Workers' Compensation	1,853	1,890	1,928

Office Expenses & Supplies

Copier Toner & Paper	3,000	3,072	3,144
Postage	240	252	264
DSL Service	2,130	2,184	2,238
Misc. Office Supplies			

Insurance

General Liability	841	870	894
Automobile Liability	44,132	44,628	45,132
Fidelity Bond/Crime Insurance	-	-	-

Marketing

	6,000	6,150	6,304
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Insurance Deductible/Expense

	5,516	5,516	5,516
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Performance bond

	3,125	3,125	3,125
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Communications

Cell Phone	900	924	948
Radio Usage			
Telephone	6,390	6,552	6,714

Profit

	42,059	52,221	53,628
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Safety

Pull Notice Program	301	301	301
Safety & Training Program	4,832	4,939	5,049
Drug & Alcohol Program	1,361	1,391	1,429

Other/Equipment

Trapeze Maint. Fees	49,200	50,436	51,696
Business License			
Depreciation- DriveCam	1,224	3,072	4,116
Depreciation- Trapeze			
Depreciation- Computers	1,335	1,152	965

Depreciation-CoinCounter	732	732	732
Depreciation-PhoneUpgrade			
Overhead	92,530	95,738	98,318

Maintenance Supplies

VehicleCleaning Supplies	690	708	726
FacilityCleaning Supplies	828	850	871
Facility Supplies	1,242	1,274	1,307
Other			

Other Utility Expenses

Utility Supervisor			
Utility Workers	15,361	15,668	15,982
Vacation			
Holiday			
PTO			
Medical/Dental Insurance	4,736	5,107	5,758
Life Insurance	12	13	13
401(k)	9	9	9
Payroll Taxes	1,526	1,550	1,574
Workers' Compensation	885	902	921

Start Up	-	-	-
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Other (Specify)			
Armored Car Service	4,644	4,764	4,884
TimePoint/IVR Costs	13,834	14,184	14,537
Interest Expense	8,045	8,141	8,068

Total Fixed Expense	523,041	544,637	559,008
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PROPOSAL FORM, Page 6

Staffing Levels & Wages/ Salaries (Full-Time) Fixed Route, ADA Paratransit & Demand Response	YEAR 1	YEAR 2	YEAR 3			
<p>CONTRACTOR Definition of full-time Employee_</p> <p><u> </u> <i>A full time employee is one that works an average of more than 35 hours a week.</i></p> <p>_____</p> <p>_____</p> <p>_____</p>						
Full-Time Employees	FY 2012/13 7/1/12 - 6/30/13	FY 2013/14 7/1/13 - 6/30/14	FY 2014/15 7/1/14 - 6/30/15			
Job Classifications	No.	Scale	No.	Scale	No.	Scale
Drivers	6	17.59	6	18.03	6	18.39
Drivers	2	18.74	2	19.11	2	19.49
Drivers						
Drivers						
Drivers						
Drivers						
Dispatchers/Supervisors	1	18.37	1	18.74	1	19.11
Operations Manager	1	29.96	1	30.56	1	31.18
Office/Clerical Staff	1	18.50	1	18.87	1	19.25
Trainers	1	21.11	1	21.53	1	21.96
Utility Staff						
Off-Site Personnel						
<p>Please list all benefits a full-time employee will be eligible to receive based on the terms of your price proposal. Include the time frame at which an employee is eligible to receive such benefits.</p> <p><u> </u> <i>Vacation: varies by seniority with average of 130 vacation hours per FT Driver, 3 month probation.</i></p> <p><u> </u> <i>Holiday: 10 days for both FT/POT drivers – begins accruing immediately; staff gets 6 paid Holidays.</i></p> <p><u> </u> <i>PTO Days: Drivers average 13 days; Staff PTO is part of their wage calculation.</i></p> <p><u> </u> <i>Medical/Dental/Life/401K Benefits are as outlined in the Proposal.</i></p> <p>_____</p> <p>_____</p>						
	FY 2012/13	FY 2013/14	FY 2014/15			
FTE for full-time employees:	12	12	12			
<p>*Please explain and justify any off-site personnel included in the price proposal.</p> <p><i>Definitions: Full-Time Equivalent (FTE) is calculated by dividing the total number of person hours by 2,080. "Wage Scale" should either be the hourly wage or monthly salary. In the case of drivers, please indicate the number of drivers at differing hourly wage rates.</i></p>						

Staffing Levels & Wages/Salaries (Part-Time) Fixed Route, ADA Paratransit & Demand Response	YEAR 1	YEAR 2	YEAR 3			
<p>CONTRACTOR Definition of part-time Employee_</p> <p><i>A part time employee is one that works an average of less than 35 hours a week.</i></p> <hr/> <hr/> <hr/>						
Part-Time Employees	FY 2012/13 7/1/12 - 6/30/13	FY 2013/14 7/1/13 - 6/30/14	FY 2014/15 7/1/14 - 6/30/15			
Job Classifications	No.	Scale	No.	Scale	No.	Scale
Drivers	3	15.62	3	16.01	3	16.33
Drivers	1	16.11	1	16.51	1	16.84
Drivers	1	16.61	1	17.02	1	17.36
Drivers	1	17.10	1	17.52	1	17.87
Drivers	13	17.59	13	18.03	13	18.39
Drivers						
Dispatchers/Supervisors	3	16.36	3	16.69	3	17.02
Operations Manager						
Office/Clerical Staff						
Trainers	1	17.33	1	17.67	1	18.03
Utility Staff	1	10.62	1	10.83	1	11.05
Off-Site Personnel						
<p>Please list all benefits a part-time employee will be eligible to receive based on the terms of your price proposal. Include the time frame at which an employee is eligible to receive such benefits.</p> <p><i>_Vacation: PT drivers are not eligible. Holiday: 10 days for both PT/FT Drivers – begins accruing immediately; staff gets 6 paid Holidays. PTO Days: PT Drivers are not eligible and PT staff is covered as part of their wage calculation. Medical/Dental/Life/401K Benefits are as outlined in the Proposal.</i></p> <hr/> <hr/> <hr/>						
	FY 2012/13	FY 2013/14	FY 2014/15			
No. of part-time employees:	24	24	24			
<p>*Please explain and justify any off-site personnel included in the price proposal.</p> <p><i>Definitions: "Wage Scale" should either be the hourly wage or monthly salary. In the case of drivers, please indicate the number of drivers at differing hourly wage rates.</i></p>						

ATTACHED TO THIS PROPOSAL FORM ARE THE FOLLOWING ITEMS:

1. Any and all Addenda which may have been issued by CITY in connection with this RFP
2. Performance Security Requirement
3. RFP Forms A and B – Non-Collusion Affidavit; Eligible Bidder Certification; Proposer's Bond Form
4. Statement of Qualifications
5. Experience/References
6. Organization Description
7. Proposed Staffing Plan (including salary & benefit schedules, resumes)
8. Description of Management and Personnel Policies
9. Description of Accounting and Reporting System
10. Description of Insurance (including statement of loss experience and pending claims)
11. Financial Statement
12. Technical Requirement/ Contractor Furnished Equipment
13. Description of Safety Program
14. Description of Screening and Selection Program
15. Description of Training and Retraining Program
16. Time Schedule for Start-up/Transition

Proposer: _____ Phone: _____

Address: _____

Signature: _____ Date: _____

AGREEMENT

BETWEEN

CITY
AND
MV TRANSPORTATION, INC.

This AGREEMENT is entered into in the City of Lodi, County of San Joaquin, State of California, this ____ day of _____, 2012 ("Effective Date") by and between the City of Lodi, a municipal corporation, hereinafter referred to as "CITY and MV Transportation, Inc., of Fairfield, California, hereinafter referred to as "CONTRACTOR" (collectively the "PARTIES").

WITNESSETH

WHEREAS, CITY has determined that it requires operational services for its public transit system, and

WHEREAS, CONTRACTOR has represented that it has the necessary expertise and personnel and is qualified to perform such services;

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE 1 - COMPLETE AGREEMENT

This AGREEMENT and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the AGREEMENT between CITY and CONTRACTOR and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this AGREEMENT shall not affect the validity of other provisions. CITY'S failure to insist in one or more instances upon the performance of any term or terms of this AGREEMENT shall not be construed as a waiver or relinquishment of CITY'S right to such performance by CONTRACTOR. In the event of a conflict between the various documents comprising this AGREEMENT, the document with a later date shall prevail over a document with an earlier date.

ARTICLE 2 - HIRING OF THE CONTRACTOR

CITY hereby engages CONTRACTOR and CONTRACTOR agrees to perform the services, hereinafter described, in connection with the operation of CITY'S GrapeLine Fixed route, VineLine ADA complementary paratransit, and GrapeLine demand response/Dial A Ride services.

ARTICLE 3 - INDEPENDENT CONTRACTOR

CONTRACTOR'S relationship to CITY in its performance of this AGREEMENT is that of an independent contractor. CONTRACTOR agrees that it is not and will not become an employee, partner, agent, or principal of CITY while this AGREEMENT is in effect. CONTRACTOR may, at CONTRACTOR'S own expense, use employees or subcontractors as CONTRACTOR deems necessary to perform the services required by CONTRACTOR under this AGREEMENT. The personnel performing services under this AGREEMENT shall at all times be under

CONTRACTOR'S exclusive direction and control and shall be employees of CONTRACTOR and not employees of CITY. CITY shall not control, direct or supervise CONTRACTOR's employees or subcontractors in the performance of those services.

CONTRACTOR shall pay all wages, salaries, and other amounts due its employees in connection with the performance of this AGREEMENT and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers compensation insurance, and similar matters. The personnel performing services under this AGREEMENT shall not be entitled to the rights or benefits afforded to CITY employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other CITY employment benefit. CONTRACTOR shall provide its employees with written notice that any and all obligations in connection with their employment are obligations of CONTRACTOR and not CITY.

The relationship between CITY and CONTRACTOR is non-exclusive. CONTRACTOR may perform services for, and contract with as many other clients, persons, or companies as CONTRACTOR, in its sole discretion, sees fit.

ARTICLE 4 - SCOPE OF WORK

CONTRACTOR will provide the services to be rendered as set forth in the Request for Proposals issued by CITY on February 1, 2012, as amended by any addenda, which is attached hereto as (Exhibit A – Scope of Work) and is hereby incorporated by this reference, as supplemented or modified by CONTRACTOR'S Operations Service Proposal, which is attached hereto as Exhibit H and is hereby incorporated by this reference.

ARTICLE 5 - CHANGES IN SCOPE OF WORK

It is understood and agreed by CITY and CONTRACTOR that it may be necessary, from time to time during the term of this AGREEMENT, to modify its provisions or to revise the scope and/or extent of CONTRACTOR'S work under this AGREEMENT for CITY transit operations. In each such instance, CITY and CONTRACTOR shall consult with each other and shall come to a mutually acceptable AGREEMENT as to the nature of the required modification or revision desired. Each AGREEMENT to modify or revise the scope and/or extent of CONTRACTOR'S work shall be reduced to writing, and when fully executed by both parties, shall constitute an amendment to this AGREEMENT. Each amendment will be identified and sequentially numbered as "Amendment No. 1," "Amendment No. 2," and so forth, and shall be subject to all of the other applicable provisions of this AGREEMENT. Until an amendment has been approved by CITY in the foregoing manner, it shall have no force or effect.

Notwithstanding the above, CITY without invalidating this AGREEMENT may from time to time order minor changes in the scope and/or extent of CONTRACTOR'S work involving CITY GrapeLine routes, schedules, bus stop locations, and so forth to respond to demand, special events and other occurrences without requiring an amendment pursuant to this ARTICLE 5, provided that such changes do not result in a change in the number of annual vehicle service hours of more or less than fifteen percent (15%).

In the event a federal, state or local government adopts any law, rule or regulation that requires an increase in the minimum wages or benefits paid to or provided to employees of CONTRACTOR subsequent to the date of execution of this AGREEMENT, then CITY and CONTRACTOR agree to meet and negotiate an equitable adjustment to the compensation paid to CONTRACTOR by CITY hereunder to allow CONTRACTOR to recover those costs.

ARTICLE 6 – CHANGES IN LEVEL OF SERVICE

The "baseline service level" is the amount of service, approximately 33,000 vehicle hours of service annually during the initial term of this AGREEMENT (July 1, 2012 through June 30, 2015). CITY may increase, decrease, or otherwise change the service to be provided as set forth below. Changes to service levels are provided as follows:

Emergency Adjustments. Temporary emergency adjustments in service may be initiated either by CITY or CONTRACTOR only in the event of an emergency or circumstance which requires a detour or an adjustment in routing or scheduling under circumstances where there is no opportunity for the parties to confer; provided, however, that such adjustments do not constitute a "substantial change" as defined below.

The party initiating the emergency adjustment shall notify the other party immediately of such occurrence. CITY shall specify steps to be taken by CONTRACTOR to notify patrons of the change in routing and/or scheduling necessitated by such emergency adjustments, and/or modifications to the emergency adjustments made by CONTRACTOR. In making temporary emergency adjustments, should CONTRACTOR incur added expenses beyond those compensated under the primary terms of this AGREEMENT, CITY and CONTRACTOR shall negotiate a fair and equitable adjustment in compensation for service.

Substantial Changes in Service Level Any proposed change in the service level shall be deemed "substantial" if such results in one or more of the following conditions:

- An increase of 15% or more in revenue vehicle service hours, as computed from the baseline service level.
- A decrease of 15% or more in total revenue vehicle service hours as computed from the base line service level.
- The cumulative total of non-substantial service changes over a period of time that results in a service level either more than 15% above or 15% below, the established baseline service level.

CONTRACTOR shall be given no less than thirty (30) days written notice of the intent to order such substantial changes, and shall have an opportunity to be heard prior to the effective date of such order. Such order shall not be effective sooner than thirty (30) days from the date of issuance, unless mutually agreed otherwise in writing by both parties.

CONTRACTOR shall be compensated following any substantial change to the service level according to the Article 9 of this AGREEMENT.

Non-Substantial Changes in Service Level. CITY may order non-substantial increases, decreases or other alterations to the service upon written notice to CONTRACTOR. Said notice shall specify the change(s) requested and the effective date(s). CONTRACTOR shall be allowed thirty (30) days to implement non-substantial changes.

Changes in Subsidiary Duties. CITY may request change in CONTRACTOR'S reporting requirements, training and safety programs, inventory requirements, testing procedures, personnel practices, and/or other operating details that do not result in change to the service level. If CONTRACTOR declines such requests, or such request would result in a material increase in CONTRACTOR'S costs or in the time required for performance, CONTRACTOR shall notify CITY within seven (7) days after receipt of such request and shall submit a claim

detailing such objections and/or increases. The PARTIES shall negotiate an equitable settlement of CONTRACTOR'S claim, which reflects actual increases or decreases in CONTRACTOR'S total costs to perform AGREEMENT caused by the change in question.

ARTICLE 7 - INSURANCE; PERFORMANCE SECURITY

7.1 Insurance

a. CONTRACTOR'S Responsibilities - Minimum Types and Scope of Insurance

The insurance requirements specified in this article shall apply to the CONTRACTOR and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter collectively referred to as "Agents"). The CONTRACTOR and all Agents are required to procure and maintain at their sole cost and expense the insurance coverage subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, the CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from CITY. Prior to beginning work under this AGREEMENT, CONTRACTOR shall provide CITY with satisfactory evidence of compliance with the insurance requirements of this article.

i. Workers Compensation and Employers' Liability Insurance -

Workers Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

1. Workers' Compensation coverage in compliance with the statutory benefits as allowed by California law.
2. Employer's Liability coverage in the amount of \$1,000,000 per accident or disease.
3. The Workers' Compensation insurance shall include the following endorsement as further detailed in the Endorsements Section below:

a. Waiver of Subrogation.

i. This waiver of subrogation shall also include a waiver of subrogation for any injuries to operators and drivers of passenger transit service vehicles that occur on the premises of CITY while operators or drivers are outside of the passenger transit service vehicles.

ii. Commercial General Liability Insurance - Commercial General Liability insurance for bodily injury and property damage coverage of at least \$5

million per occurrence and a general aggregate limit of at least **\$10 million**. Such insurance shall cover all of CONTRACTOR's operations, **other than CITY's operations provided under this AGREEMENT**. This insurance shall include coverage for, but not be limited to:

1. Premises and operations;
2. Products and completed operations;
3. Contractual liability;
4. Personal injury;
5. Advertising injury;
6. Explosion, collapse, and underground coverage (xcu);
7. Employment Practices liability; and
8. Broad form property damage.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Additional Insured;
2. Cross Liability or Severability of Interests Clause;
3. Primary and Non-Contributory wording; and
4. Waiver of Subrogation.

iii. **Automobile Liability Insurance** - Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least **\$2 million** per occurrence. This insurance shall include coverage for the following types of vehicles, except while being used to provide CITY's passenger transit service:

1. All Owned Vehicles;
2. Non-Owned Vehicles; and
3. Hired or Rental Vehicles.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Additional Insured;
2. Cross Liability or Severability of Interests Clause;
3. Primary and Non-Contributory wording; and
4. Waiver of Subrogation.

iv. **Automobile Physical Damage Insurance** - Automobile Physical Damage insurance providing Comprehensive and Collision insurance covering CONTRACTOR-owned vehicles. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Waiver of Subrogation.

v. **Crime Insurance** - CONTRACTOR will provide Crime insurance, including coverage for dishonesty and theft of money and securities from any inside location or outside messenger, by CONTRACTOR's officers, employees or agents, with the following limits of liability:

Employee Dishonesty	\$50,000
Depositors Forgery	\$50,000
Off and On Premises	\$50,000
Computer Fraud	\$50,000

Regarding these coverages:

1. CONTRACTOR shall reimburse CITY for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs, including attorney's fees and costs, and any other fees associated with a claim for coverage under this Section (a) (v).
2. The policy shall contain a Joint Loss Payee endorsement naming CITY as further detailed in the Endorsements Section below.

vi. **Endorsements**

1. **Additional Insured** - The referenced policies and any Excess or Umbrella policies shall include as Additional Insured's the City of Lodi, its elected and appointed officials, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
2. **Waiver of Subrogation** - The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the City of Lodi and its elected and appointed officials, officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
3. **Primary Insurance** - The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the City of Lodi.
4. **Severability of Interests or Cross Liability** - The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the City of Lodi, and its elected and appointed officials, officers, directors, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as an Additional Insured shall not in any way affect CITY's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect the CONTRACTOR and the CITY in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

5. **Joint Loss Payee Endorsement** - CITY shall be named as a Joint Loss Payee on the CONTRACTOR's Employee Dishonesty policy.

vii. **Evidence of Insurance**

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Risk Manager of CITY with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the CONTRACTOR's policy(ies) will not be cancelled or have coverage reduced without 30 days prior written notice to CITY's Transportation Manager and CITY's Risk Manager.

viii. **General Provisions**

1. **Notice of Cancellation** - The policies shall provide that the CONTRACTOR's policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to CITY's Transportation Manager and CITY's Risk Manager.
2. **Acceptable Insurers** - All policies will be issued by insurers acceptable to CITY (generally with a Best's Rating of A-X or better).
3. **Self-insurance** - Upon evidence of financial capacity satisfactory to CITY and the CONTRACTOR's agreement to waive subrogation against CITY respecting any and all claims that may arise, the CONTRACTOR's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance.
4. **Deductibles and Retentions** - CONTRACTOR shall identify self insured retention (SIR) limits. It is at the sole approval of CITY to accept SIR limits. The CONTRACTOR shall be responsible for payment of any deductible or retention on the CONTRACTOR's policies without right of contribution from CITY. If for whatever reason, CONTRACTOR is unable or unwilling to pay its SIR to obtain the necessary liability coverage(s) required under this AGREEMENT, CITY will have the option, to the fullest extent of the law, of paying the SIR on behalf of CONTRACTOR from any source, so as to maintain the liability coverage(s).

b. **CITY's Insurance Responsibilities - Minimum Types and Scope of Insurance**

CITY, at its own cost and expense, will maintain in full force and effect during the entire term of this AGREEMENT and any extension period, unless otherwise agreed by the Parties, the following insurance:

i. **General Liability**

CITY currently has general liability and physical damage insurance coverage under the California Transit Insurance Pool (CaTIP). CITY will continue to provide general liability and physical damage insurance on all CITY owned transit vehicles and property with a minimum limit of liability per occurrence of **\$20 million** for bodily injury and for property damage.

CONTRACTOR shall be a Covered Party on the liability coverage provided by CalTIP. CITY shall be responsible for any deductible or self insured retention. This insurance shall include coverage for, but not be limited to:

1. Premises and operations;
2. Products and completed operations;
3. Contractual liability;
4. Personal injury;
5. Advertising injury;
6. Explosion, collapse, and underground coverage (xcu); and
7. Broad form property damage.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Cross Liability or Severability of Interests Clause;
2. Primary Wording; and
3. Waiver of Subrogation.

ii. **Automobile Physical Damage Insurance for Vehicles**

CITY will maintain at its own cost and expense an automobile physical damage insurance program to cover CITY-owned vehicles and equipment and CONTRACTOR shall be a Covered Party on the physical damage coverage provided by CalTIP. CONTRACTOR will cooperate fully with CITY in filing claims with and recovering payments due from CITY's insurers. CONTRACTOR shall be responsible for payment of the deductible up to \$5,000 for any claim arising out of an incident deemed to be a preventable accident on the part of CONTRACTOR or its subcontractors or employees. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

1. Waiver of Subrogation.

iii. **Endorsements**

1. **Waiver of Subrogation** - The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of CONTRACTOR to the extent of the indemnification by CITY in this AGREEMENT.
2. **Primary Insurance** - The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies).
3. **Severability of Interests or Cross Liability** - The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of CONTRACTOR as a Covered party shall not in any way affect CITY's rights either as respects any claim, demand, suit, or judgment. Said policy shall protect CONTRACTOR and CITY in the same manner as though a separate policy had been issued to each, but nothing in said

policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

iv. Evidence of Insurance

Prior to commencing work, CITY shall provide CONTRACTOR with a certificate of insurance evidencing coverage, and upon request, a certified duplicate original of the policy: The certificate shall also show that CITY's policy(ies) will not be cancelled or have coverage reduced without 30 days or 60 days prior written notice to CONTRACTOR, whichever applies.

v. General Provisions

1. **Notice of Cancellation** - CITY shall use its best efforts to obtain 60 days' written notice to CONTRACTOR. However, in no event will such policy provide for less than 30 days' prior written notice of cancellation to CONTRACTOR except for non-payment of premium. In the event said insurance policy is cancelled for any reason, then CITY shall replace said policy during the notification period with another policy which complies with the requirements of this AGREEMENT.
2. **Retentions and Self-insurance** - CITY shall have the right to maintain self-insured retentions at any level or levels of up to the CalTIP limit. Currently, CITY has no SIR with CalTIP.
3. **Filing and Payment of Claims** - CONTRACTOR will cooperate fully with CITY in the investigation and processing of any and all claims of whatever nature against the CONTRACTOR and CITY, including cooperation with CalTIP's Contract Third Party Claims Administrator, and in CITY's attempts to recover payments from CITY's insurers. If **CITY fails or refuses to pay** losses incurred within any self-insured retention, CONTRACTOR shall have the right to terminate this AGREEMENT upon 30 days' written notice. This right of termination, however, applies only to failure or refusal by CITY to pay losses incurred within self-insured retentions, and not to failures or refusals to pay losses falling within gaps or shortfalls in insurance coverage created by previous payment of losses which depleted or exhausted the annual aggregate limits applicable to such insurance. Nothing contained in this subsection should be deemed to foreclose or limit CITY's rights to defend against any claims.

c. General Insurance Provisions Applicable to Both CONTRACTOR and CITY

The Parties further agree as follows:

- i. **Failure to Procure or Maintain Insurance** - The failure of either party to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this AGREEMENT.
- ii. **Claims Costs** - Each of the Parties, at its sole cost and expense, will be

responsible for the investigation, administrative handling, and settlement of claims for injury, death, or damage arising out of the performance of this AGREEMENT for which it is responsible. Each party shall respond to reasonable requests by the other party as to the status of all claims presented for which the requesting party is responsible. The Parties agree that the furnishing of such information is for the purpose of keeping each other informed, as potential co-defendants, with respect to such claims, is a privileged co-defendant communication, does not waive the attorney-client, attorney work product or any other applicable privilege and shall not be admissible in any action or proceeding of any kind whatsoever as an admission or concession of liability or for any other purpose whatsoever, nor shall any such information exchanged be admissible as evidence of liability to, or damages allegedly suffered by any claimant.

iii. **Claims Made Coverage**

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. Policy retroactive date coincides with or precedes the start of work (including subsequent policies purchased as renewals or replacements).
2. Every effort will be made to maintain similar insurance for at least three (3) years following completion of work, including the requirement of adding all additional insured's.
3. If insurance is terminated for any reason, the party agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this AGREEMENT.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

7.2 Performance Security

As a condition precedent to the effectiveness of this AGREEMENT, CONTRACTOR shall furnish to CITY a Performance Security in the amount equal to Two Hundred Fifty Thousand Dollars (\$250,000). The Performance Security shall be in a form acceptable to CITY and shall be held by CITY throughout the term of this AGREEMENT to guarantee performance by CONTRACTOR.

ARTICLE 8 - INDEMNIFICATION

CONTRACTOR shall, to the extent permitted by law, indemnify, defend, and hold harmless CITY, its elected and appointed officials, officers, agents, employees, and volunteers, and CITY's Liability pool (CalTIP) and its insurers, from any liability imposed for injury (as defined by California Government Code Section 870.8), claims or demands, including reasonable attorney's fees, costs, and expenses, whether arising before or after completion of the work hereunder, or in any manner directly or indirectly caused, occasioned or contributed to, or claimed to be caused, occasioned or contributed to, in whole or in part, by reason of any act or omission, of CONTRACTOR, or of anyone acting under CONTRACTOR'S direction or control or on its behalf, in connection with or incident to or arising out of the performance of this AGREEMENT, except to the extent that such liability arises from or is caused by the sole negligence or willful misconduct of CITY, its elected and appointed officials, officers, agents,, employees or volunteers.

CITY maintains a policy of automobile liability insurance for the operation of the vehicles to be used in accordance with the terms of this Agreement. Therefore, CITY agrees that CONTRACTOR'S duty to indemnify CITY shall not include nor extend to any claim, loss, liability or damage from any cause, including but not limited to injury to person, property, or wrongful death, including payment of reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of CONTRACTOR, whether or not the act or omission arises from the sole negligence or other liability of CONTRACTOR, or its agents, officers, employees, or volunteers relating to the operation of passenger buses (unless it is the direct result of CONTRACTOR'S gross negligence or willful misconduct) and that CITY and CITY's liability pool and insurer waives any subrogation rights.

With respect to those claims arising from a professional error or omission, as well as employment practices liability, CONTRACTOR shall indemnify, defend and hold harmless CITY, its elected and appointed officials, officers, agents, employees, and volunteers, and CITY's Liability pool (CalTIP) and its insurers, from any liability arising from the professionally negligent acts, errors or omissions of CONTRACTOR.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

ARTICLE 9 - PAYMENT

CITY agrees to pay CONTRACTOR for the performance of services set forth in this AGREEMENT as follows:

9.1 Price Formula

For services rendered under Article 4 of this AGREEMENT, entitled "Scope of Work", and detailed in Exhibit A, which is attached hereto and made a part hereof, payment shall be based on the following rates for the periods of **July 7, 2072 through June 30, 2073 (2072-73); July 7, 2073 through June 30, 2074 (2073-74); and, July 7, 2074 through June 30, 2075 (2074-75).**

A. **FIXED HOURLY RATE**, per Vehicle Revenue Hour:

- \$35.131 for CITY fixed route and VineLine/DAR during 2012-13.
- \$36.244 for CITY fixed route and VineLine/DAR, during 2013-14.
- \$37.230 for CITY fixed route and VineLine/DAR, during 2014-15.

In the event CITY exercises any option year(s) allowed under this AGREEMENT (Section 11.3), the fixed hourly rate shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.

Vehicle Revenue Hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers. This means from the first scheduled pick up time point to the last scheduled time point. For fixed route services, Vehicle Revenue Hours are defined as the scheduled hours of service, as set forth in the current "GrapeLine Fixed Route Maps and Bus Schedules", which is available upon CONTRACTOR'S request from CITY, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes as specifically authorized by the CITY under Article 6 of this AGREEMENT.

For Dial-A-Ride and VineLine ADA paratransit service, Vehicle Revenue Hours are defined as the time from when a vehicle makes its first pick up through the time of its last drop off, regardless of whether the first pick-up is a no-show. "No-show" is defined when a passenger reserves a ride but does not meet the vehicle at the scheduled time and in accordance with CITY'S DAR/ML Rider's Guide.

Vehicle Revenue Hours shall specifically exclude deadhead hours, including time for travel to and from storage facilities, changing routes, downtime for road calls, road tests, fueling, vehicle inspections, driver training, and driver lunches and rest breaks but shall include layover time.

The fixed hourly rates specified herein shall compensate CONTRACTOR for all fixed hourly rate cost elements detailed in CONTRACTOR'S Operations Service Proposal, which is attached hereto as Exhibit H and is incorporated herein by this reference.

B. **FIXED MONTHLY RATE**

- \$43,586.79 per service month during 2012-2013.
- \$45,386.41 per service month during 2013-2014.
- \$46,584.02 per service month during 2014-2015.

In the event CITY exercises any option year(s) allowed under this AGREEMENT (Section 11.3), the fixed hourly rate shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.

9.2 Invoices; Payment

On or before the fifth day of each month, CONTRACTOR shall submit an invoice to CITY, Attention: Transportation Manager, itemizing CONTRACTOR'S full and complete performance under this AGREEMENT for the previous one-month period. Invoices shall be in such form and shall incorporate such supporting documentation as CITY may from time to time require.

All payments by CITY shall be made in arrears after the service has been provided by CONTRACTOR. CITY shall pay CONTRACTOR'S invoice within 30 days following receipt of such invoice. If CITY disputes any item on an invoice for a reasonable cause, CITY may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for the disputed item(s) shall be stated in writing by CITY and sent to CONTRACTOR within fifteen (15) working days after receipt of invoice by CITY. CONTRACTOR and CITY shall then resolve payment disputes pursuant to Section 15.13 herein.

9.3 Greyhound Commission

In accordance with the Scope of Work, the CONTRACTOR shall staff the Greyhound ticket sales counter (currently shared with CITY sales counter and transit service duties) during regularly posted lobby hours. CITY shall provide ticket commission (currently 83.3%) to CONTRACTOR from Greyhound commission sales. CONTRACTOR shall submit an invoice to CITY for Greyhound commission sales within five (5) business days after receipt of amount for Greyhound commission sales.

9.4 Failure to Perform

CITY recognizes that the operation of a public transit service is subject to circumstances and variables beyond the control of CONTRACTOR. However, a properly run service will take steps to reasonably accommodate such circumstances without compromising the safety or reliability of the service.

CITY and CONTRACTOR will monitor service performance of the operation to assure that strict adherence of routes and schedules are being maintained. If performance is found to be substandard, CITY may request, in writing, adequate assurance of performance as defined in the Scope of Work (Exhibit A).

CONTRACTOR understands that continual substandard performance, including, but not limited to service runs departing ahead of schedule, missed service runs, service runs departing scheduled stops fifteen minutes or more after the scheduled time, frequent accidents, safety violations, frequent vehicle failure, frequent public complaints regarding driver behavior, or dirty vehicles are grounds for termination of this AGREEMENT.

Penalties for Non Compliance and Performance of this AGREEMENT will be assessed in accordance with the Scope of Work. CITY will deduct penalty assessments from monthly payments by CITY to CONTRACTOR.

ARTICLE 10 - OPERATING REVENUES

All operating revenues collected by CONTRACTOR are the property of CITY. For purposes of this AGREEMENT, operating revenues shall include, but are not necessarily limited to, farebox receipts, pass and ticket sales revenue, and advertising revenues. CONTRACTOR shall be

responsible for handling farebox receipts, and pass and ticket sales revenues in the manner provided for in CONTRACTOR'S Scope of Work, attached hereto as Exhibit A, and as necessary for CITY to meet the requirements of State and federal funding sources.

ARTICLE 11 - TERM OF AGREEMENT

11.1 Base Term

This AGREEMENT shall become effective July 1, 2012 and shall continue in full force and effect through June 30, 2015 unless earlier terminated as herein provided.

11.2 Month-to-Month Extensions

Upon completion of the full term of this AGREEMENT, CITY at its sole discretion may extend the term of this AGREEMENT on a month-to-month basis up to a maximum of three (3) months. CITY shall notify CONTRACTOR of such extensions at least thirty (30) days prior to the termination date of this AGREEMENT. The compensation rates in effect during the last monthly period of the full term of this AGREEMENT shall remain in effect and be applicable to any extensions.

11.3 Option Term

In consideration of this AGREEMENT, CONTRACTOR hereby grants the below options, exercisable in writing at CITY'S sole election, any time on or before the date specified herein and as follows:

- A. Description - CITY may extend the services provided by CONTRACTOR under this AGREEMENT for the terms specified hereafter.
- B. Price - In the event CITY exercises any option year(s) allowed under this AGREEMENT, rates shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.
- C. Option Exercise Date - On or before April 1, 2015 for an initial one (1)-year extension, and on or before April 1, 2016 for a second 1-year extension.
- D. Term - Two (2) one (1)-year extensions, July 1, 2015 through June 30, 2016, and July 1, 2016 through June 30, 2017.

It is mutually understood and agreed by the PARTIES that all work performed and services provided under the exercised option shall be in strict compliance with all of the requirements of this AGREEMENT as such may be amended from time to time, in writing, by mutual AGREEMENT of the PARTIES.

It is mutually understood and agreed that CITY is under no obligation whatsoever to exercise an option and that no representations have been made by CITY committing it to such exercise. The exercise of an option may be made by amendment of this AGREEMENT. Should CITY elect to exercise an option, upon CONTRACTOR'S acceptance of CITY's election to exercise

the option herein described, the PARTIES shall execute a written amendment to this AGREEMENT.

ARTICLE 12 – CITY ACCESS TO VEHICLES

CITY shall be permitted access to all vehicles and equipment identified in Exhibit TBD during the hours of operation and at all other times which may be acceptable to CONTRACTOR for the purpose of conducting inspections, surveys, maintenance, or related activities as CITY may deem necessary for the proper administration of the provisions of this AGREEMENT. Exhibit TBD is attached hereto and incorporated by this reference.

ARTICLE 13 - COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

This AGREEMENT is financed in part with funding received under Section 5307 of the Federal Transit Administration (“FTA”). All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal laws and requirements including, but not limited to:

13.1 Drug and Alcohol Testing

CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 U.S.C. §5331 and 49 Code of Federal Regulations (“CFR”) Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. CONTRACTOR further agrees further to certify annually its compliance with Parts 653 and 654 on or before March 15 and to submit the Management Information System (MIS) reports on or before March 15 to the CITY Transportation Manager. To certify compliance CONTRACTOR shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative AGREEMENTs,” which is published annually in the Federal Register.

13.2 Buy America Requirements- Not Applicable

13.3 Charter Bus Requirements

CONTRACTOR agrees to comply with 49 U.S.C. §5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR Part 604.9. Any charter service provided under one of the exceptions must be “incidental” (i.e., it must not interfere with or detract from the provision of mass transportation).

13.4 School Bus Requirements

Pursuant to 49 U.S.C. §5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

13.5 Energy Conservation Requirements

CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13.6 Clean Water Requirements

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq. CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed *in whole* or in part with Federal assistance provided by FTA.

13.7 Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601, et seq., as amended, contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any CITY, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13.8 Federal Changes

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the AGREEMENT (Form FTA MA (18) dated October, 2011) between CITY and FTA, as they may be amended or promulgated from time to time during the term of this AGREEMENT. CONTRACTOR'S failure to so comply shall constitute a material breach of this AGREEMENT.

13.9 Clean Air

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13.10 Recycled Products

Recovered Materials – CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6962, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

13.11 No Government Obligation to Third Parties

No Obligation by the Federal Government.

- A. CITY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the this AGREEMENT, absent the express written consent by the Federal Government, the Federal Government is not a party to this AGREEMENT and shall not be subject to any obligations or liabilities to CITY, CONTRACTOR, or any other party (whether or not a party to this AGREEMENT) pertaining to any matter resulting from this AGREEMENT.
- B. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13.12 Program Fraud and False or Fraudulent Statements and Related Acts

- A. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq., and United States Department of Transportation ("U.S. DOT) regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this AGREEMENT. Upon execution of this AGREEMENT, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this AGREEMENT or the FTA assisted project for which this work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.
- B. CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with this AGREEMENT that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C §1001 and 49 U.S.C. §5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13.13 Privacy Act

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this AGREEMENT.
- B. CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

13.14 Civil Rights Requirements

The following requirements apply to this AGREEMENT:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this AGREEMENT:
 - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the performance of this AGREEMENT. CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

C. CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13.15 Transit Employee Protective Agreements

A. CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

- (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work set forth in this AGREEMENT in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this AGREEMENT and to meet the employee protective requirements of 49 U.S.C. §5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on this AGREEMENT. CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. However, the requirements of this subsection (1), do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. §5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. §5311. Alternate provisions for those projects are set forth in subsections (2) and (3c) of this clause.
- (2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If this AGREEMENT involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. §5333(b) are necessary or

appropriate for the state and the public body subrecipient for which work is performed on this AGREEMENT, CONTRACTOR agrees to carry out the performance of this AGREEMENT in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

13.16 Disadvantaged Business Enterprises (DBE)

- A. This AGREEMENT is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. CITY has not established a specific DBE goal for this AGREEMENT, however, CONTRACTORS are encouraged wherever possible to include DBE owned and operated sub contractors.
- B. The 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 this DOT-assisted AGREEMENT. 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 CITY deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. CONTRACTOR is required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. CONTRACTOR is required to pay its subcontractors performing work related to this AGREEMENT for satisfactory performance of that work no later than 30 days after CONTRACTOR'S receipt of payment for that work from CITY. In addition, CONTRACTOR may not hold retainage from its subcontractors.
- E. CONTRACTOR must promptly notify CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. CONTRACTOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of CITY.

13.17 Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by

reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause CITY to be in violation of the FTA terms and conditions.

13.18 Access to Records and Reports

CONTRACTOR agrees to provide CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his/her authorized representatives, including any PMO Contractor, access to CONTRACTOR'S records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

CONTRACTOR agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than three (3) years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case CONTRACTOR agrees to maintain same until CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

13.19 Suspension and Debarment

This AGREEMENT is a covered transaction for purposes of 49 CFR Part 29. As such, CONTRACTOR is required to verify that CONTRACTOR, nor any of its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by CITY. If it is later determined that CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13.20 Access Requirements for Persons with Disabilities

CONTRACTOR agrees to comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. 12101 et. seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 49 U.S.C. 5301(d); and all regulations promulgated to implement the ADA and Section 504 of the Rehabilitation Act of 1973, as amended, as may be applicable to CONTRACTOR.

13.21 Alcohol Abuse

To the extent CONTRACTOR or any subcontractor at any tier, or their employees, perform a safety-sensitive function under this AGREEMENT, CONTRACTOR agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with 49 U.S.C. 5331, and FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R., Part 654.

13.22 Fly America

CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provides that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, as appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

13.23 Prompt Payment

- A. Prompt Progress Payment to Subcontractors Attention is directed to the provisions in Federal Regulations (49 CFR 26.29) concerning payment to subcontractors. CONTRACTOR shall make prompt and regular incremental acceptances of portions, as determined by CITY of the contract work and pay retainage to the prime contractor based on these acceptances.
- B. Prompt Payment of Payment of Withheld Funds to Subcontractors CONTRACTOR shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by CITY. Federal Regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with CITY'S prior written approval. Any violation of this provision shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code.

This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient

subcontractor performance; and/or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors

13.24 Contract Work Hours and Safety Standards Act

CONTRACTOR agrees to comply, and assures the compliance of each third party contractor and each subcontractor at any tier, during the term of this AGREEMENT, with the following employee protection requirements for contract employees.

- A. Overtime requirements No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- B. Violation: liability for unpaid wages; liquidated damages In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by any contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.
- D. Subcontracts The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 14 - TERMINATION

- A. Termination for Convenience CITY may terminate this AGREEMENT, in whole or in part, at any time by written notice to CONTRACTOR when it is in CITY'S best interest. CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to CITY to be paid to CONTRACTOR. If CONTRACTOR has any

property in its possession belonging to CITY, CONTRACTOR will account for the same, and dispose of it in the manner CITY directs.

- B. Termination for Default If CONTRACTOR fails to perform in the manner called for in this AGREEMENT, or if CONTRACTOR fails to comply with any other provisions of this AGREEMENT, CITY may terminate this AGREEMENT for default. Termination shall be effected by serving a notice of termination on CONTRACTOR setting forth the manner in which CONTRACTOR is in default. CONTRACTOR will only be paid the contract price for services performed in accordance with the manner of performance set forth in this AGREEMENT.

If it is later determined by CITY that CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of CONTRACTOR, CITY, after setting up a new delivery of performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- C. Opportunity to Cure CITY in its sole discretion may, in the case of a termination for breach or default, allow CONTRACTOR an appropriate period of time, to be determined in the sole discretion of CITY, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If CONTRACTOR fails to remedy to CITY'S satisfaction the breach or default of any of the terms, covenants, or conditions of this AGREEMENT within ten (10) days after receipt by CONTRACTOR of written notice from CITY setting forth the nature of said breach or default, CITY shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

- D. Waiver of Remedies for any Breach In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by CITY shall not limit CITY'S remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

- E. Termination for Convenience CITY, by written notice to CONTRACTOR, may terminate this AGREEMENT, in whole or in part, when it is in CITY'S interest. If this AGREEMENT is terminated, CITY shall be liable only for payment under the payment provisions of this AGREEMENT for services rendered by CONTRACTOR before the effective date of termination.

- F. Termination for Default If CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this AGREEMENT or any extension thereof, or if CONTRACTOR fails to comply with any other provision of this AGREEMENT, CITY may terminate this AGREEMENT for default. CITY shall terminate by delivering to CONTRACTOR a written Notice of Termination specifying the nature of the default. CONTRACTOR will only be paid the contract price for services performed in accordance with the manner or performance set forth in this AGREEMENT.

If, after termination for failure of CONTRACTOR to fulfill its obligations under this AGREEMENT, it is determined that CONTRACTOR was not in default, the rights and

obligations of the PARTIES shall be the same as if the termination had been issued for the convenience of CITY.

ARTICLE 15 - GENERAL PROVISIONS

15.1 Conflict of Interest

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service required to be performed under this AGREEMENT. CONTRACTOR further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by CONTRACTOR.

15.2 Conflict of Transportation Interests

CONTRACTOR shall not divert any revenues, passengers or other business from CITY to any taxi or other transportation operation of CONTRACTOR.

15.3 Conflicting Use

CONTRACTOR shall not use any vehicle, equipment, personnel or other facilities which are dedicated to CITY for performing services under this AGREEMENT for any use whatsoever other than provided for in this AGREEMENT without the prior written approval of CITY.

15.4 Audit; Retention of Records

CONTRACTOR shall allow authorized representatives of CITY, the U.S. Department of Transportation, the Comptroller General of the United States, and the California State Controller's Office to inspect and audit all data and records of CONTRACTOR relating to performance under this AGREEMENT. Such audit shall be allowed upon reasonable notice to CONTRACTOR. Further, CONTRACTOR shall maintain all required records for three (3) years after final payment under this AGREEMENT and until all other pending matters are closed.

15.5 Compliance with Laws, Rules, Regulations

All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal, state, or local statutes, and any rules or regulations promulgated thereunder.

CONTRACTOR shall pay all taxes required to be paid by it by any applicable federal, state, or local statute, including the Business License Tax levied by CITY. Further, CONTRACTOR shall secure, on its own behalf, or on behalf of CITY if requested, any and all licenses and permits required by law to perform the services set forth in Exhibit A, Scope of Work. CONTRACTOR shall assure that all of its employees operating CITY vehicles possess a valid, current Class B California Driver License with appropriate endorsements.

CONTRACTOR shall not be required to obtain licenses for CITY owned or leased vehicles, for the CITY-provided facility, or any other CITY-provided equipment.

15.6 Liaison

Contractor shall assist and cooperate with CITY in meeting the objectives of providing quality public transportation services. CONTRACTOR shall perform close liaison activities, coordination and cooperation with CITY on matters related to transit operations, monitoring, reporting and service performance measurements.

15.7 Service Performance Measures

CITY and CONTRACTOR agree to a system of Service Performance Measures (Assessments and Incentives) included in Exhibit A, Scope of Work, to ensure the performance required under this AGREEMENT. CITY will deduct and/or add assessment and incentive amounts, as set forth in the Scope of Work, to monthly payments by CITY to CONTRACTOR.

15.8 Stop-Work

CITY may stop work on its transportation system upon forty-eight (48) hours of written notice to CONTRACTOR. CITY shall be liable for all relevant costs defined under Section 9 incurred prior to the stop-work period and for restart, if any.

15.9 Sale or Transfer

CONTRACTOR agrees that it will not sell, assign or transfer in whole or in part any right, title or interest it possesses by reason of this AGREEMENT to any other person or entity without first obtaining the written consent of CITY to such sale, assignment, or transfer. In the event of any violation of this Section 14.9, CITY may immediately terminate this AGREEMENT.

15.10 Binding

This AGREEMENT shall be binding on the assigns, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

15.11 Severability

In the event any provision of this AGREEMENT is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of this AGREEMENT, and each provision of this AGREEMENT will be and is deemed to be separate and severable from each other provision.

15.12 Waiver/Jurisdiction/Venue

Neither CITY'S review, approval, or acceptance of payment for the services required under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT, and CONTRACTOR shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONTRACTOR negligent act, error or omission in the performance of any of the services furnished under this AGREEMENT. The PARTIES agree that CITY shall have the final authority to require the discharge by CONTRACTOR of any employee of CONTRACTOR performing services under this AGREEMENT. The waiver by CITY of any breach of any term, covenant, condition or AGREEMENT herein contained shall not be deemed to be a waiver of any subsequent breach of the same or of a breach of any other term, condition or agreement herein contained.

This AGREEMENT shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this AGREEMENT shall be venued with the San Joaquin County Superior court.

15.13 Dispute Resolution - Mediation

CITY and CONTRACTOR agree to mediate any dispute or claim arising between them out of this AGREEMENT or any resulting transaction before resorting to court action. Mediation is a process by which parties attempt to resolve a dispute or claim by submitting it to an impartial, neutral mediator, who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. Mediation fees, if any, shall be divided equally among the parties involved. Evidence of anything said, any admission made, and any document prepared, in the course of the mediation, shall not be admissible in evidence, or subject to discovery in any court action, pursuant to California Evidence Code §1152.5. IF ANY PARTY COMMENCES COURT ACTION BASED ON A DISPUTE OR CLAIM TO WHICH THIS PARAGRAPH APPLIES WITHOUT FIRST ATTEMPTING TO RESOLVE THE MATTER THROUGH MEDIATION, THEN IN THE DISCRETION OF THE COURT, THAT PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES, EVEN IF THEY WOULD OTHERWISE BE AVAILABLE TO THAT PARTY IN ANY SUCH COURT ACTION.

15.14 Attorney's Fees

In the event any dispute between the PARTIES arises under or regarding this AGREEMENT, the prevailing party in any litigation of the dispute shall be entitled to an award of reasonable attorney's fees and costs incurred therein from the party that does not prevail, as determined by the San Joaquin County Superior Court.

15.15 Notice

All notices hereunder and communications with respect to this AGREEMENT shall be effected upon the mailing thereof of registered or certified mail return receipt requested and addressed as follows:

FOR CONTRACTOR:

MV Transportation, Inc.
4620 Westamerica Drive
Fairfield, CA 94534

ATTN: WC Pihl

FOR CITY:

CITY OF LODI
221 W. Pine Street
(P.O. Box 3006)
Lodi, CA 95240 (95241-1910)
ATTN: Public Works Director

15.16 Time of Performance

Time is of the essence in the performance of services under this AGREEMENT and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this AGREEMENT. CONTRACTOR shall commence performance on the Effective Date. Any services for which times for performance are not specified in this AGREEMENT shall be commenced and completed by CONTRACTOR in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONTRACTOR. CONTRACTOR shall submit all requests for time extensions to CITY's Transportation Manager in writing.

15.17 City Business License

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to obtain a city business license and CONTRACTOR agrees to secure such license prior to commencement of any work under this AGREEMENT, pay the appropriate fees, and keep such license in good standing at all times during the term of this AGREEMENT.

15.18 Shortages and Delays

CONTRACTOR shall not be held responsible for losses, delays, failure to perform, or excess costs caused by events beyond the control of CONTRACTOR. Such events may include, but are not limited to, the following: Acts of God (fire, epidemics, earthquake, flood, or other natural disaster); acts of government or public, riots, war, civil disorder, strikes, labor disputes or fuel shortages. However, CONTRACTOR shall not receive payment for the revenue vehicle mileage rate and only the mutually agreed direct and indirect monthly fee during the period of time that service is not provided. CONTRACTOR also grants CITY the right to provide these services through other means on a temporary basis should CONTRACTOR be unable to perform said services.

Section 15.19 Captions

The captions of the sections and subsections of this AGREEMENT are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 15.20 Integration and Modification

This AGREEMENT represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may not be modified or altered except in writing, signed by both the PARTIES.

Section 15.21 Contract Terms Prevail

All exhibits, the Request for Proposal dated February 1, 2012 (RFP) and this AGREEMENT are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this AGREEMENT, the attached exhibits, or the RFP, the terms of this AGREEMENT shall prevail.

Section 15.22 Authority

The undersigned hereby represent and warrant that they are authorized by the party they purport to represent to execute this AGREEMENT.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this AGREEMENT as of the date first above written.

CITY OF LODI, a municipal corporation

CONTRACTOR

By: _____
KONRADT BARTLAM
City Manager

By: _____
Name:
Title:

ATTEST:

RANDI JOHL
City Clerk

APPROVED AS TO FORM:
D.STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

By: _____ 

**Exhibits to be attached
prior to execution of contract**

RESOLUTION NO. 2012-36

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING CONTRACT FOR FIXED ROUTE,
ADA PARATRANSIT, AND DEMAND RESPONSE
OPERATIONS FOR FISCAL YEARS
2012/13 TO 2014/15

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed proposals were received and opened on March 12, 2012, for fixed route, ADA paratransit, and demand response operations, described in the request for proposals therefore distributed on February 1, 2012; and

WHEREAS, said proposals have been compared, checked, tabulated, and evaluated by an evaluation committee and a report thereof filed with the City Manager as follows:

<u>Proposer</u>	<u>Rank</u>
MV Transportation, Inc.	1
Storer Transit Systems	2

WHEREAS, the evaluation committee unanimously recommends award of the contract for fixed route, ADA paratransit, and demand response operations to MV Transportation, Inc., of Fairfield, California.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for fixed route, ADA paratransit, and demand response operations for Fiscal Years 2012/13 to 2014/15 to MV Transportation, Inc., of Fairfield, California, in the amount of \$1,682,365 for Fiscal Year 2012/13; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the contract and up to two one-year contract extensions.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-36 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS - Hansen, Johnson, Nakanishi, and Mayor Mounce

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - Katakian

ABSTAIN: COUNCIL MEMBERS - None


RANDI JOHL
City Clerk

CITY COUNCIL

JOANNE L. MOUNCE, Mayor
ALAN NAKANISHI,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
PHILKATZAKIAN

CITY OF LODI

PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6706
FAX (209) 333-6710
EMAIL pwdept@lodi.gov
http://www.lodi.gov

KONRADT BARTLAM
City Manager
RANDI JOHL
City Clerk
D. STEVEN SCHWABAUER
City Attorney
F. WALLY SANDELIN
Public Works Director

April 11, 2012

MV Transportation, Inc.
Attn: Mr. Pihl
4620 Westamerica Drive
Fairfield, CA 94534

MV Transportation, Inc.
Attn: Mr. Stewman
1944 Williams Street
San Leandro, CA 94577

MV Transportation, Inc.
Attn: Mr. Kohlhepp
24 S. Sacramento Street
Lodi, CA 95240

SUBJECT: Adopt Resolution Authorizing City Manager to Execute Contract and Contract Extensions for Fixed Route, ADA Paratransit, and Demand Response Operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation, Inc., of Fairfield (\$1,682,365 for Fiscal Year 2012/13)

Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, April 18, 2012. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Randi Johl, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Paula Fernandez, Transportation Manager/Senior Traffic Engineer, at (209) 333-6800, extension 2667.



for:

F. Wally Sandelin
Public Works Director

FWS/pmf

Enclosure

cc: City Clerk