

## REPORT TO CITY COUNCIL

**DATE: DECEMBER 11, 2023**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: JESSICA FORTE, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER**

**SUBJECT: REQUEST TO APPROVE THE FIRST AMENDMENT TO THE PROFESSIONAL CONSULTANT SERVICES AGREEMENT WITH LARRY WALKER ASSOCIATES RELATED TO THE MALIBU CREEK WATERSHED COORDINATED INTEGRATED MONITORING PROGRAM**

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The City of Agoura Hills (City) currently administers the compliance monitoring program on behalf of the Malibu Creek Watershed (MCW) group, which consists of the cities of Calabasas, Hidden Hills, and Westlake Village, County of Los Angeles, and the Los Angeles County Flood Control District.

On January 21, 2016, the Los Angeles Regional Water Quality Board approved the Coordinated Integrated Monitoring Program (CIMP) which outlines the group's approach to meeting the following primary objectives:

- Assess the chemical, physical, and biological impacts of discharges from the Municipal Separate Storm Sewer Systems (MS4) on receiving waters.
- Assess compliance with receiving water limitations and water quality-based effluent limitations established to implement TMDL wet weather and dry weather waste load allocations.
- Characterize pollutant loads in MS4 discharges.
- Identify sources of pollutants in MS4 discharges.
- Measure and improve the effectiveness of pollutant controls implemented under the National Pollutant Discharge Elimination System (NPDES) Permit.

The City Council approved an agreement with Larry Walker Associates for professional consulting services related to the Malibu Creek Watershed CIMP on June 26, 2019. The agreement is currently set to expire on December 31, 2023. As such, the MCW group is recommending that the agreement with Larry Walker Associates be extended through December 31, 2027. The scope of work and terms of the agreement will remain the same as previously approved with the exception of an optional task to update the MCW Watershed Management Program in the event there are changes to water quality and/or regulations.

The proposed amendment has been reviewed and approved as to form by the City Attorney.

### **FISCAL IMPACT**

The City Council approved the second amendment to the Memorandum of Understanding (MOU) with the other watershed agencies on June 28, 2023, which included estimated costs for monitoring and reporting for a total of four (4) years. There is no additional fiscal impact to the City Council 2023/2024 adopted Budget as funds were appropriated for the City's fair-share cost in the Public Works Department's NPDES Compliance Account, 010-4525-5520.43.

### **RECOMMENDATION**

Staff respectfully recommends the City Council approve the First Amendment to the Professional Consultant Services Agreement with Larry Walker Associates for professional consulting services related to the Malibu Creek Watershed Coordinated Integrated Monitoring Program.

Attachment: Professional Consultant Services Amendment

AGREEMENT FOR CONTRACTOR SERVICES  
WITH THE CITY OF AGOURA HILLS

NAME OF CONTRACTOR:	City of Thousand Oaks
RESPONSIBLE PRINCIPAL OF CONTRACTOR:	Attn: Grahame Watts
CONTRACTOR'S ADDRESS:	City of Thousand Oaks 2100 E. Thousand Oaks Blvd. Thousand Oaks, CA 91362
CITY'S ADDRESS:	City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301 Attn: City Manager
PREPARED BY:	Stephanie Pozos
COMMENCEMENT DATE:	January 16, 2024
TERMINATION DATE:	July 30, 2025
CONSIDERATION:	\$380,000

**AGREEMENT FOR TRANSIT SERVICES  
BETWEEN THE CITY OF THOUSAND OAKS  
AND CITY OF AGOURA HILLS**

THIS AGREEMENT, is made and entered into this 16th day of January, 2024, by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereinafter referred to as "City"), and **CITY OF AGOURA HILLS**, a municipal corporation (hereinafter referred to as "Agoura Hills"). Agoura Hills and City agree as follows:

**1. RETENTION OF CITY**

Agoura Hills hereby engages City, and City hereby accepts such engagement, to perform the services described in Section 2. City warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

The services to be performed by City are as follows and are more particularly described in the Scope of Work, attached hereto as Exhibit "A": City shall operate and manage Senior and Disabled Demand Response (DAR) transportation services for City of Agoura Hills, in conjunction with City's public transportation program and through its contracted transportation operator, MV Transportation, Inc, Contract 12072-2019, attached as Exhibit "C."

**3. COMPENSATION AND PAYMENT**

**(a) Compensation.** Agoura Hills shall compensate City for the service performed under this Agreement in accordance with the Schedule of Fees, attached as Exhibit "B". The Not-To-Exceed Amount of the contract is \$380,000.

**(b) Invoice and Payment.** All payments shall be made within 30 days after receipt of written verification from the City of the actual compensation earned, in a form satisfactory to Agoura Hills. City shall address invoices to Agoura Hills as follows:

City of Agoura Hills  
29900 Ladyface Court  
Agoura Hills, CA 91301

**(c) Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed to upon mutual written agreement between the City and Agoura Hills. No liability or right to compensation

for extra services shall exist without such a written agreement in form acceptable to the parties. Rates for extra services shall be set by mutual agreement of the parties.

#### **4. CITY PROJECT MANAGER**

The services to be performed by City shall be accomplished under the general direction of, and in coordination by, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is, Grahame Watts, Emergency Management and Transit Administrator.

#### **5. TERM**

A. On July 1, 2019, City and Agoura Hills entered into that certain Agreement entitled "Agreement for Contractor Services between the City of Agoura Hills and City of Thousand Oaks". The parties intend to replace the 2019 Agreement (12224-2019), labeled as "Attachment 1" of this agreement, with this Agreement as of the date first written below and hereby terminate the 2019 Agreement and amendments related to said 2019 Agreement.

B. The term of this Agreement shall commence on January 16, 2024, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2025, unless sooner terminated pursuant to the provisions herein.

#### **6. NO ASSIGNMENT**

This Agreement is not assignable by City without Agoura Hills's prior consent in writing.

#### **7. HOLD HARMLESS AND INDEMNITY**

City shall defend, indemnify and hold harmless Agoura Hills and their elected officials, officers, employees, servants, agents and designated volunteers (collectively "Indemnitees") from and against all claims, demands, lawsuits, judgments, damages, losses, injuries or liability, including, without limitation monetary or property damage, personal injury or wrongful death, and costs or expenses, including attorneys' fees and costs of defense (collectively, "Claims"), whether actual, alleged or threatened, which arise solely out of, the negligent acts or omissions, or willful misconduct, of City, its elected officials, officers, employees, in the performance of this Agreement.

City shall require its contracted transit operator to similarly agree to defend, indemnify and hold harmless Agoura Hills Indemnitees for the acts or omissions of the contracted transit operator or its officers, agents, employees, contractors, or consultants.

Agoura Hills shall defend, indemnify and hold harmless City, its elected officials, officers, employees, servants, agents, designated volunteers from and

against all claims, demands, lawsuits, judgments, damages, losses, injuries or liability, including, without limitation monetary or property damage, personal injury or wrongful death, and costs or expenses, including attorneys' fees and costs of defense (collectively, "Claims"), whether actual, alleged or threatened, which arise solely out of, the negligent acts or omissions, or willful misconduct, of Agoura Hills, their elected officials, officers, employees, in the performance of this Agreement.

## **8. MINIMUM SCOPE AND LIMIT OF INSURANCE**

City shall, at all times during the term of this Agreement, require City's contracted transit operator to carry the insurance specified in Section 9 ("INSURANCE") of the Agreement for Professional Services Between the City and Contract Operator, Contract No. 12072-2019, dated May 21, 2019, incorporated here by this reference. City shall require City's contracted transit operator to name Agoura Hills and its elected officials, officers, employees, agents, and designated volunteers as additional insured.

City shall provide Agoura Hills verification of self-insurance with the following limits:

- a) General Liability - \$1,000,000 per occurrence, for property damages and bodily injuries
- b) Automobile Liability (Any Auto) - \$1,000,000 per accident for bodily injuries and property damage

## **9. RELATION OF THE PARTIES**

The relationship of the parties to this Agreement shall be that of independent contractors and in no event shall City be considered an officer, agent, servant, or employee of Agoura Hills. City and its contracted transit provider shall be solely responsible for any workers' compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work, respectively.

## **10. TERMINATION**

Any party, may, upon sixty (60) calendar day's written notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, City shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by Agoura Hills to City within 30 days following submission of a final statement by City.

**11. CORRECTIONS**

City shall correct, at its expense, all errors in the work which may be disclosed during Agoura Hill's review of City's work for which City has received written notification.

**12. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by City of the final payment made under this Agreement shall operate as and be a release of Agoura Hills from all claims and liabilities for compensation to City for anything done, furnished, or relating to City's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within five (5) calendar days of the receipt of that check, whichever occurs first.

**13. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified.

**14. NON-APPROPRIATION OF FUNDS**

Payments due and payable to City for current services are within the current budget and within an available, unexhausted, and unencumbered appropriation of Agoura Hills funds. In the event Agoura Hills has not appropriated sufficient funds for payment of City services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

**15. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES**

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only

and in no other way define, limit, or describe the scope or intent of any provision or section of the Agreement. This Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering or services and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

**16. MITIGATION OF DAMAGES**

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**17. TAXPAYER IDENTIFICATION NUMBER**

City shall provide Agoura Hills with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as most recently issued by the Internal Revenue Service.

**18. MODIFICATION/AMENDMENT OF AGREEMENT**

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval by the parties.

**19. AUTHORIZATION**

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

**20. PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**21. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:



TO CITY:                   Grahame Watts  
                                  City of Thousand Oaks  
                                  2100 E. Thousand Oaks Boulevard  
                                  Thousand Oaks, CA 91362

TO CITY:                   City of Agoura Hills  
                                  30001 Ladyface Court  
                                  Agoura Hills, CA 91301  
                                  Attn: City Manager

**22.   SIGNATURES**

**(a) Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

**(b) Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e., files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

**(c) Digital/Electronic Signatures.** This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first written above.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
Illece Buckley Weber, Mayor

**ATTEST:**

\_\_\_\_\_  
Kimberly M. Rodrigues, City Clerk

*Date Approved by City Council:*

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APPROVED AS TO FORM:

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Candice K. Lee, City Attorney

**CITY OF THOUSAND OAKS**

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, Mayor

**ATTEST:**

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Laura B. Maguire, City Clerk

**APPROVED AS TO  
ADMINISTRATION:**

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Andrew P. Powers, City Manager

**APPROVED BY DEPARTMENT  
HEAD:**

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Clifford G. Finley  
Public Works Director

**APPROVED AS TO FORM:**  
Office of the City Attorney

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Tracy Friedl  
Assistant City Attorney

*The presence of electronic signature certifies that the foregoing is a true and correct copy as approved by the City of Thousand Oaks City Council on the date cited above.*

## EXHIBIT A

### SCOPE OF WORK

#### **City Duties and Responsibilities – Operations**

City accepts shall perform, through the use of City's contracted transit operator, the services set forth below in connection with the operation and management of Senior and Disabled Dial-a-Ride (DAR) services.

Except as specifically noted below, or where not applicable in the scope of the services as described above, the terms of City's contract with the transit operator shall describe and set forth the standards by which services shall be provided under this Agreement. To the extent of any conflict between the terms of City's contract with the transit operator and the terms of this Agreement, the terms of this Agreement shall control.

#### **1. Operations:**

City shall provide, through its contracted transit operator, operations management at a level sufficient to oversee the performance of the services required under this Agreement.

#### **2. Hours:**

City shall provide DAR services to Agoura Hills residents during the hours of 5:00 a.m. to 8:00 p.m. on weekdays, and 7:00 a.m. to 8:00 p.m. on weekends or other hours as Agoura Hills requests, so long as the hours are within the ranges specified above. Agoura Hills agrees that City may, at its sole discretion, extend or adjust the operating hours for City's local DAR services. City shall provide Agoura Hills with 30 days' advance written notice prior to adjusting operating hours for City's local DAR service. Within 15 days of receipt of City's notice, Agoura Hills shall respond to City in writing confirming whether Agoura Hills's hours for DAR services will also change to match City's adjusted operating hours for its local DAR services. Agoura Hills shall not request local DAR service hours in excess of City's hours for its local DAR services.

#### **3. Eligibility:**

City shall provide DAR services to Agoura Hills residents and visitors who are seniors or have a disability. Agoura Hills may, at any time within the contract period, and with minimum 15 days' notice to City, convert the seniors and disabled service back to a General Public service. The minimum senior age shall be 50 and Agoura Hills will provide City with the Agoura Hills' qualification requirements for disabled service. Americans with Disabilities Act (ADA) paratransit services shall remain the responsibility of LA ACCESS, the authorized service provider for Los Angeles County including the city limits of Agoura Hills and the Los Angeles unincorporated areas immediately contiguous to the city limits serviced under this agreement.

Agoura Hills shall notify City at least 30 days in advance of requested changes to eligible locations for service but shall not authorize service in areas more than 5 miles outside the City Limits of Agoura Hills or outside the TOT local service area. City shall not provide service beyond City's local service areas for Agoura Hills residents, defined as the city limits of the cities of Thousand Oaks, Westlake Village, and Ventura County unincorporated areas of Oak Park, Newbury Park, Ventu Park, Lynn Ranch, Rolling Oaks, Hidden Valley, and Lake Sherwood. Agoura Hills shall not limit the number of rides an individual can receive in a day, week, or month except as may be required by Agoura Hills' contract with Agoura Hills of Los Angeles for unincorporated areas contiguous to the Agoura Hills' City Limits.

#### **4. Identification:**

All Agoura Hills riders covered under this Agreement ("eligible riders") shall not be required to pre-register to use the service or be required to present an identification card unless required by Agoura Hills. Prior registration to be able to use the service, if required by Agoura Hills, shall be the responsibility of Agoura Hills.

#### **5. Reservations:**

City shall provide rides on a first available and reservation basis including the use of subscriptions for regularly recurring rides. Eligible riders may reserve rides up to 14 days in advance. Eligible riders may also request rides on a first available basis, meaning the first available vehicle and driver will be dispatched to perform the ride. City shall provide eligible Agoura Hills riders with the same level of customer service and ride availability as are provided to City riders. Priority for first available rides will be based on call time, not City of origin, to ensure equal access to available rides. If capacity constraints exist, that are reasonably beyond the control of the City or its contractor, as is customary, the oldest reservation will receive priority for vehicle and driver scheduling.

Any change to City's reservation policy for DAR and ADA service shall apply to this Agreement. City shall provide Agoura Hills with 30 days' advance written notice prior to changing its reservation policy.

#### **6. Notifications:**

Agoura Hills shall be responsible for general announcements of service change in the form of press releases and printed and electronic advertisements, except in those instances where City has agreed to the responsibility in writing as an extra service as described in Section 4 of the Agreement.

#### **7. Vehicles:**

City warrants that it has sufficient vehicles in service to adequately meet eligible rider demand and provide service within the on-time performance standards described in the City's contract for Transit Operations.

## **8. Fares and Fare Collection:**

City shall collect fare for services as set by Agoura Hills.

City's contracted transit operator shall provide City with a complete accounting of collected fares. City shall credit collected fares against Agoura Hills' monthly invoice. Agoura Hills shall not be entitled to interest income earned on the deposit of fares.

The fare levied on eligible rides shall be a "flat" fee regardless of distance. Any discount fare offered to City residents shall apply to eligible Agoura Hills' riders provided all applicable eligibility requirements are met. Agoura Hills and/or the City may periodically make available discount ride tickets, free passes, and coupons to eligible riders. City shall not issue discount ride tickets, free passes, and coupons in excess of five percent of the total rides provided annually.

## **9. Literature and Electronic Information:**

City shall include in its literature, print advertisements, and electronic information processes, a description of available services covered under the terms of this Agreement.

## **10. Service Complaints:**

All service complaints originating from eligible riders shall be handled in strict accordance with City standards of response and the obligations of the City's contracted Transit Operator. In the event City is unable to satisfactorily resolve the complaint or the complaint involves an issue outside the scope of this Agreement, City shall refer the complaint to Agoura Hills for resolution. City's Title VI non-discrimination policies, Code of Passenger Conduct, and Late Cancellation and No Show policies shall apply to Agoura Hills' rides.

## **11. Optional Services:**

The following additional work, reasonably associated with like transit operations, may be included in the Scope of Services to be performed by City upon request of Agoura Hills pursuant to a written agreement and at a mutually agreed upon price. These optional services will not require a formal amendment of the Agreement:

Such optional services may be in the areas of:

- Production and distribution of marketing materials
- Completion of State and Federal Reporting
- Surveys and studies

It shall be within City's discretion to determine whether City, or one of its contractors, shall perform said services.

## EXHIBIT B

### SCHEDULE OF FEES

Billing shall be calculated on a “per-ride” basis based on a revenue hour calculation according to National Transportation Database definition of “revenue hour” as exists on July 1, 2019. In addition to revenue hour expenses, City shall bill for proportional costs of fuel, vehicle leases, vehicle maintenance. Separately, the City shall bill an annual “Management Fee” (see below). Additionally, bonus payments of up to two percent of revenue hour billings may be earned by MV Transportation Inc. for exceptional service. Bonus payment earned by contractor will be billed by City to Agoura Hills at the rate earned, 0.5 – 2.0 percent, on the same proportional basis as billing, as a separate line item.

Contract Year One (January 16, 2024 – June 30, 2024):

\$97.97 - MV billing rate per revenue hour

Per-ride costs will vary monthly based on factors such as total ridership, vehicle maintenance costs, fuel costs, and bonus payments earned by contractor. Agoura Hills shall pay the same per-ride cost (before application of fares collected) as the other participating agencies, City of Moorpark, City of Westlake Village, and County of Ventura.

Contract Year Two (July 1, 2024 – June 30, 2025):

Year one rate plus CPI adjustment of not less than three and not more than five percent. CPI will be calculated as the difference in the CPI between June of the current Agreement year and July of the previous year, all items, not seasonally adjusted, Los Angeles region, and using non-alternative method.

The number of revenue hours billed shall be determined by taking the total number of revenue hours contractor bills for Thousand Oaks Transit (local) Dial-a-Ride services in a month and applying a percentage of hours proportional to the Agoura Hills portion of rides provided to the total number of rides provided. Calculation of billable hours by percentage shall be to two decimal places.

Agoura Hills shall pay the same proportion for vehicle leases, maintenance, and fuel as for revenue hours to reach a per-ride cost. All fares collected or earned shall be applied against this cost.

Costs for fuel, vehicles leases, and maintenance shall be at “billed” charges by the contractor and/or the City’s Fleet Division including all usual and customary markups paid by the transit program. These costs are included in the per-ride cost calculation to determine the cost per ride.

Separately from per-ride costs, the City shall charge an annual Management Fee. The Management Fee shall consist of wage and benefit charges for staff management and billing, proportional shares of Maintenance and Operations costs at the Transportation Center and Municipal Service Center, Cost Allocation expenses, and Trapeze Software expenses, billed on a proportional basis by ridership and/or billed hours for all transit programs operated by Thousand Oaks Transit.

Billing of Management Fees will be done at fiscal year-end, as part of June invoicing. Costs are estimated only and are subject to change. Should the expected year-end costs exceed twenty percent of the estimate below, Agoura Hills shall be notified by City as soon as reasonably practical.

**Management Fees - FY 23-24  
(estimated)**

	<b>Rate</b>	<b>Quantity</b>	<b>Unit</b>	<b>Total Cost</b>
Transit Program Manager (1.25% FTE)	\$86.67	26	Hours	\$ 2,253.42
Accounting Specialist (1.25% FTE)	\$53.60	26	Hours	\$ 1,393.60
Maintenance & Operations (TOTC)	\$167,348	2.32%	-	\$ 3882.47
Maintenance & Operations (Misc.)	\$ 30,519	6.27%	-	\$ 1,913.54
Cost Allocation/Insurance (Other DAR Services)	\$ 52,078	47.2%	-	\$24,580.82
Trapeze Expenses	\$ 44,961	6.27%	-	\$ 2,819.05
<b>Staff and Direct Costs</b>				<b>\$36,642.90</b>

Optional Work as described in Exhibit “A” shall be charged at a mutually agreed upon price at the time the work is requested, up to a total of \$5,000 per contract year. Optional work beyond that figure will require a formal amendment of the Agreement’s not-to-exceed amount.

In the event Liquidated Damages are levied by City for failure of Contractor to meet City required Performance Measures, Agoura Hills shall be entitled to a credit on their next monthly invoice equal to their proportional share the Liquidated Damages levied and collected by the City.



## EXHIBIT C

Project Name: Transit Operations Services

### AGREEMENT FOR GENERAL SERVICES BETWEEN THE CITY OF THOUSAND OAKS AND MV TRANSPORTATION, INC.

THIS AGREEMENT, made and entered into this 21<sup>st</sup> day of May, 2019 by and between the CITY OF THOUSAND OAKS, a municipal corporation (hereinafter referred to as "City"), and MV Transportation, Inc. (hereinafter referred to as "Contractor"). City and Contractor agree as follows:

#### 1. RETENTION OF CONTRACTOR

City hereby retains Contractor, and Contractor hereby accepts such engagement, to perform the services described in Section 2. Contractor warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

#### 2. DESCRIPTION OF SERVICES

The services to be performed by Contractor are as follows and are more particularly described as set forth in the Scope of Work, attached as Exhibit "A", Operation and management of Fixed Route (Bus), Commuter Bus, Shuttle Bus, Senior Dial-A-Ride (DAR), General DAR, American with Disabilities Act (ADA) Para-transit Services and Shuttle Bus and DAR Vehicles Lease in conjunction with City's public Transportation Program, Schedule of Fees, attached as Exhibit "B", City Provided Services, attached as Exhibit "C", Performance Standards, attached as Exhibit "D", Federal Required Contract Forms, attached as Exhibit "E", and Federal Transit Administration Requirements, attached as Exhibit "F" and incorporated herein.

#### 3. COMPENSATION AND PAYMENT

(a) **Maximum.** The total compensation earned by or payable to the Contractor, by City, for any and all services under this Agreement for Year One of the Agreement (Fiscal Year 2019-2020, July 1, 2019, to June 30, 2020) shall not exceed **\$6,300,000** (herein "Year One not-to-exceed amount"). The total compensation payable to Contractor by City for each successive year of the Agreement shall not exceed a sum equal to the hourly rates on June 30 of the prior year, plus the annual percent change in the Consumer Price Index (CPI) not to exceed three percent. CPI will be calculated as the difference in the CPI between June of the current Agreement year and July of the previous Agreement year, all items, not seasonally adjusted, Los Angeles region, and using non-alternative method. In the event the CPI calculation results in a negative number, previous year's rate shall apply. CPI calculation shall not apply to vehicles lease which shall

be fixed for the Agreement term. CPI adjustment for two-year extensions shall be subject to negotiation prior to Agreement extension.

**(b) Rate.** Contractor shall be paid hourly, and with reimbursement for expenses, at the rates set forth in Contractor's Schedule of Fees, attached as Exhibit "B" and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon Contractor until June 30, 2023, except as modified by CPI adjustments as described in subsection (a) above, after which any change in said rates and expenses must be approved in writing by City's Project Manager, provided the not to exceed amount is the total compensation due Contractor for all work described under this Agreement. City is to be given 60 days' notice of any rate increase request.

In the event a local, state or federal government agency with jurisdiction over Contractor's employees orders an increase in the mandated minimum wages, payroll taxes or fringe benefits applicable to employees of Contractor that was unknown to Contractor at the signing of this Agreement, City and Contractor may renegotiate rates as specified in Exhibit B of this Agreement for Contractor's costs during the term of this Agreement or any extension thereof.

Contractor shall provide written notice to City within 60 days if this event occurs and City may retroactively amend Contractor's rates from the first day of Contractor's increased or decreased costs. In the event City or Contractor are unable to agree on new rates within 60 days of the written notice, then either party may terminate this Agreement upon 180 days' prior written notice to the other party.

**(c) Payment.** All payments shall be made within 30 days after receipt of written verification from the Contractor of the actual compensation earned, in a form satisfactory to City's Project Manager.

**(d) Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed upon only by execution of a written Amendment to this Agreement. No liability or right to compensation for extra services shall exist without such Amendment. Unless otherwise stated in the Amendment, applicable rates for extra services shall be at the rates set forth in Exhibit "B".

#### **4. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by Contractor shall be accomplished under the general direction of, and in coordination with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is, Mike Houser, Senior Transit Analyst.

City shall provide those services listed in Exhibit "C", attached hereto and incorporated herein by reference.

## 5. TERMS OF PERFORMANCE

**Non-Exclusivity.** This Agreement is non-exclusive. City reserves the rights to retain, employ, or contract with other qualified services providers during the term of this Agreement on such occasions and in such circumstances as City shall determine are appropriate.

**Ability to Perform.** Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

**Laws to be Observed.** Contractor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws as well as with Ventura County and City of Thousand Oaks ordinances, regulations and adopted codes during its performance of the work.

**Payment of Taxes.** The contract prices shall include provision for all taxes that the Contractor is required to pay. Contractor is responsible for all taxes required to be paid under this Agreement.

**Permits and Licenses.** Contractor shall procure all permits and licenses, pay all charges and fees, and give all necessary or legally required notices.

**Prevailing Wage.** Contractor may be obligated to pay prevailing wages under the California Labor Code. Contractor agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of the Contractor to be familiar with the California Labor Code, and failure or neglect of the Contractor to understand the California Labor Code shall in no way relieve Contractor from any obligations.

**Department of Industrial Relations Requirements.** The Work may be subject to the payment of not less than prevailing wages under California Labor Code Section 1770 et seq. The work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial relations pursuant to Labor Code section 1725.5.

**Safety Provisions.** Contractor shall conform to the rules and regulations pertaining to safety established by Occupational Safety & Health Administration (OSHA) and the California Division of Industrial Safety.

**Preservation of City Property.** Contractor shall provide and install suitable safeguards, approved by City, to protect City property from injury or damage. If City

property is injured or damaged as a result of Contractor's operations, it shall be replaced or restored within a reasonable time at Contractor's expense. The facilities shall be replaced or restored to a condition as good as when Contractor began work.

**Subcontractors.** Contractor shall be solely responsible for ensuring that any subcontractors used in completing tasks under the Agreement comply with all pertinent laws and regulations, including DIR registration, as well as the relevant terms of this Agreement. City shall have no obligation to monitor or oversee subcontractors.

**Immigration Act of 1986.** Contractor warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

**Contractor Non-Discrimination.** In the performance of this work, Contractor agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

**Work Delays.** Should Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at City's sole option, be extended for such periods as may be agreed upon by City and Contractor.

**Inspection.** Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of Contractor are being performed in accordance with the requirements and intentions of this Agreement. All work done, and all materials furnished, if any, shall be subject to City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.

**Audit.** Contractor shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination or expiration of this Agreement. Contractor agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Contractor shall reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more.

Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Contractor with respect to this Agreement, if allowed by this Agreement.

## **6. TERM, PROGRESS AND COMPLETION**

This Agreement shall expire on June 30, 2023, unless Contractor's authorized work assigned before the expiration of the term is not completed by that date. Additionally, the agreement provides for two (2), two-year extension options to be exercised by mutual agreement. Rates and terms of extension will be negotiated. CITY shall provide a minimum of 120 days notice in advance on current contract expiration date of intent to exercise option. If work has not been completed during the allotted Agreement period, the terms and conditions of the Agreement, including all rights and obligations, shall remain in effect and bind the parties until the work is completed.

Contractor shall not commence work on the services to be performed until (i) Contractor furnishes proof of insurance as required by paragraph 9 below, and (ii) City gives written authorization to proceed with the work provided by City's Project Manager.

## **7. NO ASSIGNMENT**

This Agreement is not assignable by Contractor without City's prior consent in writing.

## **8. HOLD HARMLESS AND INDEMNITY**

**(a) Hold Harmless for Contractor's Damages.** Contractor holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Contractor's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Contractor, to Contractor's employees, to Contractor's contractors or subcontractors, or to the owners of Contractor's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

**(b) Defense and Indemnity of Third-Party Claims/Liability.** Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, agents, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of

City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse City its costs of defense, including without limitation reasonable legal counsels' fees, expert fees and all other costs and fees of litigation. Contractor shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination or expiration of this Agreement.

Contractor's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**(c) Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

## **9. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

Coverage shall be at least as broad as:

**(a) Commercial General Liability (CGL):** Contractor shall, at Contractor's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$10,000,000 per occurrence, \$20,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including with limitation, blanket contractual liability.

(b). **Automobile Liability:** Contractor shall, at Contractor's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$15,000,000 combined single limit for each accident.

(c). **Worker's Compensation:** Contractor shall, at Contractor's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers for all work performed by Contractor, its employees, agents and subcontractors.

(d). **Sexual Misconduct Liability:** Contractor shall, at Contractor's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Sexual Misconduct Liability Insurance covering actual or alleged claims for sexual misconduct and/or molestation at least as broad as Insurance Services form CA 00 01 or the exact equivalent for all activities of Contractor arising out of or in connection with the work to be performed under this Agreement covering employer's liability limits in an amount not less than \$2,000,000 per occurrence, \$2,000,000 general aggregate and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse; molestation; harassment; mistreatment or maltreatment of a sexual nature.

If the Contractor maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Required minimum insurance limits are for the initial term of the Agreement only. City reserves the right to request higher insurance limits for any extensions of the Agreement, subject to the discretion of City's Risk Manager.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

### Additional Insured Status

City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. City's contracted agencies (cities of Moorpark, Agoura Hills, Westlake Village, County of Ventura, and ECTA member agencies) and their elected officials, officers and employees shall also be covered as additional insureds for the respective services provided by Contractor. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Contractor shall ensure that the automobile liability policy contains a provision covering City as an additional insured and shall obtain an endorsement to that effect if it does not.

### Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

### City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor, or City will withhold amounts sufficient to pay premium from Contractor's payments. In the alternative, City may cancel this Agreement.

### City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, City and Contractor may renegotiate Contractor's compensation.

### Primary and Non-Contributory Coverage

For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers.



Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it and be at least as broad as CG 20 01 04 13.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its officers, officials, employees or volunteers or shall specifically allow Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor hereby waives his own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.
- (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

### Verification of Coverage

Contractor shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

## **10. RELATION OF THE PARTIES**

The relationship of the parties to this Agreement shall be that of independent contractors and in no event shall Contractor be considered an officer, agent, servant or employee of City. Contractor shall be solely responsible for any workers' compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

## **11. TERMINATION BY CITY**

City may terminate any portion, or all of the services agreed to be performed under this Agreement by notifying Contractor in writing 60 calendar days prior to any termination. In the event of such termination, Contractor shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Contractor within 30 days following submission of a final statement by Contractor.

## **12. CORRECTIONS**

Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's work. Should Contractor fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Contractor.

**13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within five (5) calendar days of the receipt of that check, whichever occurs first. However, any approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, subcontractors, agents and consultants.

**14. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified.

**15. CONFLICT OF INTEREST**

Contractor is unaware of any City employee or official that has a financial interest in Contractor's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Contractor shall not offer, encourage or accept any financial interest in Contractor's business by any City employee or official. If a portion of Contractor's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within City or with a City franchisee, Contractor warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

**16. NON-APPROPRIATION OF FUNDS**

Payments due and payable to Contractor for current services are within the current budget and within an available, unexhausted and unencumbered

appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Contractor services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

**17. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES**

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement. This Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering or services and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by both parties.

**18. MITIGATION OF DAMAGES**

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**19. TAXPAYER IDENTIFICATION NUMBER**

Contractor shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**20. MODIFICATION/AMENDMENT OF AGREEMENT**

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval by the City and Contractor.

**21. AUTHORIZATION**

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

**22. PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**23. FEDERAL REQUIREMENTS**

Contractor acknowledges that federal funds are being used for this Agreement and that Contractor is required to comply with all material obligations required by federal or state law in reporting work completed with said funds, and certifies that Contractor and its subcontractors are eligible to participate in this Federally funded contract, pursuant to the "System for Award Management (SAM)" as maintained by the General Services Administration and required by 2 CFR, part 180. Applicable Federal requirements are located in Exhibit "F," attached hereto and incorporated herein by reference.

Contractor shall also comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this Agreement.

**24. FORCE MAJEURE**

Notwithstanding any provision of this Agreement to the contrary, neither party shall be considered in breach or default, or liable to the other party for any losses, expenses, or damages, in each case resulting from any delay in performance or from non-performance caused by circumstances beyond the reasonable control of the party affected, including but not limited to acts of God, fire, flood, explosion, war, terrorism, sabotage (including, but not limited to computer viruses), severe weather, embargo, failure of carriers, shortages of utilities, raw materials, equipment or transportation, action or request of governmental authority, strike, labor disputes, picketing, lockout, transportation embargo, civil riot or insurrection or judicial action. The affected party shall use reasonable commercial efforts to avoid or remove those causes of nonperformance. In the event that either party is unable to perform its obligation under this Agreement by reason of force majeure, it shall immediately give notice thereof to the other party.

**25. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Mike Houser  
Senior Transit Analyst  
2100 E. Thousand Oaks Blvd.  
Thousand Oaks, CA 91362

TO CONTRACTOR: MV Transportation, Inc.  
Attention: Office of General Counsel  
~~2711~~ 2747 N. Haskell Ave., Suite 1500  
Dallas, TX 75204

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

MV TRANSPORTATION, INC.

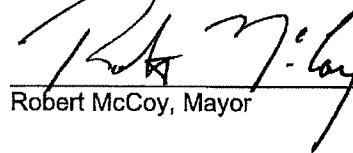


Meg Lassarat  
Chief Financial Officer



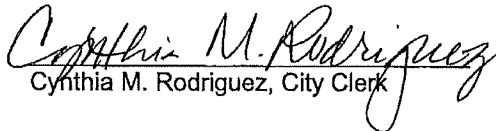
Tom Egan  
Chief Executive Officer

CITY OF THOUSAND OAKS



Robert McCoy, Mayor

ATTEST:



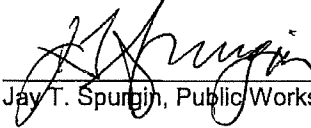
Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

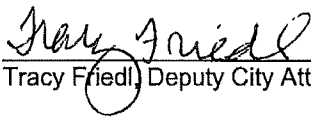


Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

  
\_\_\_\_\_  
Jay T. Spurgin, Public Works Director

APPROVED AS TO FORM:  
Office of the City Attorney

  
\_\_\_\_\_  
Tracy Friedl, Deputy City Attorney

## EXHIBIT A – to Contract No. 12072-2019

### SCOPE OF WORK

#### **Contractor Duties and Responsibilities – Transit Operations**

Contractor shall perform the duties and accept the responsibilities set forth below in connection with the operation of City's transit program and all services provided under contract by the City to other agencies. The omission of a duty or responsibility herein below shall not relieve Contractor of its obligation to perform such duty or accept such responsibility, so long as it is usual, customary and generally accepted within the public transportation industry as being an integral element of operating a fixed-route and demand response public transit service of any kind and character such as TOT.

Contractor shall assist and cooperate with City in meeting the objective of providing the highest quality transportation service in the most cost-effective manner. Contractor shall perform close liaison activities, coordination and cooperation with City, its agency partners, and its staff on matters related to operations, monitoring, reporting and service performance measurements. Contractor shall furnish all equipment and services required in the operation and management of the programs under the contract unless specifically identified or agreed upon in writing to be contributed by City or its contracting agencies.

#### **1. Operations - General**

Contractor shall provide operations management at a level sufficient to oversee its functions and employees and shall staff operations in a manner to ensure uninterrupted services during normal business hours. It is City's minimum expectation that one member of the Contractor's management team will be on duty at one of the transit operation locations between the hours of 7:00 a.m. – 6:00 p.m., Monday through Friday, and 8:00 a.m. – 6:00 p.m. on Saturday. In addition, one member of the management team shall be "on-call" and available to respond immediately to urgent matters by phone starting thirty minutes before and ending thirty minutes after, all scheduled operating hours.

All operations will be carried out in accordance with DOT and FTA regulations and Title VI non-discrimination laws. Contractor shall always operate all services in a safe, courteous, reliable manner as specified by the City and in strict accordance with the operating days and hours, routes and schedules set forth in the current brochures or any revisions thereto in writing.

Services provided under contract to other agencies will be offered in accordance with the standards of the contract agency when such requirements are not in direct conflict with Contract performance standards. Notwithstanding the above, Contractor is hereby authorized to deviate from established routes when



necessary to avoid construction, detours, or other obstruction within the public right of way. Contractor shall notify City of such obstruction causing deviation as soon as is practicable.

At least one member of the management and/or supervisory staff shall reside within a 15-mile radius of the TOTC to respond to emergency incidents.

#### **A. General Manager**

Contractor shall provide a full-time General Manager who shall provide overall day-to-day supervision of the transit operations under the terms of this Agreement. The General Manager may from time to time be required to attend City or other agency meetings and report on transportation services.

The General Manager shall act as a liaison working cooperatively with City staff in providing operational data as described in this document, responding to comments and concerns from City staff, passengers and the general public and responding to specific requests for other assistance as the need arises. The person serving as General Manager, as provided by the Contractor, shall be approved by the City.

If General Manager needs to be out of the office during regularly scheduled times, a manager on duty will be designated and at a minimum, either the Operations Manager or Customer Service Manager will be available by phone.

Should the General Manager become unavailable due to retirement, long term absence, or removal by the Contractor for cause or if the City requests a replacement for the General Manager, the résumé and qualifications of proposed replacement(s) shall be submitted to the City for approval within ten (10) business days.

#### **B. Operations Manager**

Contractor shall provide a full-time Operations Manager who shall provide overall day-to-day supervision of the City's transit over-the-road operations under the terms of this Agreement and will serve as the back-up to the General Manager and Customer Service Manager for other aspects of operations. The Operations Manager may, from time to time, be required to attend meetings and report on transportation services.

#### **C. Customer Service Manager**

Contractor shall provide a full-time Customer Service Manager who shall provide day-to-day supervision of the City's transit operations as the back-up to the General Manager. The Customer Service Manager may, from time to time, be required to attend meetings and report on transportation services.

#### **D. Training and Safety Manager**

Contractor shall provide a full-time Training and Safety Manager who shall provide overall day-to-day supervision of the City's transit training and safety procedures under the terms of this Agreement. The Training and Safety Manager may, from time to time, be required to attend meetings and report on transportation services.

#### **E. Supervision**

Contractor shall provide the following minimum staffing levels for supervisory staff:

1. Road Supervisor (3.0 FTE)
2. Dispatch Supervisor (1.0 FTE)
3. Lead Mechanic (1.0 FTE)

Contractor may satisfy these requirements with either full-time or part-time staff at their discretion. It is City's minimum expectation that one Road Supervisor shall be present at the MSC for each start of service day, at least thirty minutes before scheduled start of earliest service.

#### **F. Operations Staffing**

Contractor shall provide for staffing levels necessary to meet all contract requirements for service provision. At a minimum these staffing levels will include:

1. Dispatcher - on duty beginning thirty minutes prior to start of service, during all posted operational hours, and ending no sooner than 30 minutes after scheduled service end.
2. Mechanic - in sufficient quantity to ensure no failed CHP inspections and scheduled maintenance completed to recommended intervals one hundred percent of the time.
3. TOTC Front Counter Clerk - front counter shall be staffed from 7:00 a.m. – 7:00 p.m. Monday through Friday and from 8:00 a.m. – 6:00 p.m. on Saturday. This shall be the person's primary duty and shall not substitute for required clerical and customer service staffing requirements.
4. Clerical/Accounting Staff - as necessary to ensure timely delivery of reports and invoices.
5. Customer Service Agents (CSA) - sufficient to provide for a minimum of two non-management staff present all hours the TOTC is open to the public and to ensure phone call contract requirements are met. CSAs shall be available to answer phone calls for information and to make ride reservations beginning 30 minutes before scheduled service start time to 30 minutes after scheduled service end time.

6. Drivers - appropriately licensed and trained and in sufficient quantity to provide uninterrupted fixed route, shuttle bus, seasonal bus service, special event bus service, and DAR/ADA services and sufficient to deal with staffing concerns such as call-out, no show, illness and vacation and to support special services as may be requested on reasonable advanced notice. Additionally, a minimum of three drivers (one on Sunday) not assigned to specific services shall report for duty at least 30 minutes before scheduled start of service day to back up for no shows and call offs.
7. Back-up drivers - a minimum of two drivers (one on Sundays) shall be deployed to the TOTC daily and be available between the hours of 6:00 a.m. to 7:00 p.m. Monday through Friday and from 8:00 a.m. to 6:00 p.m. on Saturday and Sunday with back-up vehicles to respond to in-service failures or extraordinary services demands that could result in contract service standard violations.

#### **G. Fixed Route and Shuttle Bus**

All operations will be carried out in accordance with Department of Transportation (DOT) and Federal Transportation Administration (FTA) regulations and Title VI non-discrimination laws.

Contractor will operate all forms of bus service in a safe, courteous, reliable manner as specified by City and in strict accordance with the most current operating days, hours, routes and schedules set by TOT and contracting agency, either in brochures or other any written or electronic manner.

Contractor shall maintain a minimum ninety (90) percent on-time stop arrival rate for all fixed route and shuttle services as calculated by installed AVL equipment and will notify City staff anytime during normal operations that service on any route is fifteen minutes or more behind schedule. The City at its sole discretion may waive any part of this requirement for extraordinary circumstances.

In any instance where operational standards for Moorpark bus service or Kanan Shuttle are in conflict with TOT standards of service, or whereby the TOT standard provides for a higher level of customer service or service delivery standard, the TOT standard shall apply to the operation of Moorpark bus and Kanan Shuttle services.

#### **H. Seasonal Bus (Summer Beach Bus)**

Contractor may be asked to supply necessary vehicles and staff (at additional cost as negotiated) to provide service or to work with a third-party service provider to operate service in a supervisory capacity.

### **I. Special Event Bus (City of Agoura Hills)**

Contractor shall operate special event bus services using City supplied vehicle. Contractor is required to have a robust contingency plan in place to address potential in-service failures far from base and after normal business hours.

### **J. Local DAR and ADA Services**

All operations will be carried out in accordance with DOT and FTA regulations and Title VI non-discrimination laws.

All DAR Service types shall be operated in accordance with the most current operating days, hours, and Service area set by TOT or other contracting agency DAR or ADA whether in information brochures or any available written and electronic form. DAR and ADA operations will be provided in an origin-to-destination manner except for General DAR which will be provided curb-to-curb. Exceptions to these standards must have the approval of City Project Manager or designee.

Contractor shall comply with federal ADA para-transit Service standards (49 CFR Part 37). Contractor shall respond to telephone requests for DAR and ADA Service on a reservation and demand response basis in accordance with City service standards discussed herein.

Contractor shall also accept telephone requests for reservations made up to fourteen (14) days in advance. Advance reservation trips shall be given scheduling priority over real-time demand response trips. Reservation priority shall comply with required ADA para-transit criteria. At a future date as directed by City, Contractor shall also accept on-line reservations and cancellations. Contractor shall also accept "subscription service" reservations. Subscription trips are limited to not more than forty percent of available service capacity. Contractor shall be required to pro-actively update subscriptions to ensure no interruption in service.

Contractor shall respond to telephone requests for DAR/ADA service (excludes intercity DAR/ADA) on a real-time "demand" basis in accordance with City service standards discussed herein.

All DAR trips billed to City shall be based on City-issued picture IDs and require presentation of ID at the time the trip is provided. Contractor shall ensure that all rides provided are only for authorized and qualified riders of the services and only to or from locations within approved services areas. Contractor shall be responsible for the correct collection and accurate reporting of required fares and shall credit agencies with the full value of fares based on ridership. For any short-pays, courtesy rides not required by law, driver mistakes, etc., the Contractor shall make the agencies "whole" by providing full fare credit.

Contractor is authorized to have only as many vehicles in service at any given time as service demand requires. Driver “slack” time may not exceed two percent of billed revenue time for any service and may not include time blocks that exceed twenty-nine minutes even if inclusion is under the two percent threshold.

Contractor will provide all trips with an average monthly wait time not exceeding fifteen minutes for all trips provided in a calendar month (determined as an aggregate of all services). Wait times will be calculated on a per minute basis, from time of requested pick-up time or call time for on-demand. Trips performed 1-15 minutes earlier than requested pick up time will count as “0” minutes for purposes of calculating compliance for this requirement. No ride will be performed more than fifteen minutes before requested pick-up time. Failure to meet this minimum standard shall constitute a contract violation.

For “reserved” trips (Subscription, Advanced, Same Day) Contractor will maintain a minimum on-time performance standard as noted in the table below:

Wait Time (in minutes)	Performance Standard (percent)
1-15	>85 percent OTP
1-30	>95 percent OTP
1-45	>97 percent OTP
Over 45	>99 percent OTP

For “demand” trips Contractor will maintain a minimum on-time performance standard as noted in the table below:

Wait Time (in minutes)	Performance Standard (percent)
1-45	>85 percent OTP
1-60	>95 percent OTP
1-75	>97 percent OTP
Over 75	>99 percent OTP

### **Trip Denials**

Wait times more than fifty-nine minutes for reserved or seventy-five minutes for demand trips for ADA service will constitute a denied trip (will count as two denials if round-trip ride booked). Trip denial will be applied whether the ride is taken or not. A denial rate that exceeds 0.3 percent for all ADA trips in any given month is a contract violation and may subject Contractor to performance measure penalties.

### **Productivity**

Contractor shall seek prior approval if the number of vehicles required exceeds nine vehicles per weekday day and seven vehicles per weekend day for local DAR/ADA services. Contractor shall be required to provide a minimum productivity of 2.40 for year one of the contract. Productivity rates for all subsequent years of the contract including exercised extensions shall be negotiated in May of each current contract year for the following contract year

but may not be set any lower than the previous year plus 0.01 increase in productivity. The Contractor is expected to use all resources and expertise needed to consistently achieve rates in excess of standard while simultaneously meeting on-time performance standards. Contractor is expected to sacrifice productivity when necessary to achieve minimum on-time targets. City may at its sole discretion waive productivity requirements for extraordinary events. Failure to meet productivity requirements will result in a credit to City for all revenue hours billed monthly in excess of productivity requirements.

Whenever possible, vehicles leased from Contractor shall be first in service and last out of service. At no time during the contract shall the average monthly miles per vehicle for City-owned vehicles exceed the average monthly miles for leased vehicles. Failure to meet this standard may be a contract violation and may subject Contractor to performance measure penalties. City may at its sole discretion waive this requirement for extraordinary events.

#### **K. General Purpose DAR (Agoura Hills)**

All operations will be carried out in accordance with DOT and FTA regulations and Title VI non-discrimination laws. Service shall be operated in accordance with the operating days, hours, and service area set forth in the current Agoura Hills information brochure or any available written and electronic form or any revisions thereto. General DAR service will be provided curb-to-curb. Exceptions to this standard must have the approval of City Project Manager or designee.

Contractor will maintain a minimum on-time standard as noted for reserved DAR/ADA above.

Productivity levels for this service will be waived for year one of the contract and be subject to negotiations in May prior to year two of contract at a rate not less than that achieved by Contractor in year one.

#### **L. Intercity DAR (ECTA)**

Service shall be operated in accordance with the operating days, hours, and service area set forth in the current ECTA information brochure or any available written and electronic form or any revisions thereto. DAR and ADA operations will be provided in an origin-to-destination manner except for General DAR which will be provided curb-to-curb. Exceptions to this standard must have the approval of City Project Manager or designee.

Contractor will maintain a minimum on-time standard as noted for reserved DAR/ADA above.

Productivity requirements for this service on weekdays is 1.70 rides per billed hour. Productivity requirements for Saturdays will be waived for year one of the contract and subject to negotiation in May prior to year two at a level consistent with that achieved by the contractor in year one.

## **2. Adjustment to Service**

City reserves the right to adjust service at any time without any change to the unit cost per revenue hour with the Contractor resulting in annual revenue hours remaining within forty (40) percent plus or twenty-five (25) percent minus, of the total anticipated annual revenue hours as set by Contract. Modifications to service may include, but are not limited to, extending, deleting, or adding routes or parts of routes, adding or deleting service hours, expanding or decreasing service areas, and adding new like or deleting existing services. In the event actual annual revenue hours fall below seventy-five percent (75 percent) or exceed one hundred and forty percent (140 percent) of the total annual revenue hours in any given year, City will consider negotiations for a revised unit cost per revenue hour with the Contractor.

## **3. Special Events, Promotional, and Other Special Services**

In addition to regular transit service operations, City may request Contractor to provide special event, promotional, or other special transportation services that have been determined to be in the public interest and that comply with FTA regulations. Special events and other special services shall be billed at no more than the agreed revenue rate for the service the vehicle is typically assigned to. In the case of static displays and other requests that require non-revenue staff, City and Contractor shall negotiate the billing rate prior to the provision of service. All billings for services shall be in writing and be pre-approved by Transit Program Manager or designate prior to delivery of service.

## **4. Service Hours**

Hours of operation are subject to change at the City's sole discretion. Every effort will be made to provide minimum 24 hours notice of changes. From time to time, City may elect to provide service for additional hours. It is the Contractor's sole responsibility to ensure drivers do not exceed maximum driving times and that all breaks required by law are provided.

For all services provided, major holidays shall be defined as: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, or as agreed to by City and Contractor. Should the City elect to provide service on a major holiday, billing shall be permitted at 125 percent of normal revenue rate for each service performed. City may elect to operate reduced service hours on December 24 and December 31.

## **5. Operations Personnel - General**

Contractor shall furnish all operators, mechanics, porters and detailers, dispatchers, supervisors, administrative staff, and other personnel necessary for providing the transportation service in accordance with this Contract. Contractor shall make every effort to retain current employees in accordance with applicable CA Labor Code 1070 and 1074.

Contractor shall have programs and policies in place to prevent the following persons from being employed to provision the services: Persons convicted of any of the following crimes, or of an attempt or conspiracy to commit any of the following crimes, as defined in the California Penal Code, and such conviction indicates that the applicant may pose a danger to the public: murder, mayhem, kidnapping, robbery, assault with intent to commit a felony, assault, battery, rape, arson, burglary, possession of burglarious instruments or deadly weapons, or any crime for which the applicant is required to register as a sex offender pursuant to California Penal Code, Section 290.

Contractor shall provide wage and salaries commensurate with the responsibilities of the positions offered, and in concert with labor rates similar to like transit operations. Upon completion of training, all hourly employees shall earn a minimum of \$14.00 per hour (\$15.00 per hour for operators) or local minimum wage plus \$0.50, whichever is higher. The top of scale pay rate shall not be less than \$20.00 per hour for any hourly positions (\$22.00 per hour for Road Supervisors and Dispatchers). Contractor shall provide for annual wage increases for all hourly staff in contract years two through four which shall not be less than contract calculated CPI increase or two percent, whichever is greater. Wage increases in contract extension years shall be negotiated.

The cost of wages during all training shall be the responsibility of the Contractor. Contractor may set a "training" wage for all positions, but wage may not be less than the current minimum wage in place for business in Ventura County employing more than twenty-five workers at one location.

City reserves the right to review the résumé of management personnel assigned to this Contract. City may, after consultation with Contractor, accept or reject any management personnel proposed by Contractor when City deems it to be in the best interest of the Contract. City may also, at its sole option, request the replacement of any supervisory or management staff should City deem it necessary for the execution of the work under the Contract. Contractor shall notice City when changes in management personnel assigned to this Agreement are required. Changes shall comply with Exhibit "D" Performance Standards.

At no time during the term of the Contract shall any management or supervisory personnel be responsible for any of Contractor's other transit operations nor shall any City provided resources be used in the operation of services not identified in the Agreement without the written consent of City's Public Works Director or their designate.

Written documentation of all training, including new hires, recurrent, and retraining shall be maintained by Contractor and furnished to City or its agents upon request. City may at its sole discretion require basic first aid and CPR and/or AED training for all drivers and office staff.



Contractor shall provide City with copies of their employee hand book and substance abuse policy as well as all training guides no later than 30 days after contract start date.

#### **A. Employee Selection and Supervision**

Contractor shall comply with all FTA and DOT requirements as they relate to screening and hiring of staff. Contractor shall comply with all State and Federal requirements related to non-discriminatory recruiting and hiring practices.

Contractor shall be responsible for the employment and supervision of all employees necessary to perform transit operations. Contractor's responsibilities shall include, but are not limited to, recruitment, screening, selection, training, supervision, evaluations, retention and termination.

Contractor shall use appropriate screening and selection criteria for employing operations personnel. Those checks shall include DMV and criminal background checks, pre-employment drug screening and physicals of all employees associated with this contract and shall undertake the steps necessary to assure all such employees perform their duties in a safe, legal, courteous, and professional manner at all times.

Contractor will provide continuous supervision of transit services during revenue operations. Supervision will include monitoring of schedule adherence, on-street operation, on-route compliance, and on-board ride checks. During operational hours when General Manager or designate is not scheduled to be physically present at the TOTC, staffing of operations will consist of not less than two staff, at least one of which is a dispatcher, dispatch supervisor or road supervisor.

#### **B. Bilingual (English/Spanish/Mandarin) Personnel**

Contractor shall make every effort to recruit bilingual (English/ Spanish/ Mandarin) personnel as drivers, dispatchers, and CSA positions including the use of pay differentials for bilingual staff. A minimum of twenty-five percent (25 percent) of drivers and fifty percent of CSA personnel and at least one management staff member shall be English/Spanish bilingual, and English/Spanish bilingual personnel shall be available during all operating hours at the TOTC to receive telephone calls from the public and to provide translation for transportation system personnel and passengers.

Call takers, dispatchers, fixed route and DAR/ADA drivers shall be English language proficient with appropriate language skills and vocabulary to be able

to effectively communicate detailed information in English to riders about routes, fares, operational rules and be able to clearly articulate stop calls (fixed route), communicate during emergency situations and communicate with other personnel over the radio in English.

Contractor shall maintain, at its own expense, through use of commercially available services during operating hours, language translation services. Contractor will be required to provide, at its own expense, any equipment and services required under ADA to permit visually and hearing-impaired riders to have equal access to transit information and services.

### **C. Dispatchers and Customer Service Representative (CSA) Training**

Contractor shall develop, implement and maintain formal training and ongoing training programs, including the provision and payment for the required training. Contractor shall maintain a record of all training programs including periodic updates and employee attendance.

Dispatchers, CSAs, and any other personnel who may from time to time be assigned to telephone information lines shall be trained in public relations skills, proper telephone manners, accident and incident procedures, radio procedures, and shall have detailed knowledge of the City's transit services and those transit operations which link up to the City's local system. These individuals shall be knowledgeable of schedules, transfer points, fare, and operating policies. Training for Dispatchers will consist of a minimum of 120 hours of classroom and on-the-job training before being allowed to dispatch without supervision. Training for CSAs will consist of a minimum of 80 hours classroom and supervised training before allowed to provide unsupervised customer support.

### **D. Driver Training**

Contractor shall develop, implement, and maintain a formal training and retraining program for all drivers, subject to City approval. The program must provide, at a minimum, eighty (80) hours of classroom instruction covering defensive driving, first aid, State rules and regulations, accident/incident procedures, radio procedures, wheelchair lift procedures, passenger relations, employee work rules, routes, schedules, sensitivity training, and City operating policies. Training must be completed before a driver can enter unsupervised revenue service.

At least thirty-two (32) hours of behind-the-wheel training, under supervision, shall be provided to all transit drivers. Such behind-the-wheel training may not occur while the vehicle is in revenue service. Additional hours of training may be required to familiarize operators with routes and with the service area. Drivers shall be trained to operate all types of vehicles operated in the City's transit service. Contractor shall be required to monitor and comply with all State regulations and requirements with respect to driver training. Drivers shall be trained to drive all vehicles including all agency owned and leased vehicles.

Within this required training period, Contractor shall instruct drivers in at least eight (8) hours of disability awareness sensitivity training, which includes ADA regulations and procedures; four (4) hours of sexual harassment training; eight

(8) hours of passenger control/difficult passenger training; eight (8) hours of defensive driving training. City reserves the right to review all training materials, and to monitor training sessions. Contractor shall provide annual refresher training to all staff and shall at City's direction provide additional training as determined by City. All training shall comply with applicable DOT or FTA requirements.

Drivers shall be certified as having completed this course before operating any transit vehicle in revenue service unsupervised. All drivers must complete Contractor's formal training programs as approved by City. Additionally, all drivers currently employed by Contractor as a Class C driver will be required to upgrade their license to the required class within 60 days of the start of the Contract. Contractor shall keep a current list of drivers and their certifications and provide this list to the City upon request.

All drivers must always also have in their possession when operating a vehicle for City service, a valid Department of Motor Vehicles (DMV) Medical Examiner's Certificate and valid DMV Training Card. Contractor shall be responsible for monitoring DMV records for drivers to ensure their continued qualification and suitability for fixed route transit and/or DAR/ADA vehicle operation. Contractor shall produce upon request of City any and all such records. Drivers shall display a photo identification at all times when in revenue operations.

Contractor shall review current DMV reports on all applicants for the position of vehicle driver and shall reject any applicant with any driving under the influence conviction in the prior ten years. Contractor shall participate in the DMV Pull Notice Program, whereby Contractor shall be notified of any activity on a driver's driving record. Any driver exceeding the DMV point system or with a revoked or suspended license will not be allowed to operate a vehicle for the services described in this Agreement or like services added in the future.

#### **E. Driver's Requirements**

Contractor shall ensure all drivers meet the following standards and are qualified to perform the intended services:

1. Each operator must be an employee of Contractor. Contractor may not sub-contract with non-employees to execute revenue service or vehicle operations unless specifically authorized by City in advance
2. Continuous possession of the appropriate valid driver's license, California DMV Transit Certificate, passenger endorsement, and air brake endorsement
3. Not more than two (2) moving violations in the past five (5) years and no DWI/DUI convictions within the last ten (10) years
4. Demonstrated command of the English language, both oral and written
5. Ability to resolve complaints and problems as required
6. No felony conviction history in accordance with the policy as described above.

## 7. Pass Federal Drug and Alcohol Testing regulations

The following shall be minimum service requirements and driver responsibilities. Failure to carry out these responsibilities shall result in the driver or drivers being prohibited from driving any City owned or lease vehicle in revenue service, unless approved in writing by City.

Drivers shall:

1. Appear neat, clean, and well groomed, in approved uniform
2. Be helpful and courteous to passengers at all times
3. Operate the vehicle safely and legally
4. Assist elderly and physically impaired passengers
5. In cases of emergency, immediately contact dispatch for direction
6. Call out stops in accordance with FTA requirements
7. Not allow animals in vehicle except as required by law
8. Not deviate from route and schedule without City approval
9. Make sure vehicles are on schedule
10. Not smoke in vehicle and enforce no smoking rules on the bus
11. Enforce Thousand Oaks Passenger Code of Conduct Rules (and equivalent rules for other agencies under contract with the City)
12. Not accept tips or gratuities
13. Submit suggestions for service improvements to City via the process determined by Contractor and approved by City's Program Manager

All drivers shall comply with the California Highway Patrol regulations and requirements of the Driver's Log to be completed and signed. All driver manifests will be approved in advance by City and shall be filled out completely and legibly by each driver and available for inspection by City staff on request and for a period of not less than three years from the date of service. City may at its sole discretion decline to pay for services where billing is based on driver manifests that are incomplete or illegible. Each driver manifest will be certified by both the dispatcher on duty at the time it was submitted and at least one supervisor or manager. Manifests lacking the required approvals will not be accepted for billing purposes.

Drivers will, when requested by City, hand out notices to passengers and render assistance in the City's monitoring functions. Drivers will be required to honor and update special passes, collect tickets, and issue and collect transfers as determined by City. Drivers will record ridership counts by passenger category according to procedures approved by City and use electronic equipment supplied by City or Contractor including but not limited to GFI fareboxes and Syncromatics AVL/AVAS equipment. Drivers shall use this equipment or other devices as may be installed by City during contract term during the operation of the fixed route bus service. As a backup, an accurate timepiece, set each day in accordance with Contractor's procedures, shall be used.

## **6. Uniforms**

Contractor shall develop a dress code subject to City approval and implement dress code effective first day of contract operations. Such dress code will strive to achieve a professional look featuring, at a minimum, button down long and short sleeve dress shirt/blouse and slacks for all fixed route and DAR/ADA drivers and equivalent dress shirt or polo style shirt and slacks for all office and management/supervisory staff. Dress style shorts may be worn in lieu of dress slacks for DAR/ADA drivers only when forecast temperature exceeds 90 degrees. A lightweight jacket or pullover V-neck sweater shall be provided as well to all drivers. City at its sole discretion may make exceptions to the uniform policy. However, at no time shall shirts, jackets, hats, sweaters, and other clothing displaying any logos or graphics that have not been specifically authorized in advance by City, be worn by any staff in the employ of Contractor while on duty.

Clothing shall be custom fit for each staff member and in sufficient quantities to permit up to 6 consecutive work days between washings. All uniforms will be maintained in good repair and shall be exchanged at least once every 18 months. The dress code shall include shoes that are of a "plain" style, all black oxford style shoe or black "business dress" style tennis shoe. Sandals or open-toe shoes will not be permitted.

Drivers shall wear IDs clearly displaying their name and picture at all times while performing any duties associated with this contract. Uniforms shall clearly display (separately) both the name of the contracting firm and name of the transit service.

## **7. Removal of Staff**

City may require Contractor to immediately, pending investigation, remove any driver (or other hourly staff member) for any of, but not limited to, the following reasons:

1. Suspicion of committing unsafe or inappropriate acts while providing the intended service.
2. Revocation, suspension, or non-renewal of a valid California driver's license.
3. Conviction of any felony criminal offense for those crimes listed in Exhibit A, Section 5.
4. Unacceptable customer service as reported by customers, other drivers, or as observed by City staff or its agents.
5. Non-compliance with Contract specified appearance standards.
6. Non-compliance with other Contract specified requirements.

## **8. Safety and Security**

Program shall conform to all DOT and FTA specification and that of any state or federal agency with jurisdiction. City's Risk Manager or designate shall be consulted on all changes to Contractor's established safety and security procedures prior to implementation of any changes after Contract start date. Contractor shall present a Safety and Security Policy and Procedures manual for City staff review at least 14 days before Contract start date<sup>1</sup>.

Contractor shall develop, implement, and maintain a formal safety and accident prevention program, including periodic safety meetings, participation in safety organizations, safety incentives offered by Contractor to drivers and other employees, and participation in risk management activities under the auspices of Contractor's insurance carrier and City. Contractor shall comply with all applicable California Highway Patrol and OSHA requirements. Contractor shall provide City with an overview of its program.

Contractor shall report all hazardous conditions (e.g., trees, signs, road conditions, etc.) encountered during service hours to City and take necessary precautions to safeguard passengers, personnel, and equipment.

All staff will be required, regardless of position, to undergo comprehensive training on the proper use of radio communications equipment and demonstrate proficiency prior to using City supplied radio communications equipment. Failure to properly demonstrate correct usage will be grounds for the removal of drivers and dispatchers. Contractor shall not permit drivers or any staff member under employment to bear weapons of any type on City property, facilities, or onboard vehicles while operating a vehicle under the terms of this Agreement.

## **9. Accidents and Incident Reporting**

Contractor shall develop, implement, and maintain formal procedures, approved by the City, to respond to emergencies and routine concerns that from time to time occur in the course of providing transit service. Such occurrences to be addressed include, but are not limited to: in-service vehicle failure, lift failure, passenger disturbances, passenger injuries and vehicle accidents.

Contractor will notify the City's Transit Program Manager and the Fleet Maintenance Supervisor of any accident involving a transit revenue hour vehicle within 15 minutes of its occurrence. In case of injury accidents, notification shall occur as soon as practicable. A complete written report on any accident will be delivered to the Transit Program Manager or designate as soon as it is practical to do so but no longer than twenty-four hours or four hours in the case of passenger injury. This standard applies regardless of day of week or time of day of accident or incident.

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<sup>1</sup> This is separate and apart from the required Emergency Operations Plan.

Contractor shall have vehicle operators, dispatchers, road supervisors, and CSA staff report public safety incidents observed by them to the dispatcher or General Manager or manager on duty, who in turn, shall refer all such incidents to the proper authorities. Such observed incidents shall include, but not limited to: fires; criminal acts; suspicious circumstances; public right-of-way obstructions; natural disasters; signal outages or bulb out; collisions; and the like on all transit vehicles and at all transit locations. Beyond reporting such incidents, neither Contractor nor any of its employees shall have any responsibility of any kind or character to act further with respect to them and Contractor shall make the safety of employed staff a priority with regard to any developing situation that may indicate a likelihood of violence occurring.

## **10. Fares**

Contractor shall assure each patron pays the appropriate fare prior to being provided transportation service. All cash fares are to be remitted in the exact amount due based on fare classification. Contractor will be required to sell all fare media as may be required by City or agencies contracting with City and provide a prompt and accurate accounting of all sales. Excluding sales of tickets and passes via fareboxes and electronic ticketing devices provided by City, Contractor shall be required to pre-purchase all fare media for sale to the public and shall be solely responsible for all loss due to theft or erroneous sales. Contractor will issue fare media for TOT bus services at the TOTC using City supplied equipment. Contractor shall put into place a robust security protocol which ensures each sale is identified by staff member and all cash, checks, and credit card payments are accounted for and properly credited monthly. Contractor shall issue fare media for VCTC using supplied fare media.

Contractor shall not issue any fare media that has not been specifically approved by City nor shall Contractor allow sales to be "on account" or to be paid over time. Contractor is prohibited from selling fare media at other than face value and may not charge any additional fees to process transactions other than those specifically authorized in advance by City.

Contractor shall be required to accept checks at the TOTC for payment for all City-issued and VCTC-issued fare media for sales up to \$100.00 in value and shall be responsible for all returned checks and costs associated with collections related to non-sufficient checks.

Contractor shall be required to accept credit and debit cards at the TOTC for payment for sales of City-issued and VCTC-issued fare media. Costs associated with the acceptance of credit and debit cards for fare media purchases shall be the responsibility of Contractor. At a future date as determined by City, Contractor shall also accept credit cards and/or debit cards for fare payment on board all fixed route and commuter buses and DAR/ADA vehicles and accept payments on-line, over the phone, or through other electronic devices.

Contractor shall make change for cash purchases for fare media purchases at the TOTC but shall not be required to accept bills in denominations exceeding \$20.00 provided Contractor posts and makes known limits at the point of sales location. Contractor shall also maintain a sufficient amount of change at the TOTC to address routine transit rider and TOTC patron requests for change up to \$20.00 for cash bus fares and vending machines. The Contractor may, at its sole expense, and under the direction of Facilities staff, install a "change" machine in the TOTC lobby to satisfy this requirement.

## **11. Fare Collection**

### **A. Fixed Route**

1. All cash fares shall be accurately deposited directly by patrons in the fareboxes provided by the City within each vehicle.
2. All non-cash fares (transfers, passes, and the like) shall be processed through the farebox or handed to the driver for inspection.
3. All fares collected are the sole property of the City (or applicable agency).
4. Contractor shall, in accordance with a procedure specified by City, account for revenues collected on City's transit vehicles.
5. Access to the farebox cashboxes shall be limited to management and supervisory staff only.
6. Contractor shall faithfully deliver the farebox and revenues to City's Finance Department or their representative a minimum of twice a week on Tuesdays and Thursdays, except on holidays. Contractor shall be required to deliver a minimum of six cashboxes and will be required to "dump" non-secure fareboxes in reserve buses at least once weekly.
7. Moorpark fareboxes shall be faithfully delivered to Moorpark City Hall daily.

### **B. DAR/ADA and Intercity ADA**

1. Contractor shall collect fares and process in a manner directed by City.
2. Fares collected shall be verified by the drivers as to the customer category.
3. Contractor shall collect as fare payment all City approved tickets or tokens and return them to City on request.

It will be the responsibility of Contractor to ensure the correct identification has been presented by the passenger and verified by the vehicle operator prior to acceptance of the discount, prepaid, free or promotional fare media. In the absence of presentation and verification of the appropriate identification as indicated above, it will be the responsibility of Contractor to collect the full adult fare, within the bounds of reasonable prevailing circumstances.

## **12. Scheduling and Dispatch Functions**

### **A. General**

Contractor shall schedule and dispatch vehicles in accordance with the provisions of the ADA. Contractor shall comply with all FTA regulations related



to trip scheduling and will comply with Title VI, non-discrimination requirements in the delivery of all scheduling and dispatch functions.

Contractor shall provide sufficient staff to answer a minimum of fifty percent of phone calls without hold and ninety percent (90 percent) of all calls, as measured on a monthly basis, on transit information lines and DAR/ADA reservation and information lines, with no more than a 60 second (60) on-hold time. Average hold times for all calls placed on hold, as measured on a monthly basis, shall not exceed forty-five seconds. No more than five percent of calls shall be on hold in excess of 120 seconds as measured on a monthly basis. Violation of one or more of these standards shall constitute a Contract violation and subject Contractor to performance measure penalties.

Contractor shall maintain a minimum of one staff person at the TOTC to answer questions and provide information on area transportation services in both English and Spanish during all operational hours and 30 minutes before and 30 minutes after posted operational hours for phone inquiries. In lieu of this requirement if bilingual staff are not available, use of translation services are permitted provided a minimum of two staff are on duty and available to accept in-person and over the phone inquiries.

Contractor shall use a systematic method to schedule and transport passengers using transit vehicles. Contractor shall train staff and periodically practice manual dispatching techniques in the event of a system failure or emergency which prevents staff from utilizing electronic systems.

Except for the Trapeze software platform and support for which City will pay as a separate fee and for network and switching equipment, Contractor shall be responsible for providing all electronic equipment necessary to provide services including but not limited to PCs, monitors, UPS, printers, scanners, copiers, antennas, and other peripheral devices unless explicitly stated in the Agreement or by written agreement with City's Transit Program Manager that it will be provided by City.

Contractor shall make full use of electronic systems provided and staff shall be trained on all functional aspects of the system including the entry of data and the mining of data to generate reports and statistical information. City staff will be trained on and have monitoring access to, any electronic systems implemented by Contractor in furtherance of customer service and data reporting objectives.

Contractor shall be responsible for any phone services required for Contractor's sole use and shall maintain at Contractor's expense a minimum of two analog phone lines and one DSL line at the TOTC to be used as a redundant back-up in event of a catastrophic failure of services used by the City's provided phone and data systems.

### **B. Fixed Route and Shuttle Bus Service:**

Contractor shall maintain a dispatcher to monitor fixed route and commuter bus service on-time performance and to ensure drivers are properly logged onto installed equipment during all regularly scheduled operational hours including driver pre- and post-trip times. Dispatchers will conduct communications with bus drivers over City provided radios and frequencies. Dispatchers shall immediately respond to requests for assistance or direction from bus drivers to resolve issues with routes and/or passengers. Dispatcher for fixed route and shuttle bus service shall not simultaneously dispatch DAR/ADA services except in cases of emergency or for short periods of time to cover scheduled breaks and lunch periods.

Contractor's staff shall know, on a real-time basis, the schedule adherence of each bus route, the location of every fixed route and shuttle bus in operation in revenue service, and the location of all buses not in revenue service including those buses in repair or being used for training and testing purposes. Access to this data shall be made available to City staff on a real-time basis.

### **C. DAR/ADA, GP DAR, ECTA**

Contractor shall provide an adequate number of dispatchers to staff dispatching functions to ensure all services receive proper monitoring. Contractor shall also be responsible for maintaining radio control and contact with all vehicles in service and for maintaining the daily dispatch log. Scheduling and dispatching personnel shall be trained in professional techniques, radio protocol, dealing with difficult people and in conflict resolution techniques. Personnel shall be monitored, and refresher training will be offered as necessary. Dispatch staff will be provided with tools and access necessary to allow for the independent resolution of issues including provision of service in excess of usual and customary requirements, when supervisory and management personnel are not immediately available. All calls involving dispatch and customer service staff at TOTC will be recorded for training and quality assurance purposes using City supplied technology.

Contractor and Contractor's staff shall endeavor to place customer needs ahead of operational rules when such deviation from normal rules and procedures will provide a positive customer experience ("yes, we can" service philosophy). Such exceptions should have management approval prior to implementation.

Both dispatchers and CSAs shall coordinate the provisions of demand response services such that it will optimize the number of riders carried and minimize circuitous routing while maintaining on-time performance. CSAs shall advise riders to the best of their ability, approximate time of pick-up. Contractor shall take all possible actions not in direct conflict with Agreement provisions to avoid any undue delay in the pick-up and drop-off of riders.

At no time shall Contractor require a rider to remain on board a demand response vehicle longer than forty-five (45) minutes for local services or seventy-five (75) minutes for ECTA as determined by the scheduling software. Rides identified as exceeding these thresholds must be booked alternatively to avoid exceeding these targets. Specific to ADA rides, Contractor shall randomly sample monthly twenty (20) ADA provided rides and compare trip completion times to equivalent fixed route services (if existing). Service under ADA shall be performed at least ninety-five percent of the time in under less time than a comparable fixed route bus trip.

Contractor's staff shall know, on a real-time basis, the location of every DAR/ADA, GP DAR, and ECTA vehicle in operation in revenue service, the location of all vehicles not in revenue service including those vehicles in repair or being used for training and testing purposes. Access to this data shall be made available to City staff on a real-time basis.

### **13. System Promotions**

City shall be responsible for all marketing and public relations activities relating to City's transit programs and may on occasion request assistance from Contractor and Contractor's staff with specific promotional events. Contractor shall distribute on-board notices, cooperate and participate in marketing, promotion, advertising, public relations, and public education programs and Programs undertaken by City from time to time.

Under no circumstances shall Contractor or its employees be permitted to distribute any unauthorized printed or other materials without prior written permission of the Transit Program Manager or designate. City will cooperate with Contractor on efforts to recruit qualified staff including the posting of job availabilities on transit vehicles and at transit facilities.

Contractor shall display required vehicle headway signage, in plain view, on all vehicles so equipped while in revenue service. Contractor shall be responsible for all necessary programming of headway signs using City supplied equipment. At all times, vehicles not in revenue service shall display "out of service" messages.

Contractor's staff shall not respond to press requests for interviews or comments on the record regarding any specific incident or transit operations in general. All requests from press and the media are to be forwarded to City's Transit Program Manager or Public Information Officer.

City will provide Contractor, on a routine basis, informational items for posting in transit vehicles as well as required Title VI posting materials. Contractor shall ensure that all vehicles, at all times, have both required and timely posting materials displayed. In addition, all vehicles so equipped, shall have their

brochure displays stocked with a sufficient quantity to ensure all passengers can available themselves of a copy without having to ask a driver.

Contractor's staff shall copy City's Transit Program Manager or designate on all replies to e-mail concerns or complaints and shall forward all inquiries beyond the scope of Contractor's operational duties to the Transit Program Manager or designate for a response.

#### **14. System Reporting Requirements**

Contractor will provide City with substantiated information to contribute to schedule revisions and to short- and long-range planning and will collect data and perform miscellaneous surveys to be used in assimilating information needed to successfully monitor the service and clients and to respond to any and all reporting requirements.

Contractor shall continually monitor City's transit operations, facilities, equipment, and shall advise ity and make recommendations upon observed deficiencies or needed improvements. City shall retain all authority to act on such recommendations.

Contractor shall supply information to other City consultants engaged in transit related planning and promotional activities upon City request.

#### **15. System Interruption**

In the event of a service interruption of any kind, Contractor shall ensure appropriate action is taken to mitigate the situation as quickly as possible. It is at Contractor discretion how to mitigate events with generally accepted transit norms.

Contractor will inform City regarding any route problems, delays, detours, or vehicle breakdowns. Incident/accidents that cause a major service interruption, severe injuries, or media attention must be reported to ity immediately. All service interruptions or detours, when normal routing or service is resumed, must be reported to City as well.

#### **16. Operations During an Emergency**

No later than July 31, 2019, Contractor shall provide for City's review and approval an Emergency Operations Plan to maintain services in the event of a significant emergency or due to the unavailability of the TOTC or MSC. Such plans shall be updated at least twice annually and will include at all times a current list of emergency contact numbers. All operations staff shall be familiar with the Plan and it shall be readily available to staff to access in the event of an emergency.

Contractor may, from time to time, be required to participate in City sponsored emergency training exercises and City may require management and

supervisory staff to be trained in basic SIMS and NIMS protocols to support Emergency Operations Center (EOC) during emergencies. Additionally, in the event of an emergency or natural disaster, management personnel may be required to report to City's designated EOC to provide support for City's transportation needs and efforts.

The TOTC is a designated emergency staging location and back-up EOC and may be used by police, fire, and other emergency personnel and City staff in the event of emergency or natural disaster. During these periods, Contractor's staff will cooperate with and comply with those instructions given by City staff or senior emergency personnel that can be reasonably accommodated while maintaining Contractor's responsibilities under this Agreement.

In the event of an emergency, Contractor shall deploy vehicles in a manner described by City or other authorized authorities. Emergency service does not constitute an expansion of service. City shall be obligated to compensate Contractor for emergency service that exceed the normal expense of operating the transit service during such period of declared emergency. Contractor shall make every reasonable effort to house staff and provide necessary support of their needs during a protracted emergency.

The TOTC is equipped with a back-up power source. It shall be Contractor's responsibility to supply battery back-up power for all Contractor-owned or supplied equipment to ensure continued operations during power switchovers or in the event the emergency generator fails.

In the event of an emergency, City's Transit Program Manager or Public Works Director shall be contacted before any suspension of service takes place.

## **17. Extra Services**

Contractor may be requested to perform extra services on an as-needed basis as pre-authorized in writing by City. Such requests, whenever possible, will be made well in advance of need to provide Contractor with sufficient time to source the necessary staff and resources.

Any work or activities that are in addition to, or otherwise outside of, the services to be performed under this Agreement shall only be performed pursuant to a written agreement and only when inclusion is not considered to be a Cardinal Change. Contractor shall not perform, nor be compensated for any change, without written authorization from City as set forth herein. In the event such a change authorization is not issued and signed by City, Contractor shall not provide change.

## **18. Financial and Operational Records**

Contractor shall establish and maintain, within a separate account, all program revenues and expenditure data and any other relevant financial and operational

records or documents including a separate breakdown of all expenses and reporting for services provided under contract to other agencies.

Contractor shall submit invoices to City within ten business days or fifteen calendar days, whichever is earlier, after the end of the month for services rendered during the reporting period. Separate invoices shall be provided for all services and other special service as may be requested by City or contracting agencies. Invoices shall be prepared in such a form and supported by such documentation as may be required by City or its contracting agencies to establish that the amounts are allowable.

Payment to Contractor shall be made within 30 days after receipt of an acceptable invoice and supporting data. City, may at its discretion, make partial payments while withholding payment for other services with outstanding or questionable support or invoices. All invoices shall be addressed as follows:

City of Thousand Oaks  
Finance Department - Accounts Payable  
2100 E. Thousand Oaks Blvd.  
Thousand Oaks, CA 91362

All invoices, supporting documents, and other financial records relevant to this contract shall be subject to inspection and audit by representatives of City, DOT, FTA, VCTC, and other state and federal agencies as may be required to comply with regulations and requirements.

City relies substantially on the use of TDA funding and state and federal grants for operational expenses. Each granting agency has unique reporting requirements for expenditures and such reporting requirements shall be binding on Contractor even if reporting requirements exceed those required by this Agreement. Agencies contracting for services with City may have unique reporting and supporting document requirements. Contractor shall make every reasonable effort to comply with requests for information and supporting documentation in specific formats when requested by City on behalf of a contracting agency.

If at any time during the term of the contract, or for four years after its expiration or termination, authorized representatives of City may conduct an audit of the Contractor regarding the services provided under the contract, and if such audit finds that City's dollar liability for such services is less than payments made by City to Contractor, Contractor agrees that the difference shall be either: 1) repaid by the Contractor to the City by check payment, or 2) at City's option, credit against any future payments hereunder to Contractor. If such audit finds that City's dollar liability for services provided is greater than made by City to Contractor, the difference shall be paid to Contractor by City by check payment.

## 19. Operational Reports

Due to the complex nature of the operations under the TOT umbrella of services, reporting is extensive and unique to individual services. Each agency that contracts with City has unique reporting requirements which must be met.

Contractor will be responsible to provide City with any and all information necessary and available to Contractor to ensure completion of annual NTD filing and to comply with information requests related to any state or federal audit including FTA triennial audits.

Summary of all complaints concerning any aspect of the services provided under this Agreement shall be provided to City. Such complaints shall be individually listed by date and subject matter and be written in a uniform format. In compliance with FTA triennial audit requirements, Contractor shall maintain a comprehensive log of all complaints received, via any method, and produce said log on request. At a minimum the log must contain date, nature of the complaint, summary of follow up activities, and concluding actions taken. The log should specifically identify any ADA specific complaints.

The listed requirements below represent *general* reporting requirements and is not intended to represent exact reporting requirements that may be required during the duration of the Contract.

### A. Fixed-Route and Shuttle Bus Services:

A monthly activity report summarizing ridership, revenue, and cost will be submitted to the City. The monthly report will include, but may not be limited to, the following:

1. Miles between road calls
2. Miles between maintenance road calls
3. Number and percentage of missed/late pull-outs
4. Number and percentage of missed/late trips
5. Number and percentage of on-time performance
6. Number of complaints/1,000 passengers
7. Total accidents/100,000 miles
8. Collision accidents/100,000 miles
9. Total preventable accidents/100,000 miles
10. Passenger accidents per 100,000 miles
11. Wheelchair boardings
12. Drug and Alcohol test
13. Driver/Dispatcher Training Activities
14. Driver Evaluations
15. Ridership counts by day, mode, route, and fare type
16. Vehicle revenue service and total hours by vehicle
17. Vehicle revenue service and total miles by vehicle
18. Summary of safety program activities
19. Trip ticket analysis
20. Number of bikes transported

## **B. DAR, ADA, GP DAR, and ECTA Service**

A monthly activity report summarizing ridership, revenue, and cost will be submitted to ity. The monthly report will include, but may not be limited to, the following:

1. A list of all vehicle breakdowns occurring in service
2. List and explanation of denied and missed trips
3. List of passengers by fare type and agency
4. Operation reports
  - a. Total vehicle miles
  - b. Total vehicle hours
  - c. Total revenue miles
  - d. Total revenue hours
  - e. Average response time (time between the call-in and pick-up)
  - f. Longest response time per month
  - g. Total trip time
  - h. On-time performance
  - i. Origin to destination information on a per-trip basis

## **20. Vehicle Maintenance and Collision Records for Vehicles**

Contractor shall maintain all Contractor owned, leased and City of Agoura Hills owned vehicles' maintenance records required under the laws of the State of California or as may be required by DOT or FTA. Such records include but are not limited to the following:

1. Copies of work orders for all vehicle maintenance activities
2. Preventive maintenance schedule report copies, retained in file for a three-year period including copies of all lift and ramp inspections
3. The original of the pre-trip inspection/defect report for each vehicle
4. Reports containing negative driver notations shall be retained for a minimum of 30 days; reports indicating a vehicle defect shall become a permanent part of the vehicle file
5. Reports of all road call maintenance shall be retained as a permanent part of the vehicle file

Contractor shall maintain an individual file for each vehicle used in the revenue operations under contract to City. In addition to the items above, this file shall include, but not be limited to, the following information by date of action:

1. All preventive maintenance work, including parts and labor utilized
2. All warranty work, if applicable
3. All other types of repair work, including parts and labor

City reserves the right to inspect a vehicle that had previously been involved in a traffic collision, before that vehicle is placed back in-service following repairs.

For all vehicles, a Driver Vehicle Inspection (DVI) will be completed at the start of every shift and for start of day shifts, turned in immediately for inspection prior to start of revenue service. For City and Moorpark owned vehicles, DVI copies



will be presented daily to the Fleet Maintenance Crew Leader or their designate, no later than 8:00 a.m. Monday through Friday and by 6:00 a.m. the following Monday for vehicles operated on Saturday or Sunday. DVI shall meet criteria set by CVC 34505.5 (Periodic Inspection by Motor Carrier). Contractor's inspection forms shall have fields to log the minimum requirements of CVC 34505.5.

The following vehicle defects are mandatory vehicle "downed" requirements:

1. Inoperable wheelchair lift or ramp
2. Inoperable or inadequate passenger or driver air conditioning
3. Inoperable headlight, taillight, marker lights, interior lighting
4. Inoperable farebox
5. Inoperable headway sign
6. Any defect that compromises the safety of the passenger or driver
7. Rodent or insect infestation
8. Any visible fluid leaks
9. Any tire with inadequate tread or inflation
10. Any vehicle lacking required, and required quantity of, wheelchair tiedowns, safety equipment including fire extinguisher, first aid, blood borne pathogen kits, accident documentation kit, sanitary wipes, and any other equipment the Contractor's operating rules or City requirements require

No vehicle tagged by Fleet staff as "Out of Service" is to be operated by any member of Contractor's staff at any time.

## **21. Leased DAR Vehicle Requirements**

### **A. (DAR and ADA)**

1. All vehicles proposed for use in the service by Contractor shall be subject to approval by City. Each vehicle must be ADA accessible as outlined in Section 49 CFR Part 38, ADA Accessibility Specifications for Transportation Vehicles. All vehicles shall have passed the annual inspection and certified by the California Highway Patrol (CHP) if an inspection is required. All vehicles proposed by Contractor for use in operation of the subject services shall be available for inspection by City and the CHP upon request. At the time of inspection, vehicles shall be equipped with all items required herein.
2. Contractor shall maintain and keep all leased DAR/ADA vehicles in excellent mechanical condition. Contractor shall ensure its employees, vehicles, facilities, and equipment meet all applicable laws, codes, and safety standards as set by Federal, State and local governments, and shall be inspected at each interval required by all governing entities.
3. Contractor shall provide precise scheduled maintenance and preventive maintenance inspections as specified by the vehicle manufacturer, City, and all other governing entities. All scheduled and preventive

maintenance must be completed on a timely basis and within the established mileage interval. Contractor shall keep an accurate record of all repair and work orders performed by, or for, Contractor on all equipment: A preventive maintenance wheelchair ramp and lift inspection shall be conducted at manufacturer's recommended intervals or during regularly scheduled maintenance, whichever is sooner.

4. Throughout the term of this contract, Contractor shall, at all times and at its sole expense, ensure all components of each leased vehicle to be maintained in safe and proper working conditions, free from damage or malfunction. At Contractor's expense, any leased vehicle damaged by collision or otherwise shall be repaired as expeditiously as possible to a like new condition. Security record devices shall be tested not less than every thirty (30) days for proper operation and recording.
5. Contractor shall inspect the cleanliness of each vehicle and ensure that the wheelchair lift, or ramp is operational, prior to its assignment for service. Vehicles that fail to meet these standards shall be corrected prior to their assignment for service.
6. Vehicles will have all required Title VI notices and other postings as directed by City of other contracting agencies and shall be displayed in a clean and workmanlike manner. For materials that are time sensitive, posting will be current and posted as soon as practical.
7. No vehicle shall be used for parts for any reason without prior written consent of City.
8. Contractor shall provide for local DAR/ADA service, eight (8) Class D low floor paratransit vehicles capable of transporting three passengers and one wheelchair and two (2) Class A or Class B cutaway vehicles capable of transporting eight passengers or two passengers and five wheelchairs that are Buy America compliant and fully comply with all applicable FTA and DOT requirements. All vehicles shall be wheelchair accessible for the operation of DAR/ADA service. All vehicles shall be factory new, model year 2019 and be available for service at contract start date. It is desirable that all vehicles provided be environmentally friendly through the use of electric, hybrid or CNG technology if available. City shall permit vehicles designated 77114 and 77115 to remain in service for the new contract to satisfy the requirement above for two Class A or B vehicles. Maximum in-service life requirements will apply from original in-service date.

At any time during the contract period, City may elect to add additional leased vehicles. Rate for additional leased vehicle shall be negotiated excepting that any Class D, Class A or Class B vehicles added to leased vehicle fleet during months 1 through 23 of the Contract shall be at the

same rate negotiated for vehicles supplied at Contract start. Additionally, City may require, at its sole discretion and at a mutually agreed lease rate, that Contractor supply additional Class B, Class C, Class E or F vehicles at any time during the contract period. All vehicles added shall fully comply with FTA and DOT requirements. Rates for vehicles will be provided on or before Contract start date and will be binding on Contractor for any vehicle added in months one through twenty-three of the Contract.

City may at its sole discretion, and without notice, require Contractor to remove any leased vehicle from service if in the opinion of City the vehicle is not required to meet service demands. City staff will meet and confer with Contractor's management staff prior to making such requests but decisions of City shall be deemed final and City shall have no obligation for further lease payments provided vehicle has been in revenue service for a minimum of eighteen months.

All vehicles shall be constructed in a manner sufficient to provide reliable and mechanically sound operation in the context of daily public transportation service and meet all applicable state and federal regulations for use in demand response service. All vehicles will be equipped with City specified graphics, supplied at Contractor's expense. All vehicles will be equipped with MORryde (or City acceptable equivalent) ride softening suspension equipment, back-up sensors and back-up camera, rearview mirror with back-up camera display, Drivecam brand (or equivalent) incident recording equipment, and a minimum four cameras, digital video recording system with audio capable of providing playback of a minimum of the 200 most recent hours of recording.

City, at its sole discretion and expense, may require the installation of headway signs, digital radios, GPS, or other electronic and safety or security equipment into or on leased vehicles. City shall retain ownership of such equipment for the duration of the vehicle's in-service life. City-owned equipment installed in leased vehicles shall be professionally removed, at Contractor's expense, when vehicle is retired from service.

9. No vehicle placed in service on DAR/ADA shall remain in service no more than 48 months or 150,000 miles, whichever comes first and shall be replaced with a like, current model year, factory new replacement or other vehicle agreeable to ity. City will not waive this requirement and replacement of all vehicles at or before the first contract extension will be required without exception.
10. All vehicles used in the operation of this service shall be equipped with two-way communications systems between the dispatcher and vehicle driver at Contractor expense and shall have adequate air conditioning installed by the vehicle manufacturer in good working order. No vehicle

shall be placed into revenue service with non-working air conditioning regardless of ambient temperature.

11. All exterior vehicle graphics, including commercial advertising as may be permitted, will be approved by City and must meet requirements of the ADA as specified in the ADA Section 49 CFR, Part 38. Additional signage shall include vehicle numbers and a California transportation carrier identification number at the front and curbside of the vehicle. All vehicle signage shall be subject to approval of City. City reserves the right to make changes to exterior graphics at any time during the contract period.
12. Fueling of all leased DAR/ADA vehicles shall occur at the MSC without exception unless fuel is unavailable at MSC or due to extraordinary circumstances. Contractor shall be reimbursed by City for such fuel upon presentation of bill noting specific vehicle, date, quantity, and per gallon price. Contractor shall endeavor to fuel vehicles at lowest possible cost under these circumstances. Contractor's staff costs associated with fueling leased and City-owned DAR vehicles shall be at Contractor's sole expense and time and distance to fueling and from fueling to next pick-up shall not counted towards revenue service hours and miles.

#### **B. ECTA**

Except as specifically noted as different in this section, all requirements in Section 21(A) shall apply here.

1. Contractor shall provide for local ECTA service, six (6) Class A paratransit vehicles that can transport eight passengers or four passengers and three wheelchairs that are Buy America compliant and fully comply with all applicable FTA and DOT requirements. All vehicles shall be wheelchair accessible for the operation of ECTA service and be capable of transporting a minimum of three wheelchairs. Except as noted above, all vehicles shall be factory new, model year 2019 and be available for service at contract start date. It is desirable that all vehicles provided be environmentally friendly through the use of electric, hybrid or CNG technology if available. City shall permit vehicles designated as 77503, 77504, 77706, 77707, 77708, and 77709 to remain in service for the new contract to satisfy the requirement above for six Class A vehicles. Maximum in-service life requirements will apply from original in-service date.
2. At any time during the contract period, City may elect to add additional leased vehicles. Rate for additional leased vehicle shall be negotiated excepting that any Class A vehicle added to leased vehicle fleet during months 1 through 23 of the Contract shall be at the same rate negotiated for new vehicles supplied. City may require, at its sole discretion and at a mutually agreed to lease rate, that Contractor supply additional Class B,

Class C, Class E or F vehicles at any time during the contract period. All vehicles added shall fully comply with FTA and DOT requirements.

### **C. GP DAR**

Except as specifically noted as different in this section, all requirements in Section 21(A) shall apply here.

1. At the direction of City, subject to approval by City of Agoura Hills, Contractor shall provide for GP DAR service, one (1) Class A vehicle that can transport eight passengers or four passengers and two wheelchairs that is Buy America compliant and fully comply with all applicable FTA and DOT requirements. All vehicles (except those supplied by the City of Agoura Hills) shall be wheelchair accessible for the operation of GP DAR service. All vehicles shall be factory new, model year 2019 and be available for service at contract start date. It is desirable that all vehicles provided be environmentally friendly through the use of electric, hybrid or CNG technology.

At any time during the contract period, Agoura Hills may elect to add additional leased vehicles. Rate for additional leased vehicle shall be negotiated excepting that any Class D vehicle added to leased vehicle fleet during months 1 through 23 of the Contract shall be at the same rate negotiated for vehicles supplied at Contract start. Additionally, the City of Agoura Hills may require, at its sole discretion and at a mutually agreed to lease rate, Contractor supply additional Class B, Class C, Class E or F vehicles at any time during the contract period. All vehicles added shall fully comply with FTA and DOT requirements.

### **D. Kanan Shuttle**

Except as specifically noted as different in this section, all requirements in Section 21(A) shall apply here.

1. All vehicles proposed for use in the service by Contractor shall be subject to approval by the County of Ventura (County). Each vehicle must be ADA accessible as outlined in Section 49 CFR Part 38, ADA Accessibility Specifications for Transportation Vehicles. All vehicles shall have passed the annual inspection and certified by the California Highway Patrol (CHP) if an inspection is required. All vehicles proposed by Contractor for use in operation of the subject services shall be available for inspection by City and the CHP upon request. At the time of inspection, vehicles shall be equipped with all items required herein.
2. At the direction of City, subject to approval by County, Contractor shall provide for Kanan Shuttle service, four (4) Class E or F cutaway CNG buses that can transport twenty-eight passengers or twenty-four passengers and two wheelchairs that is Buy America compliant and fully comply with all applicable FTA and DOT requirements. All vehicles shall be wheelchair accessible for the operation of the Kanan Shuttle service.

All vehicles shall be factory new, model year 2019 and be available for service at contract start date. At the sole discretion of County, Contractor shall make available one existing vehicle designated as 66600, 66601, 66603, or 66603 as a “reserve” vehicle at a negotiated per month rate for a duration to be determined by the County.

At any time during the contract period, County may elect to add additional leased vehicles. Rate for additional leased vehicle shall be negotiated excepting that any Class E or F CNG cutaway bus added to leased vehicle fleet during months 1 through 23 of the Contract shall be at the same rate negotiated for vehicles supplied at Contract start. All vehicles added shall fully comply with FTA and DOT requirements.

All vehicles shall be constructed in a manner sufficient to provide reliable and mechanically sound operation in the context of daily public transportation service and meet all applicable state and federal regulations for use in demand response service. All vehicles will be equipped with City specified graphics, supplied at Contractor’s expense. All vehicles will be equipped with MORryde (or City acceptable equivalent) ride softening suspension equipment, back-up sensors and back-up camera, rearview mirror with back-up camera display, Drivecam brand (or equivalent) incident recording equipment, and a minimum six cameras (including one exterior camera), digital video recording system with audio capable of providing playback of a minimum two-terabytes of data of the most recent hours of recording.

Vehicles will be equipped with all equipment necessary to satisfy ADA requirements for fixed route service and shall include at a minimum, headway signs (front, side, and rear), digital radios that match City radio system requirements, two or three position bike rack, pull cords and/or stop request buttons, stop request notification signs and driver alerts, internal and external speakers, and proper signage as may be required.

3. No vehicle placed in service on KananShuttle shall remain in service more than 60 months or 200,000 miles, whichever comes first and shall be replaced with a like, current model year, factory new replacement or other vehicle agreeable to County. City will not waive this requirement and replacement of all vehicles before or during the first contract extension will be required without exception.

## **22. Back-up Vehicles**

### **A. DAR/ADA**

Contractor shall at all times have a minimum of two (2) vehicles available as a backup in the event of an in-service vehicle failure or service interruption. Contractor shall dispatch a backup vehicle into service within 30 minutes unless

service demand is such, the vehicle is not required. The use of a leased vehicle or City-owned vehicle for the purposes of satisfying this requirement is at the discretion of Contractor.

**B. General Purpose (GP) DAR**

Contractor shall at all times have a minimum of one (1) vehicle available as a backup in the event of an in-service vehicle failure or service interruption. Contractor shall dispatch a backup vehicle into service within 30 minutes unless service demand is such the vehicle is not required.

**C. ECTA**

Contractor shall at all times have a minimum of one (1) vehicle available as a backup in the event of an in-service vehicle failure or service interruption. Contractor shall dispatch a backup vehicle into service within 30 minutes unless service demand is such the vehicle is not required.

**D. Fixed-Route (Thousand Oaks and Moorpark)**

Contractor shall maintain and have available at the TOTC one (1) TOT Bus and one (1) Moorpark City Transit bus pre-tripped and available for immediate roll out during times back-up driver is on duty. In the event a back-up bus is dispatched, Contractor will make arrangements as soon as practical, to have another bus or large DAR vehicle located to the TOTC in the event of an additional bus failure before back-up bus returns from service.

**E. Kanan Shuttle**

Contractor shall maintain and have available, at the TOTC, one (1) Kanan Shuttle Bus pre-tripped and available for immediate roll out during the times that the back-up driver is on duty.

**23. Support Vehicles**

Contractor shall supply at contract start date a minimum of four (4) transit support vehicles for use by Contractor's staff in support of transit operations including for the rotation of drivers, delivery of vehicles for maintenance, transportation of fare boxes to City Hall, and other training and support activities. Vehicles supplied shall be factory new (or approved City substitution), model year 2019 and shall be all-electric, plug-hybrid, hybrid, or CNG. Operation, maintenance, and fueling of support vehicles shall be at Contractor's sole expense. Vehicles shall be maintained to the same mechanical and appearance standards as required for leased DAR vehicles and will be appropriately signed as to identify the vehicles as being owned by Contractor. At no time will support vehicles be used for revenue service. Vehicles may have graphics identifying Contractor's agency but may not have graphics identifying or implying it is a revenue vehicle or City-owned vehicle.

**24. Emergency Spare Vehicles**

Contractor shall provide, at its own expense, two emergency back-up vehicles equipped and maintained to leased vehicle standards to be able to respond to

emergency in-service situations where City and agency-owned or leased vehicles are not available. Vehicles shall be equipped to be able to provide either fixed route/shuttle or demand response services. City has no specific requirements or maximum age or mileage standards and will work with Contractor on identifying acceptable vehicles to comply with this requirement.

Vehicle must be equipped to provide fixed route and shuttle bus service and therefore must include relevant equipment. However, City supplied equipment including electronic farebox and APC shall not be required. However, when in any service, accurate and detailed ridership data will be kept as well as a secure method for storing cash payments made to driver.

## **25. City-Owned and Moorpark Owned Vehicle Maintenance**

City shall provide all maintenance and repair of City-owned transit buses, Moorpark owned transit buses, and City-owned DAR vehicles.

Contractor shall pay for any repairs arising from Contractor negligence or abuse of City-owned and Moorpark owned vehicles and shall be responsible for all repairs required as a result of collision or accident regardless of fault. City shall determine what repairs are due to negligence and abuse. Contractor and Contractor's staff shall immediately report all body damage to City or Moorpark owned vehicles regardless of the nature of the damage. All drivers shall be required by Contractor to report all damage on the DVI forms.

Any vehicle which sustains damage or experiences failure impairing safe mechanical operation shall be removed from service immediately and shall not be placed in revenue service until restored to safe operating condition. At no time will a vehicle with a known mechanic defect or faulty lift or ramp be placed in to revenue service. Any vehicle with a faulty lift or ramp occurring in revenue service shall be immediately removed from service until repaired.

Contractor shall be responsible for arranging annual terminal inspections by the California Highway Patrol (CHP), and shall also maintain a satisfactory CHP rating throughout the life of this contract. Copies of all CHP inspection documents shall be promptly transmitted to City within five working days of such inspection.

For all accident repairs performed by City staff, Contractor shall be billed at City's normal and customary rates for fleet labor time, for all parts at cost plus overhead mark-up, and all sub-let work at cost plus overhead mark-up. City, at its sole discretion, may elect to have Contractor perform certain repair work. When so allowed, Contractor shall be solely responsible for timely completion of work in a professional manner. City reserves the right to inspect and reject any work not performed by City staff.



All accident repair work performed by City staff shall be invoiced to Contractor monthly and shall be paid by Contractor in the form of a cash payment by check on a NET 30 basis.

**26. DAR/ADA, GP DAR, and ECTA Vehicle Inspection, Servicing, and Cleaning**

Contractor will require each driver inspect each vehicle with regard to safety, function, and appearance of the vehicle prior to the placement in revenue service.

A daily pre-trip inspection form shall be completed and submitted for all vehicles prior to the start of service. The checklist will be utilized and kept on file for City and California Highway Patrol review. This checklist requirement may incorporate, or supplement CHP required driver's pre-trip safety inspections.

For purpose of this Agreement, daily servicing will include, but not be limited to, fueling; engine oil, and coolant check/add; wheelchair ramp/lift check; brake check; light and flasher check; interior sweeping and dusting; graffiti removal, brochure inventory, exterior and interior visual inspection; and driver's report of vehicle safety, reliability, or performance defects, including climate control mechanisms.

Contractor shall immediately repair or replace, prior to placement in revenue service, any leased vehicle (or Agoura Hills owned vehicle) possessing safety or operational problems. City's Fleet staff shall be notified of any City-owned DAR vehicle requiring repair as soon as it is known to Contractor and Contractor shall deliver to the MSC as soon as practical, any City-owned DAR vehicle requiring repairs.

All DAR vehicles (leased and owned), at Contractor's sole expense, shall have an interior detail weekly and shall be placed through City's bus wash each time it is fueled at the MSC. All Class A and Class D vehicles shall receive a hand wash a minimum of twice monthly either by Contractor's staff or at a commercial car wash facility. At least once every 60 days or as deemed necessary by City, all DAR vehicles will receive a full exterior detail including wheels and tires that will consist of hand wash and wax and repair of exterior defects to trim and molding. All exterior decals and vehicle identifications shall be maintained in like new condition and replaced as required at Contractor's expense.

**27. Bus Vehicle Inspection, Servicing, and Cleaning (Owned and Leased)**

Contractor shall maintain City-owned and leased buses in a clean and neat condition at all times. Contractor will require each driver inspect each vehicle with regard to safety, function, and appearance of the vehicle prior to the placement in revenue service.

A daily pre-trip inspection form shall be completed and submitted for all vehicles prior to the start of service. The checklist will be utilized and kept on file for City

and California Highway Patrol review. This checklist requirement may incorporate, or supplement CHP required driver's pre-trip safety inspections. DVI shall meet criteria set by CVC 34505.5 (Periodic Inspection by Motor Carrier). Contractor's inspection forms shall have fields to log the minimum requirements of CVC 34505.5.

For purpose of this Agreement, daily servicing will include, but not be limited to, fueling; engine oil, and coolant check/add; wheelchair ramp/lift check; brake check; light and flasher check; interior sweeping and dusting; graffiti removal, brochure inventory, exterior and interior visual inspection; and driver's report of vehicle safety, reliability, or performance defects, including climate control mechanisms.

Contractor shall immediately notify City's Fleet staff of any City-owned or Moorpark owned bus requiring repair as soon as it is known to Contractor and Contractor shall deliver to the MSC as soon as practical, any City or Moorpark owned bus requiring repairs.

#### **A. Interior**

Contractor shall maintain the bus interior in good condition. Contractor shall also ensure all corners and seams are securely fastened to the floor at all times, and the doors, stop notification devices, public address system, fareboxes, headway signs, and all other electronic devices work properly. Wheelchair securement devices shall be inspected for function and adequate quantity.

The driver's area shall be clean at all times. Driver's personal property shall be kept in a secure area and out of sight. Driver seats shall be maintained in a neat appearance. Contractor shall check interior for damage and clear of trash at the conclusion of each shift or service day. Contractor shall not attach or place any markings on the interior of the vehicle without written permission from City.

Storage cabinets shall be kept neat and orderly with minimal number of supplies and items needed for revenue service. Drivers shall not allow personal materials and trash to accumulate inside storage cabinets and at no time are liquids to be stored in any cabinet containing electronic components.

Contractor shall perform basic cleaning daily and the following maintenance at least weekly:

1. Sweep, mop, clean, and remove all trash, gum, sticky substances, foreign objects, vermin, dirt, and dust from vehicle floors.
2. Clean driver area, including but not limited to, dash controls, dashboards, above the driver area and along the front dashboard; so as to be free of dust, stains, or grease.
3. Clean passenger seats to the extent they are dust free and free of all foreign substances.

4. Clean all ledges, stanchions, handrails, modesty panels, passenger signal strip and remove dust, grease, gum, or sticky substances.
5. Replenish TOT system map and route schedule brochure inventory.

## **B. Exterior**

Drivers shall inspect exterior of the bus and note any new cracks, dents, scrapes, graffiti, and any other markings. Driver shall make the report on the DVI and notify Fleet staff of significant damage immediately.

Contractor shall report any of the following maintenance items to City's Fleet staff:

1. Destination signs are not working.
2. Damage to the bike racks.
3. Repair needed to the fareboxes.
4. Wi-Fi units that are not functioning.
5. Tablets and other display or log in devices not working.
6. Failure of any monitor or passenger facing sign that is not working.

Each bus, at Contractor's sole expense, at least once every 60 days or as deemed necessary by City, will receive a full exterior detail including wheels and tires that will consist of hand wash and wax. All exterior decals and vehicle identifications shall be maintained in like new condition and replaced as required at Contractor's expense.

Additionally, the cleaning of all vehicles, whether by Contractor staff or sub-contractor, must comply with conditions and requirements of the Ventura Countywide Stormwater Quality Management Program, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS004002. Contractor shall employ NPDES best management practices. At all times work shall proceed using due diligence to safeguard against the disposition of sediment, debris, and other polluting matter into the street, storm drain and/or associated drainage conveyances. The storm drain system shall not be used for the disposal of any wastes including, but not limited to, wastewaters associated with the cleaning and/or rinsing of equipment, streets or walkways (MC 7-8.302).

## **28. Vehicle and Equipment Repair Due to Negligence, Collision, Vandalism, Theft or Abuse**

Contractor shall be responsible for the cost of all repairs to City, Moorpark, and Agoura Hills owned vehicles and equipment to correct loss or damage due to negligence, collision, vandalism, theft or abuse. This includes all interior and exterior graffiti. Cost of repairs shall include all parts, labor, vehicle transportation or towing, and other costs associated with completing the necessary repairs.

All repairs to City and Moorpark owned vehicles shall be performed by City's Fleet maintenance staff or by other sub-contractors and suppliers designated by City, except that Contractor may make minor cosmetic repairs in a workman-like manner which would normally be performed during cleaning and detailing of a

vehicle. Repairs to City of Agoura Hills owned vehicles shall be the responsibility of Contractor.

Contractor shall promptly report vehicle damage to City and Moorpark vehicles to City's Fleet maintenance staff. City Transit Program Manager or designate shall be notified of all vehicle damage, regardless of cause, or agency ownership/lease status as soon as it is known and has been documented. Should City determine unreported vehicle or equipment damage is the responsibility of Contractor, City shall notify Contractor's General Manager. Contractor shall review the damage, as soon as practicable, but in all cases within 24 hours after notification. City shall complete necessary work, document the repairs or replacement on a work order, and provide Contractor with a copy of repairs and invoice. Contractor shall be responsible for the cost of repairs.

City reserves the right to require damage repairs to any leased vehicle and to inspect and reject any repairs completed to leased vehicles.

## **29. Accident Reports**

City requires Contractor to have an accident and emergency notification program notifying City of accidents or emergencies to assure City claims are handled promptly and fairly.

Contractor shall require all vehicle operators to report **any** accident or incident involving the vehicle to the dispatcher or an on-duty manager. The dispatcher and on-duty manager shall use good judgment in handling the situation and shall immediately notify the appropriate City staff as warranted. All accidents must be reported to City by telephone, text, and/or e-mail immediately by Contractor's staff or management and Contractor must prepare appropriate incident and accident reports in writing as soon as practical, not to exceed 24 hours for non-injury accidents, four hours for injury accidents. Contractor shall submit all accident-related reports to the DMV as required. Contractor shall assume all liability for accidents and workers' compensation claims.

## **30. Vehicle On-board Cameras**

Each City and Moorpark fixed route bus and select City-owned DAR/ADA vehicles are equipped with a video and audio surveillance system. Upon request and following any accident, collision, and passenger incident, Contractor shall review and archive all relevant video images and audio to a separate computer for a period of not less than 13 months. City shall supply at its own expense all equipment necessary to review and archive data. Contractor shall not permit drivers at any time to have access to on-board recording equipment and shall not release any recording or copy thereof to any individual or agency without the knowledge of and approval of the Transit Program Manager, Risk Manager, or their designate.

Contractor's staff shall notify City Fleet maintenance staff for any failure of on-board cameras or audio and video recording equipment as soon as Contractor's staff becomes aware of the problem. Buses with inoperable security recording equipment shall not be placed into service unless no other bus is available.

For all leased vehicles, the requirements for retention of data and periodic inspection of systems is the same and the Contractor must make footage available to City staff on request and without delay.

### **31. Road Calls**

City's Fleet maintenance staff will respond to road calls to assist with disabled City and Moorpark owned vehicles upon request of Contractor's staff. Failed vehicle shall display "Out of Service" on the front and/or side destination signs. Contractor shall follow the following procedures in making road calls:

1. Transit bus driver notifies Dispatch of location and problem with vehicle. The driver shall make every effort to park vehicle in a safe location that does not block pedestrian or vehicle traffic.
2. Dispatch notifies City's Fleet maintenance staff and forwards the information. A backup vehicle should be dispatched to continue the affected route.
3. City's Fleet maintenance staff will respond to site to assess the situation. Fleet staff will determine if the vehicle can be repaired on site or if it should be towed into the Municipal Service Center. Under no circumstances should the vehicle be left unattended.
4. In the event City Fleet maintenance staff is unavailable when first contacted, the dispatcher shall contact the Fleet Maintenance Supervisor or Fleet Supervisor by cell phone. Contractor shall also attempt to notify the Transit Program Manager of the situation.

Vehicles shall not be left unattended overnight unless specific authorization is given by City staff. In the event that a vehicle will be left unattended, dispatch is responsible for notifying law enforcement in the area the vehicle will be left. The driver is responsible for ensuring the vehicle is secure and all valuables have been removed.

### **32. After-Hours Road Calls**

When a situation occurs outside the standard Fleet work hours (Monday through Friday 6:30 a.m. to 5:00 p.m.), the dispatcher is authorized to contact the on-call mechanic. If no response is gained, the dispatcher may call the Fleet Supervisor. The dispatcher may also contact the Transit Program Manager or designate and seek direction in this situation.

If this road call is determined by City to be caused by collision, vandalism, abuse, or Contractor's employee error, then the cost of the road call shall be billed to Contractor in accordance with City's usual and customary billing practices.

### **33. Vehicle Towing**

City maintenance staff shall authorize all towing of City and Moorpark owned vehicles, except that towing may be performed by the most expedient source at the direction of law enforcement or when otherwise necessary to eliminate a potential hazard. Towing of leased vehicles and Agoura Hills owned vehicles is the sole responsibility of Contractor.

### **34. Vehicle Headway Signs**

Contractor shall be responsible for the correct use of vehicle headway signs and shall provide periodic updates and refreshes of message structures using City supplied data devices. Contractor shall be responsible for ensuring message lists are complete and reflect operational needs and shall at its expense update list periodically on their own or as directed by City staff. At no time is a message to be programmed into the headway sign that has not been approved by City.

### **35. TOTC**

Contractor's staff shall endeavor to maintain leased office space in a clean and professional manner, with minimum clutter. Contractor shall prohibit staff from posting materials not supplied by City. Contractor shall assist City in maintaining the public access areas in good condition and will ensure vending machines, signage, radios, interior landscaping, benches, and other amenities are in good working order through routine inspection. Contractor's staff shall notify City's Facilities staff of any damage, vandalism, graffiti, or other concerns as soon as Contractor's staff becomes aware of the problem.

Contractor's staff will maintain the security of the administration area at all times and will not permit administration area to be accessed by unauthorized persons, will alarm the building as required, and will perform security sweeps as needed prior to the locking of the public areas. Contractor's staff shall regularly observe and review security camera recordings for incidents and shall have any significant events copied to an archive computer for a period of not less than 13 months. General Manager will limit access to record and playback interface to management staff only. General Manager shall also be solely in charge of and have access to individual building alarm codes.

At no time will the storage of hazardous or flammable substances be permitted inside the Transportation Center. Contractor's staff is prohibited from smoking in or within 25 feet of the administration building and shall enforce the "no smoking" provisions of City's Municipal Code with all patrons within the footprint of the TOTC.

City maintains five (5) bike storage lockers on the grounds of the TOTC. Contractor shall be responsible for implementing a City approved policy for locker check-out and monitoring to ensure the lockers are not misused for the storage of personal goods.

Contractor's General Manager will limit access to the I.T. and Electrical closets to management staff and will not attempt to repair or diagnose any City-owned equipment without first contacting City staff for directions. Use of the I.T. and Electrical closets for the storage of materials is strictly prohibited. City will consider, on a case by case basis, requests for the installation of computer and other electronic equipment owned by Contractor into the I.T. and Electrical closets.

### **36. Late Cancellation and No-Show Reduction**

City has an FTA approved Policy for Late Cancellations and No Shows designed to reduce incidents. City's rate of nearly fifteen percent for some services is well above accepted norms (five percent). Contractor shall enforce City's approved policies and reduce Late Cancellations and No Shows below five percent for all demand response services operated under this Agreement.

### **37. Trapeze (Demand Response Software)**

Contractor will use City's current demand response reservations and scheduling software (Trapeze PASS [TP4-16.0.20.0] and Trapeze MON, [TP6-16.0.25.0]). Additionally, use of Trapeze PORTAL and RIPPLE software enhancements for direct access booking and ride-reminder calls shall be required under this Agreement and fully operational no later than July 31, 2019.

### **38. MSC**

Parking for Contractor's staff operating from the MSC will be provided in the staff parking area. City will issue key fobs to all Contractor staff. Contractor shall be solely responsible for ensuring use of the fobs is limited to only Contractor staff and specifically to the staff assigned to the individual fob.

Contractor's staff will enter and exit the facility only as directed by City staff. Staff shall not enter the yard by walking through the vehicle gates. Additionally, at no time is a privately-owned vehicle of Contractor's staff to enter the grounds of the MSC. Contractor staff shall have the option of street parking their private vehicles if they so desire but must conform to posted signs.

At no time is any City equipment or supplies to be accessed or operated by Contractor staff except for that specifically approved in writing. City, at its sole discretion, may train select Contractor staff on the proper operation of some City owned equipment for the express purpose of complying with service requirements of this Agreement. When so authorized, Contractor's staff will use the upmost care to ensure equipment is operated safely and that no damage is caused to City equipment or the facility as a result of use.

### **39. Performance and Fidelity Bond**

A performance bond will be required. Prior to July 1, 2019, and annually thereafter, Contractor shall provide City with surety bonds or a letter of credit in the amount equal to seventy-five percent (75 percent) of Contract Price for year

one, seventy-five percent (75 percent) for year two, and fifty percent (50 percent) for years three and four. Bond requirements for extension years shall be negotiated but shall not be less than \$1,500,000 in any extension year. City at its sole discretion may determine lesser amounts are adequate. Annual surety bonds or letter of credit amounts will be rounded to the nearest thousand dollars.

At all times the Contract in in effect, Contractor shall cause its personnel assigned to the Contract to be covered under an appropriate bond protecting City from employee theft up to a minimum amount of one-hundred thousand dollars (\$100,000) with respect to any one occurrence by Contractor's employees.

#### **40. Start Date**

Contractor shall implement all aspects of the Contract except those specifically articulated with a different date, on July 1, 2019, or be subject to performance measure penalties.

#### **41. Disadvantaged Business Enterprise (DBE) Requirements**

No DBE goal is established for this procurement.

#### **42. Training Bus**

Contractor will be responsible for providing, fueling, and maintaining at its own expense one heavy-duty, airbrake equipped transit style bus for driver training and testing purposes.

#### **43. Office Trailer**

Contractor will provide a brand-new, replacement office trailer at its own expense (not to exceed 2,000 square feet and subject to City Planning guidelines for exterior appearance and color) at the same location as the existing trailer on MSC grounds. A ground lease will be required and City will charge a nominal fee of \$1.00 per square foot per month for the ground lease to cover reasonable and expected utility, phone, data, and maintenance costs related to the trailer's presence at the MSC. Power draw from the MSC power system will be limited to no more than 160 amps.

Trailer is to be delivered and installed at City's Municipal Service Center within 60 days of contract execution date. Contractor shall be responsible for all costs associated with disconnection of utilities to current building and connection of utilities to new building. Contractor shall ensure placement of trailer is approved in advance by the MSC Fleet and Facilities Manager. Contractor shall ensure the prompt removal of old trailer.

#### **44. Leased Vehicle Transition**

For those vehicles Contractor is replacing but cannot place in service by the required July 1, 2019 contract start date due to availability and other conditions beyond the reasonable control of Contractor, City will permit existing vehicles to



remain in service without penalty to Contractor for a period not to exceed 60 days for gasoline powered vehicles and not to exceed 120 days for CNG powered vehicles. Contractor will maintain the lease rates as they existed on June 30, 2019, for all such vehicles until they are replaced.

**EXHIBIT B – to Contract No. 12072-2019**

**SCHEDULE OF FEES**

Contractor’s cost for all labor, materials, and equipment necessary to the completion of work itemized, shall be included in the unit price for various items shown herein. City reserves the right to increase or decrease the quantity of any item or omit items as may be deemed necessary and the same shall in no way affect or make void the Agreement. When increases or decreases are made, appropriate additions or deductions from the Agreement total price will be made at the stipulated unit price. Revenue Hour is as defined in the most current National Transportation Database definition of “revenue hour” for each type services provided by Contractor. This definition shall apply to all services billed unless specifically waived by City’s Project Manager or designee.

<b>Work Description</b>	<b>Unit Cost (per revenue hour)</b>	<b>Annual Not-To-Exceed*</b>
TOT Fixed Route Bus Service	\$ 57.83	\$1,156,600
TOT DAR/ADA Service	\$ 65.22	\$2,021,820
Moorpark Fixed Route Bus Service	\$ 62.51	\$ 325,052
Kanan Shuttle	\$ 93.34	\$ 466,700
ECTA Inter-city DAR/ADA Service	\$ 77.99	\$1,013,870
Agoura Hills General Purpose DAR Service	\$ 82.07	\$ 393,936
Agoura Hills Special Event Bus Service	\$ 86.63	\$ 43,315
Special Services	Variable	\$ 78,045
<b>TOTAL</b>		<b>\$5,499,338</b>

\* Year one cost. Future contract years limited to annual CPI increase of 3.0 percent.

<b>Vehicle Lease</b>	<b>Units</b>	<b>Unit Cost (monthly)</b>	<b>Annual Cost (rounded)</b>
DAR/ADA Class A	2	\$ 1,694.16	\$ 40,660
DAR/ADA Class D	8	\$ 1,026.47	\$ 98,541
GP DAR Class A	1	\$ 2,261.95	\$ 27,143
ECTA Class A	6	\$ 1,992.25	\$ 143,442
Kanan Shuttle (Class E/F)	4	\$ 2,261.95	\$ 108,574
<b>TOTAL</b>	<b>21</b>		<b>\$ 418,360</b>

<b>Trapeze</b>	<b>Monthly Cost</b>	<b>Annual Cost (rounded)</b>
Trapeze PASS and MON	\$ 6,138.55	\$ 73,663
Trapeze Portal	\$ 285.84	\$ 3,430
Trapeze Ripple	\$ 434.05	\$ 5,209
<b>TOTAL</b>		<b>\$ 82,302</b>

## EXHIBIT C – to Contract No. 12072-2019

### CITY PROVIDED SERVICES

#### City Duties and Responsibilities

City shall perform the following duties and accept the following responsibilities with respect to the TOT and other agencies provided service under this Contract. To the extent reasonable and feasible, Contractor shall assist City in this regard.

##### A. Fixed Route Service

1. City shall be responsible for marketing and planning activities related to routes, schedule, days and hours of operation, bus stop and street furnishing locations, preparation of planning documents, budgets, grants applications, and activities related to system administration.
2. City shall prepare, print and provide to Contractor all schedules, passes, tickets, transfers, service brochures, and like materials required by City.
3. City shall provide a minimum of eight fixed route transit vehicles equipped with radios, fare boxes, and all related safety equipment; vehicle parking, and registration; all parts and materials and part inventory (four fixed route transit vehicles for Moorpark).
4. City shall provide all necessary vehicle maintenance including labor, parts and fuel for all City and Moorpark owned vehicles.
5. City shall provide repairs to all City and Moorpark owned vehicles and provide Contractor with an invoice for damage caused by Contractor's drivers.
6. City shall at all times make available to Contractor a list of tariffs, indicating what type of fare is to be collected from each type of passenger. In the case of discount, prepaid, free or promotional fares, City shall also make available a list of what kind of identification, if any, must be presented by the passenger and verified by the vehicle operator in order to qualify for the fare. City shall also make available to Contractor any fare types for services provided under contract when such fares are different than those charged by TOT.

##### B. Dial-A-Ride/ADA Service

1. City will issue Dial-A-Ride Transportation Cards, brochures, comment cards and passes.
2. City shall pay for or otherwise supply a computerized dispatch program and equipment related to the program.

##### C. Office Facility

1. Office space at the TOTC shall be leased to Contractor at a rate and terms mutually agreed to through negotiations.
2. Ground lease space at the MSC may be leased to Contractor at a rate and terms mutually agreed to through negotiations.

3. The City shall provide all necessary telephone lines and equipment to provide phone service to customers including phone handsets and will provide for a minimum of 10 individual calling stations at the TOTC with sufficient capacity to accept up to 20 simultaneous inbound/outbound calls. Where technically possible but at Contractor expense, City shall link the ShoreTel phone system installed at the TOTC to Contractor's other operational locations within the City. Contractor shall be responsible for all monthly phone line and internet charges for all services provided to City or agencies contracting with City except for those costs related to City's owned and closed fiber-optic connection to City's network which shall be maintained at City's sole expense for City's exclusive use. City shall be solely responsible for all costs to maintain ShoreTel phone system equipment, phone call recording equipment, security camera equipment, switches, internet routers and related equipment.

## EXHIBIT D - to Contract No. 12072-2019

### PERFORMANCE STANDARDS

#### 1. Agreement Standards

Contractor will strive at all times to provide service which meets the minimum standards described, ensures responsive service to transit customers while at the same time maximizing service reliability and safety. In order to identify key areas of concern to City, various performance standards are described below for which penalties may be assessed when service falls below the minimum standard and performance bonuses paid when performance substantially exceeds minimum expectations.

Any breach of minimum performance measures by Contractor could result in damages and injury to the public and City in amounts which can be difficult to ascertain with specificity. City shall not place a monetary value on most contract violations except as specifically noted in the Performance Measures on the following pages. Rather, City shall recover from Contractor the cost of all staff time necessary to investigate complaints and alleged violations of contract performance standards. Any staff time expenditures that result from substantiated complaints and contract violations, and staff time required to meet with Contractor's staff to identify and implement corrective actions, shall be billed to Contractor monthly at the rate described in City's User Fee Manual, billed in 30-minute increments. Payment to City in the form of a check shall be required on a net-30 basis.

#### 2. Operations

Vehicles shall be operated with due regard for the safety, comfort, and convenience of passengers and the general public. Contractor shall strive to attain 100 percent on time performance. Contractor shall strive to maintain zero (0) preventable accidents, as defined by the National Transit Database applying to injury accidents and accidents with property damage in excess of one thousand dollars (\$1, 000). Contractor shall strive to maintain a rating of "exceptional" with regard to the appearance and condition of vehicles, as determined by City inspection. Contractor shall strive to maintain a maximum number of miles between road calls.

#### 3. Personnel

Regularly assigned Managers, Customer Service staff, Operators and trained backup staff of Contractor must be available and on time daily to ensure consistent and reliable service. All Contractor personnel are responsible for knowledge of service. Contractor personnel must maintain a courteous attitude, answering to the best of their ability, any questions from the public regarding provisions of service. Contractor personnel must also report all passenger complaints and/ or operation problems to General Manager or designated

Manager in charge. All paperwork, data collection, reporting, and analysis shall conform to industry accepted standards or requirements of agencies requesting such data. General Manager or designee shall personally review and approve all documents submitted to City.

**4. Service Measures**

In general, compliance with performance standards will be gauged using a point system. The accumulation of points under a certain measure in any given month will result in a contract bonus payment to be used exclusively for employee bonuses and enrichment activities.

The accumulation of points in excess of 100 in any month will constitute unacceptable contract performance. Three or more consecutive months of unacceptable contract performance or three months in any six-month rolling period may trigger the issuance of a cure or quit letter. Accumulation of 300 or more points in any single month may trigger the issuance of a cure or quit letter.

**Point Assessment Scale<sup>2</sup>**

<b>Scale</b>	<b>Performance Standard</b>	<b>Contract Status</b>
0-24	Superior	Bonus = to 2.00 percent of billed hourly costs
25-49	Very Good	Bonus = to 1.00 percent of billed hourly costs
50-74	Good	Bonus = to 0.50 percent of billed hourly costs
75-99	Fair	No Bonus
100-299	Unacceptable	<b>In violation</b>
300+	Failed	<b>Cure or Quit</b>

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<sup>2</sup> The assessment of points is cumulative across the entire scope of services to be provided under this Agreement.

### General Service Standards

Measure	Standard	Penalty
<b>Service start-up</b>	Service will commence on July 1, 2019	\$10,000 every calendar day service is delayed due to the Contractor
<b>Service failure</b>	Service will be provided at all times during the term of this Contract, except where noted	\$20,000 every calendar day service is not provided
<b>Replacement of General Manager</b>	Replacement of the assigned General Manager	\$50,000 if General Manager is replaced, without prior consent of the City for any reason other than cause
<b>Preventable accidents</b>	1 per 100,000 revenue miles	10 points per incident in excess of standard measured monthly
<b>Safety</b>	Satisfactory CHP Vehicle and Terminal Inspection of Contractor provided vehicles and facility	5 points per incident per vehicle  \$10,000 for failed Terminal Inspection specific to Contractor's facilities
<b>Complaints</b>	The incidence of verified service complaints will be no greater than five (5) per calendar month	3 points per incident in excess of 5 per month
<b>Accident/Injury Notification</b>	All accidents/injuries shall be reported within 15 minutes or as soon as practical	20 points for each incident not reported appropriately
<b>Incident Notification (Failure to)</b>	All incidents that require response of emergency personnel, that result in property damage, or that may result in litigation shall be noticed to City staff as soon as practical.	3 points for each incident not filed appropriately
<b>Incident Report Filing</b>	All incident reports will be filed within 24 hours (4 hours for accidents involving injury)	10 points for each incident not filed appropriately
<b>Unreported Vehicle Damage</b>	All damage to City and Moorpark owned vehicles will be reported promptly and noted on DVI	10 points for each incident not reported appropriately

### General Service Standards (Continued)

Measure	Standard	Penalty
<b>Timely Invoicing</b>	Complete and correct invoicing and routine monthly data provided no later than the 15 <sup>th</sup> of the month for the preceding month.	2 points per day, for each day past the deadline.
<b>Unauthorized use of key fob, key card, or alarm code</b>	Each staff member that requires key fob, key card, or alarm code will ensure it is used solely by that staff person.	2 points for each incident of unauthorized use.
<b>Uniform Policy Violations</b>	Staff shall be dressed in accordance with uniform policy when in service or "on-the-clock."	1 point for each violation.
<b>DVI Reports</b>	Each employee will accurately and completely fill out DVI reports for each shift worked and will turn in reports timely.	1 point for each violation.

### Fixed-Route Standards

Measure	Standard	Penalty
<b>On-time performance</b>	1 minute early, 5 minutes late (0 to + 5 standard for Moorpark and Kanan Shuttle)	2 points per percentage point or fraction thereof under standard, per service, maximum 20 points
<b>Missed trips</b>	50 percent or more of the route run not completed	20 points per occurrence
<b>Calling out Stops</b>	Driver must call out bus stops upon approach	1 point per occurrence, maximum 5 points per trip
<b>Destination Signs</b>	Drivers must display the correct destination information	1 point per occurrence



### Dial-A-Ride/ADA Standards

Measure	Standard	Penalty
<b>On-time performance</b>	On-time performance failing to meet standard	2 points per percentage point or fractions thereof, per standard, per service, maximum 20 points
<b>Denied trip (ADA)</b>	More than 59 minutes late or failure to pick up	1 point per occurrence for every occurrence in excess of 0.3 percent of all rides provided in any given month
<b>Average wait times</b>	Average wait times exceeding standard	10 points per minute for wait times in excess of standard in any given month
<b>Vehicle accessibility</b>	All vehicles in revenue service must be equipped with an operable lift or ramp	2 points per occurrence for any vehicle with known ramp or lift failure placed in service
<b>Phone Response</b>	Failing to meet phone answering and on-hold standards	1 point per second for failing to meet minimum on-hold performance standard, maximum 10 points  1 point per percentage point or fraction thereof for calls placed on hold in excess of standard, maximum 10 points
<b>Vehicle Mileage</b>	Average per vehicle miles of City-owned vehicles exceeds leased vehicles	\$1.25 per mile, per vehicle, for each mile or fraction thereof where the average monthly vehicle miles for City-owned vehicles exceeds leased vehicles

EXHIBIT E to Contract No. 12072-2019

REQUIRED DOCUMENTS

1. FTA Certification on Restriction of Lobbying

**CERTIFICATION OF RESTRICTION ON LOBBYING**

The undersigned Proposer certifies to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

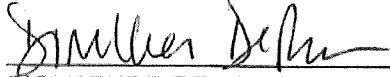
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement shall complete and submit Standard Form---LLL, " Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure. [Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.].

**Certification of Restriction on Lobbying - Continued**

The Proposer, MV Transportation, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. 3801, et seq., apply to this certification and disclosure, if any.



SIGNATURE OF PROPOSER'S AUTHORIZED OFFICIAL

December 5, 2018

DATE

Dorothea DePrisco, Assistant Corporate Secretary

NAME AND TITLE OF PROPOSER'S AUTHORIZED OFFICIAL

## 2. DBE Approval

### DISADVANTAGED BUSINESS ENTERPRISE

MV Transportation, Inc. hereby certifies that all reasonable efforts have been made to secure maximum disadvantaged business enterprise (DBE) participation in this contract.

BY:  Dorothea DePrisco  
Authorized Official

Assistant Corporate Secretary  
Title

Please include on a separate sheet the names, addresses of all DBEs contacted or that will participate in the contract, the scope of work, dollar amount of for each participating DBE. Also describe all efforts which have been made to secure maximum DBE participation. N/A\*

**All participating DBEs must complete a separate DBE affidavit on the following page. Include as many copies with the proposal as required.**

**DO NOT complete DBE affidavit page if there are no participating DBEs.**

\*Pursuant to Addendum 3, dated December 4, 2018 there is no DBE goal established for this procurement and a good faith effort is not required.

MV does not anticipate the use of DBE's in the provision of these services.

**AFFIDAVIT OF DISADVANTAGED BUSINESS ENTERPRISE**

I hereby declare and affirm that I am a qualifying DBE as describe in 49 CFR part 26 and that I will provide information to document this fact.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.**

BY: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### 3. FTA Debarment Certification

<p style="text-align: center;"><b>CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS</b></p>
--

FILL OUT SECTION A OR B OF THIS FORM. DO NOT COMPLETE BOTH FORMS.

#### SECTION A

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a third-party contract),

                    MV Transportation, Inc.                     certifies to the best of its knowledge and belief that it and its principles:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a Federal debarment or agency.
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for City of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or City of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with City of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for default.

If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third-party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

**Certification of Primary Participant - Continued**

**THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), Dorothea DePrisco, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OR THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET SEQ. ARE APPLICABLE THERETO.**



Dorothea DePrisco, Assistant Corporate Secretary

Signature and Title of Authorized Official

The undersigned chief legal counsel for the MV Transportation, Inc. hereby certifies that the Assistant Corporate Secretary has authority under State and Local law to comply with the subject assurances and that the certification above has been legally made.



Ted Navitskas, General Counsel

Signature of Applicant's Attorney

November 27, 2018

Date

N/A

**SECTION B (Complete ONLY if you have NOT completed Section A above)**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
INELIGIBLE AND VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTIONS**

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under an FTA Project), \_\_\_\_\_, certifies by submission of the proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Lower Tier Participation (Applicant for a third-party subcontract or sub-grant under an FTA Project), is unable to certify to any of the statements in this certification, such Participant shall attach an explanation to this proposal.

**THE LOWER TIER PARTICIPANT (APPLICANT FOR A THIRD-PARTY  
SUBCONTRACT OR SUB-GRANT UNDER AN FTA PROJECT)  
\_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND  
ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH  
THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C.  
SECTION 3801 ET. SEQ. ARE APPLICABLE THERETO.**

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Attorney's Signature

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date



#### 4. Buy American Certification

### BUY AMERICA CERTIFICATE

#### Equipment, Materials and Services

Certification requirement for procurement of buses, other rolling stock and associated equipment.

The Proposer agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, or manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling Stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be **rejected as nonresponsive**. This requirement does not apply to lower tier subcontractors.

**A. Certificate of Compliance with 49 U.S.C. 5323(j)(1).**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.

Date December 5, 2018

Signature  Dorothea DePrisco

Title Assistant Corporate Secretary

Company Name MV Transportation, Inc.

**Buy American - Continued**

**B. Certification for Non-Compliance with 49 U.S.C. 5323(j)(1).**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

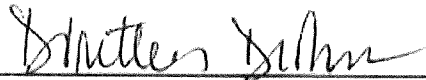
Company Name \_\_\_\_\_

5. Federal Motor Vehicle Safety Standards

**FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

The Proposer hereby certifies that the following statement is true and correct (select one option):

- The vehicle(s) to be supplied is in compliance with the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 C.F.R. Part 571.
- The vehicle(s) to be supplied is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 C.F.R. Part 571.
- The vehicle(s) to be supplied is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 C.F.R. Part 571 but no FMVSS certification is available at this time because the vehicle is a new model (Federal Register Vol. 56, No. 185, page 48391, September 24, 1991).



\_\_\_\_\_  
Signature of the Proposer's Authorized Official

Dorothea DePrisco, Assistant Corporate Secretary

\_\_\_\_\_  
Name and Title of the Proposer's Authorized Official

MV Transportation, Inc.

\_\_\_\_\_  
Company Name

December 5, 2018

\_\_\_\_\_  
Date

6. Interest and Gratuities

**INTEREST AND GRATUITIES FORM**

Proposer by its signature below, certifies that except as disclosed below, Proposer, its officers, employees and their immediate families have not offered or given a gratuity in any form including, without limitations, entertainment, favors, loans, gifts or anything of greater than nominal value for any reason including personal, non-business related reasons to any officer or employee or their immediate families within the preceding twelve (12) months. For the purpose of this section, nominal value means anything: (1) having an aggregate value of \$35.00 (thirty-five dollars), or less per year; or (2), any perishable item (flowers or food) of any value, except that prepared meals are subject to the \$35.00 limit. A campaign contribution is not a gratuity and is not the subject of this Certification.

None

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Proposer further certifies that except as disclosed below, Proposer, its officers, employees and their immediate families presently have no interest nor within the preceding twelve (12) months had any interest including, without limitation, any business or personal relationship that would appear to conflict with the performance of services required to be performed under this Contract. Interests and relationships that may reasonably be viewed as creating a potential or actual conflict of interest shall be disclosed.



Signature of the Proposer's Authorized Official

Dorothea DePrisco, Assistant Corporate Secretary

Name and Title of the Proposer's Authorized Official

MV Transportation, Inc.

Company Name

November 28, 2018

Date

## EXHIBIT F - to Contract No. 12072-2019

### FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES

The following FTA terms will be incorporated into the contract awarded pursuant to this Agreement.

1. **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.
2. **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 underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
  - 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.
3. **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 Master Agreement between City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
4. **Civil Rights**

The following requirements apply to the underlying contract:

(1) 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 and 49 CFR part 21, the 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, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) 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, the 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 course of the Project. The 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.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability, and 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, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The 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.

5. **Access to Records**

Contractor agrees to the following access to records requirements:

- a. 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 the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his 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.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to City, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, 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).

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

6. **Program Fraud and False or Fraudulent Statements or 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 U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, 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 the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the 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 the 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 a project 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 the 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.

7. **Energy Conservation**

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.

8. **Disadvantaged Business Enterprise (DBE) Participation Goal**

- a. General DBE Requirements: In accordance with Federal financial assistance agreements with the U.S. Department of Transportation



(U.S. DOT), City has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This contract is subject to these stipulated regulations. In order to ensure that CITY achieves its overall DBE Program goals and objectives, CITY encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of City to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
  2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
  3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
  4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
  5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
  6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
  7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.
- b. Discrimination: Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that is defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.
- c. City's Race-Neutral DBE Program: A race-neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a race-neutral DBE Program, City does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no DBE goal on this Project.

- d. Consultant's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Contractor affirms that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Contractor affirms that it will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.
- e. Violations: Failure by Contractor to carry out these requirements shall be a material breach of the contract, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - (1) Withholding monthly progress payments;
  - (2) Assessing sanctions;
  - (3) Liquidated damages; and/or
  - (4) Disqualifying the Consultant from future bidding as non-responsible 49 C.F.R. § 26.13(b).

9. **Federal, State and Local Laws**

Contractor warrants that in the performance of this Agreement it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated there under. If this contract is funded with federal funds, the Contractor shall also comply with applicable Federal Transit Administration (FTA) directives. Since laws, regulations, directives, etc. may be modified from time-to-time, Contractor shall be responsible for compliance as modifications are implemented. Contractor's failure to comply shall constitute a material breach of this contract.

10. **ADA Access Requirements**

Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

11. **Recycled Products**

*This provision applies to agreements in excess of over \$10,000 per EPA designated items*

**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.

12. **Termination for Convenience**

*This provision applies to agreements in excess of \$10,000*

The performance of work under this contract may be terminated by CITY in accordance with this clause in whole, or from time-to-time in part, whenever CITY shall determine that such termination is in its best interest. Any such termination shall be affected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by City, the Contractor shall:

- a. Stop work under the contract on the date and to the extent specified in the notice of termination;
- b. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- d. Assign to City in the manner, at the times, and to the extent directed by City, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of City, to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
- f. Transfer title to City and deliver in the manner, at the times, and to the extent, if any, directed by City the fabricated or non-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed

plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to City;

- g. Use its best efforts to seek, in the manner at all times, to the extent, and at the price(s) directed or authorized by City, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at price(s) approved by City, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by City to the Contractor under this contract shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as City may direct;
- h. Complete performance of such part of the work as shall not have been terminated by the notice of termination;
- i. Take such action as may be necessary, or as City may direct, for the protection or preservation of the property related to this contract which is in the possession of the Contractor and in which City has or may acquire an interest.
- j. After termination, the Contractor shall submit a final termination settlement proposal to City as directed. If the Contractor fails to submit a proposal within the time allowed, City may determine, on the basis of information available, the amount, if any due the Contractor because of the termination and shall pay the amount determined. After the Contractor's proposal is received, City and Contractor shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, City may issue a final determination and pay the amount determined. If the Contractor does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Contractor may appeal under the Disputes clause.

13. **Termination for Default**

*This provision applies to agreements in excess of \$10,000*

- a. City may, by written notice of default to the Contractor, terminate the whole or any part of this contract if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cause such failure to be corrected within a period of ten (10) days (or such longer

period as City may authorize in writing) after receipt of notice from City specifying such failure.

- b. If the contract is terminated in whole or in part for default, City may procure, upon such terms and in such manner as City may deem appropriate supplies or services similar to those so terminated. The Contractor shall be liable to City for any excess costs for such similar supplies or services and shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- c. Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required project completion schedule.

Payment for completed supplies delivered to and accepted by City shall be at the contract price. City may withhold from amounts otherwise due the Contractor for such completed supplies such sum as City determines to be necessary to protect City against loss because of outstanding liens of claims of former lien holders.

- d. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of City. The rights and remedies of City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### 14. **Suspension and Debarment**

*This provision applies to agreements in excess of \$25,000*

- a. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. The Contractor shall verify that its principals,

affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- (1) Debarred from participation in any federally assisted Award;
- (2) Suspended from participation in any federally assisted Award;
- (3) Proposed for debarment from participation in any federally assisted Award;
- (4) Declared ineligible to participate in any federally assisted Award;
- (5) Voluntarily excluded from participation in any federally assisted Award; or
- (6) Disqualified from participation in any federally assisted Award.

- b. By signing and submitting its bid, or proposal or contract, 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 by City that the bidder, or Proposer 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

- c. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

## 15. **Buy America**

*This provision applies to all agreements in excess of \$150,000 and only when tangible property or construction will be acquired. Does not apply to leased vehicles.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

An offeror or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

16. **Drug and Alcohol Testing**

*This provision applies to all agreements with safety-sensitive or security issues*

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, 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 Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before February 15th and to submit the Management Information System (MIS) reports before February 15th to Mike Houser, Senior Transit Analyst, 2100 E. Thousand Oaks Blvd., Thousand Oaks, CA, 91362. To certify compliance the 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.

17. **Contract Work Hours & Safety Standards Act**

*This provision applies to all agreements in excess of \$100,000 for construction, rolling stock, and operations*

(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 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 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: City 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 the 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) The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of 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 paragraphs (a) through (d) of this section.

18. **Disputes**

*This provision applies to all agreements in excess of \$100,000*

- a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by City's Director of Finance, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Director of Finance shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Contractor mails or otherwise furnishes to the Director of Finance a written appeal addressed to City's City Manager. The decision of City's City Manager or duly authorized representative for the determination of such appeals shall be final and conclusive.
- b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.
- c. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision of City's Director of Finance and Administration. This "Disputes" clause does not preclude consideration of questions of law in



connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any City official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

19. **Clean Water**

*This provision applies to all agreements in excess of \$150,000*

- a. The 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.* The 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. The Contractor further agrees that:
  - (1) It will not use any violating facilities;
  - (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
  - (3) It will report violations of use of prohibited facilities to FTA; and
  - (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

20. **Clean Air**

*This provision applies to all agreements in excess of \$150,000*

- a. The 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.* The 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. The Contractor further agrees that:
  - (1) It will not use any violating facilities;
  - (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
  - (3) It will report violations of use of prohibited facilities to FTA; and
  - (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

- c. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

21. **Lobbying**

*This provision applies to all agreements in excess of \$100,000*

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - 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 agency, 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. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying".

22. **Safe Operation of Motor Vehicles**

*Applies to all federally funded third party contracts*

Pursuant to Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

- a. Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or City.

- b. Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.