



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Awarding Contract for Fixed Route, Paratransit and Demand Response Operations for Fiscal Years 2008/09 to 2011/12 to MV Transportation, Inc., of Fairfield (\$1,912,153 for FY 2008/09)

MEETING DATE: June 18, 2008

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution awarding the contract for Fixed Route, Paratransit and Demand Response Operations to MV Transportation, Inc., of Fairfield, California, in the amount of \$1,912,153 for fiscal year 2008/09. The length of the contract is a base contract of four years with two one-year extensions.

BACKGROUND INFORMATION: The City's transit program began in January 1978 through a contract with the local taxi company. The system was designed to meet the needs of seniors, disabled and economically disadvantaged persons who were unable to travel by car. The City took over the Dial-A-Ride program in September 1992 and operated it with City contract employees until 1996. The City added its Fixed Route service in November 1994, in response to community interest. Services are currently provided through a contract with MV Public Transportation, Inc.

At the March 5, 2008 meeting, the City Council approved the Request for Proposals (RFP) and authorized advertisement. The proposals were released on March 7, and the deadline for submittals was April 23. The City held a pre-proposal conference on March 21, where five potential proposers were able to ask questions and tour the Multi-Modal Station and Municipal Service Center. On April 23, three proposals were received. The proposals from MV Transportation, Inc., and Veolia Transportation, Inc., were found to be responsive.

The two responsive proposals were distributed to the evaluation committee for review prior to interviews. The evaluation committee was comprised of the City's Transportation Manager, Transportation Planner, Fleet and Facilities Manager, Fleet Services Supervisor, and Senior Services Coordinator. In addition, two outside representatives, the Director of Planning and Programming for the San Joaquin Regional Rail Commission and the Finance Officer for Yolo County Transit District, served on the evaluation committee. Each committee member reviewed the proposals and participated in interviews with the two firms. The RFP, as released, was for a "best value contract" and the scoring evaluates management, training, accident history and staffing, in addition to price. At the conclusion of the interviews, committee members scored each of the firms on the following:

- Management, Technical Competence (experience of General Manager, Safety Trainer, Firm Experience and Corporate Support)
- Operations, Capability and Quality of Plans and Submittals (utilization of existing staff, effectiveness of proposed staffing and scheduling, clear identification of complaint and accident reporting and proposer's transition or implementation plan)
- Safety (safety record, proposed safety training program)
- Cost
- Financial Viability (Is the firm financially viable to complete contract?)

APPROVED: _____
Blair King, City Manager

The scoring results were completed, and the panel unanimously scored MV Transportation’s proposal as the “best value”. MV Transportation’s proposal presented the lowest cost, proposed to continue with the same General Manager and Safety Trainer, retained all current staff (subject to City’s background check), documented the best safety record, and offered all required elements of the RFP, as well as including new technology such as Drive Cam (in vehicle incident recording), Spider reporting (on-line real time data monitoring) and the incorporation of Mobile Data Terminals as a part of the AVL system. MV Transportation’s cost came in below the amount budgeted for the next fiscal year, and the award of the contract at the proposed cost level should result in no need for a system-wide fare increase. The cost proposal from Veolia Transportation was approximately 6% higher the first year and 7-8% higher for the remainder of the term. MV Transportation’s cost proposal for the first four years is:

	FY 2008/2009*	FY 2009/2010	FY 2010/2011	FY 2011/2012
Monthly Fixed Expense	\$50,143	\$51,887	\$53,837	\$55,432
Cost per Revenue Vehicle Hour	\$28.41	\$29.36	\$30.46	\$31.39
Liability Insurance	\$58,408	\$63,944	\$64,197	\$64,365
Projected Total Cost	\$1,912,153	\$2,154,818	\$2,232,997	\$2,299,276
* The cost for FY 2008/2009 is for 11 months. The contract begins August 4, 2008.				

The current contract’s annual cost for FY 2007/2008 is budgeted at \$1,800,000. Staff had budgeted \$2,100,000 for FY 2008/2009. The amount budgeted is sufficient to cover the contract cost, as well as the cost for the month of July which was extended under the current contract. MV Transportation submitted a letter to the City confirming their commitment to hold to the prices as proposed in accordance with the Scope of Work in the RFP and acknowledging their understanding of the insurance requirements of the contract. In addition, MV Transportation provided the City with a letter from the labor union representing the drivers, noting their support of a contract renewal with MV Transportation. Copies of both letters are attached.

Following award of the contract, the Transportation Manager and Fleet and Facilities Manager, along with their staff, will coordinate with MV Transportation to facilitate the installation of the technology upgrades and will coordinate with the City’s Information Systems Division for all phone and data needs to ensure a seamless transition to the new contract in August.

FISCAL IMPACT: Failure to award the contract would result in the City needing to negotiate an extension of our current contract. Any extension of the contract past the allowable term of the contract would result in the City being unable to utilize Federal Transit Administration funds for the cost of the current contract extension.

FUNDING AVAILABLE: Funding for this Transit Operations contract will be from Transportation Development Act (TDA) and Federal Transit Administration (FTA) funds and has been included in the Fiscal Year 2008/09 budget.

 Kirk Evans, Budget Manager

 F. Wally Sandelin
 Public Works Director

Prepared by Tiffani M. Fink, Transportation Manager
 FWS/TMF/pmf
 Attachments
 cc: Transportation Manager
 Fleet Services Supervisor

Fleet and Facilities Manager
 MV Transportation, Inc.



360 Campus Lane, Suite 201
Fairfield, California 94534
707 • 863 • 8980
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www.mvtransit.com

May 7, 2008

Ms. Tiffani Fink, Transportation Manager
City of Lodi Public Works Department
221 West Pine Street
Lodi, CA 95240

Dear Ms. Fink:

Thank you for the opportunity to meet with you and the panel last week. Pursuant to our discussion at this meeting, I respectfully confirm by writing this letter two items that the panel had asked our firm:

- 1) MV commits that the submitted costs contained in our proposal as they relate to the scope of work as presented in the RFP are true and valid. We stand behind our pricing as it has been proposed to the City.
- 2) Additionally, MV agrees to the terms of the insurance requirements as presented in the RFP.

MV is proud of the partnership we have had with the City of Lodi since 2003, and we appreciate the opportunity this RFP presents to continue as the City of Lodi's partner in the provision of these important services into the next contract term.

Please do not hesitate to contact me if I can provide any more information or clarification to our proposal to operate the City of Lodi's Fixed-Route, Paratransit and Demand-Response Operations.

Sincerely,

A handwritten signature in blue ink that reads 'W.C. Pihl'.

W.C. Pihl
Vice President

"FREEDOM THROUGH ORGANIZATION"



AMALGAMATED TRANSIT UNION

LOCAL NO. 256 • SACRAMENTO, CALIFORNIA

2776 21st Street • Sacramento, CA 95818-3145

Office (916) 739-1627 • Fax (916) 739-1658



Joe Escobedo
Business Development
MV Transportation
360 Campus Lane
Fairfield, CA 94585

Dear Mr. Escobedo;

This is to inform you that the ATU has established a good working relationship with MV Transportation.

We are in support of your endeavor to renew a contract with the City of Lodi.

We look forward to a continued relationship with MV Transportation and the local staff.

Respectfully,

Victor M. Guerra
President/Business Agent

**CITY OF LODI FIXED ROUTE, PARATRANSIT AND DEMAND RESPONSE
AGREEMENT**

THIS AGREEMENT is entered into in the City of Lodi, County of San Joaquin, State of California, this ____ day of _____, 2008, by and between the CITY OF LODI, a municipal corporation of the State of California, hereinafter referred to as CITY, and MV TRANSPORTATION, INC., of Fairfield, California, hereinafter referred to as "CONTRACTOR" (collectively the "PARTIES").

This Agreement is made with reference to the following recitals:

- A. CITY has determined that there is a need for paratransit, demand-response Dial-A-Ride and fixed route service in the City of Lodi.
- B. CITY recognizes that CONTRACTOR has the capability to provide such transportation services in the City of Lodi, and CONTRACTOR is willing to provide such services.
- C. CITY desires to contract with CONTRACTOR to provide such transportation services.
- D. CONTRACTOR has read and understands the terms and conditions of the Request for Proposals dated March 2008, and this Agreement and certifies that CONTRACTOR can perform the duties detailed therein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the PARTIES hereto mutually agree as follows:

1. GENERAL TERMS AND CONDITIONS

"TRANSPORTATION MANAGER" means the Transportation Manager of the City of Lodi. "RFP" means the Request for Proposals (RFP 08/09 –13/14) for Fixed Route, Paratransit and Demand Responsive Services Operations Contract with the City of Lodi

including all attachments to it.. "FTA" means the Federal Transit Administration, U.S. Department of Transportation. "U.S. DOT or DOT" shall mean the United States Department of Transportation. "Dial-A-Ride" shall mean the City of Lodi's demand-response and reservation transit system. "Grapeline and Fixed Route" shall mean the City of Lodi's transit system fixed-route service. "VineLine and Paratransit" shall mean the City of Lodi's ADA Paratransit service. "Deadhead" shall refer to non-revenue time for the movement of vehicles to the City of Lodi Municipal Service Center ("MSC") for fueling and repairs, time required for bus washing and upkeep, training and travel between the first pick-up and last drop off at the Lodi Multimodal Station, 24 South Sacramento Street, Lodi, CA (for Dial-A-Ride).

2. TERM OF AGREEMENT. Subject to the provisions of Paragraphs 14, 15, 16, 17 and 18 herein, this Agreement is for a term of four (4) years commencing on August 4, 2008 and terminating June 30, 2012, with two (2) one (1) year options which may be exercised in the sole discretion of CITY at least 30 days prior to the end of the term of this Agreement or an extension thereof. CONTRACTOR acknowledges that CITY may require CONTRACTOR to continue to provide services to CITY after such expiration of term, on the terms and conditions set forth in this Agreement, on a month-to-month basis not to exceed three (3) additional months.

3. VEHICLES. CONTRACTOR shall utilize vehicles as provided by the CITY unless otherwise needed by the CITY for expansion of service or use during a prolonged shortage of vehicles due to accident or maintenance. The CITY shall be responsible for all maintenance to said vehicles as outlined in the Request for Proposals and any appendices thereto, as well as for performing repairs to said vehicles in the case of accident. CONTRACTOR shall be responsible for the cost of vehicle repairs as outlined in the Request for Proposals and any appendices thereto.

4. SERVICE.

4.1 CONTRACTOR agrees that for the term of this Agreement CONTRACTOR will supply customer information, telephonists/dispatchers, bus drivers, supervision and management personnel to operate CITY's transportation system in a diligent and careful manner as required in Appendix A - Scope of Work attached to this Agreement and incorporated herein by this reference as if fully set forth.

4.2 CITY reserves the right to unilaterally amend the service hours during the term of this Agreement, and in the event that CITY amends said service hours, CONTRACTOR will be reimbursed for actual hours of service provided at the rates set forth under the "Payments to Contractor" provisions set forth herein. If CITY expands the hours of the day or days of the week in which the service is provided, which necessitates the addition of road supervision, dispatch or any other non-driver staff, CITY and CONTRACTOR agree to negotiate an equitable adjustment to CONTRACTOR's fixed monthly rate.

5. ADMINISTRATION OF AGREEMENT. CITY shall administer the provisions of this Agreement.

6. STATE OR REGULATORY APPROVALS.

6.1 CONTRACTOR agrees and warrants that if any approval of a State or Federal regulatory agency, such as the California Public Utilities Commission, is necessary for the validity or effectiveness of this Agreement, or for the provision of any of the services specified herein, CONTRACTOR shall obtain such approvals and advise CITY immediately of all actions or orders of the regulatory agency affecting CONTRACTOR'S operation under the terms of this Agreement.

6.2 CONTRACTOR shall conduct all operations in strict compliance with all pertinent rules and regulations, including those of the California Public Utilities Commission, including but not limited to, General Order Number 98-4 "Rules and Regulations Governing Passenger Stage Corporations and Charter-Party Carriers" and all supplements and amendments thereto, to the extent that CONTRACTOR is subject to these regulations. CITY shall not be responsible or liable for any penalty occasioned by CONTRACTOR'S violation or failure to comply with any pertinent rules and regulations. CONTRACTOR efforts to obtain such approvals shall be at CONTRACTOR'S sole expense.

7. COPARTNERSHIP DISCLAIMER. The PARTIES understand and agree that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the PARTIES hereto, or as constituting CONTRACTOR or its employees, agents or representatives as employees or agents of CITY, for any purpose or in any manner whatsoever. The PARTIES intend that for all purposes the relationship between them is that of CITY and independent contractor.

8. EMPLOYEE PROTECTIONS.

8.1 CONTRACTOR shall be exclusively responsible for satisfaction of all obligations that may be owed to its employees, whether derived from statutes, regulations, agreements, or any other source, both during and subsequent to the term of this Agreement and any carryover thereto.

8.2 As further consideration for the compensation to be paid by CITY to CONTRACTOR for the provision of services called for by the Agreement, CONTRACTOR agrees to, and will, defend, indemnify, and hold harmless CITY and its elected officials, officers, agents,

and employees from and against the payment of any dismissal allowances, displacement allowances, or any other costs, benefits, or expenses, including attorneys' fees, arising from any claims, demands, or liabilities under Sections 13(c), 15(n) (l), or any other provision of the Federal Transit Act of 1964, as said law now exists or hereafter may be amended, or under any comparable provision of Federal, State, or local law, or pursuant to the terms of any collective bargaining agreement to which CONTRACTOR is a party, or pursuant to any personnel policies adopted by CONTRACTOR pertaining to its employees, asserted against CITY for the dismissal, displacement, or other alleged injury owed to any employees of CONTRACTOR.

9. SALARY AND BENEFITS.

9.1 CONTRACTOR shall hire all non-management employees of the CITY's current transportation contractor, MV Public Transportation, Inc. (MV), at the same or greater salary and benefit rate as currently paid by MV as further set forth in the Request for Proposals and any appendices thereto. Notwithstanding the above requirement, nothing in this Agreement shall be construed to require CONTRACTOR to: i) Hire any existing MV employee for a safety sensitive position who fails to pass a pre-employment FTA drug screen; ii) Hire any existing MV employee who has been convicted of a felony or any offense relating to abuse of alcohol or controlled substances while operating a motor vehicle; iii) Hire any existing MV employee when such employee is not available to work without limitation at the start of this Agreement, or iv) Hire any existing MV employee who does not meet CONTRACTOR's minimum standards for motor vehicle citation or accident record.

9.2 Nothing contained in this Agreement shall be construed to limit CONTRACTOR'S right to manage its workforce (including existing employees), including its right to promote, demote, hire, discipline, discharge, train, retrain or otherwise make personnel

decisions, subject to limitations imposed by law or any collective bargaining agreements to which CONTRACTOR is a party.

9.3 CONTRACTOR shall not be required to assume any liability for pre-existing wages, benefits, outstanding labor grievances or any other costs for existing MV employees where such liability exists or was incurred prior to the start of the term of this Agreement.

10. RELATIONSHIP OF PARTIES AND CONDUCT OF LABOR RELATIONS.

10.1 The PARTIES intend that the relationship between them created by this Agreement is that of CITY and independent contractor. No agent, employee, subcontractor, servant, or volunteer of CONTRACTOR will be deemed to be any employee, agent, servant, or volunteer of CITY. Except as expressly provided herein with respect to the contractual standards set forth, the manner and means of conducting the services called for under this Agreement are under the control of CONTRACTOR, and CONTRACTOR will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and volunteers during the performance of this Agreement. CONTRACTOR will direct the performance of all its personnel, agents, employees, and volunteers. CONTRACTOR shall be solely responsible for the conduct of its labor relations and dealings with any unions or employee organizations which claim to represent any of CONTRACTOR'S employees. CONTRACTOR acknowledges that it is subject to the jurisdiction of the National Labor Relations Board and, with respect to the jurisdiction of the National Labor Relations Board and, with respect to any claim for recognition, allegation of unfair labor practice, or petition for certification, it will not contest the jurisdiction of the National Labor Relations Board to entertain and resolve such matters, will submit to the jurisdiction of the National Labor Relations Board, and will cooperate in expeditiously resolving any disputes brought before the National Labor Relations Board concerning its employees; provided that, this covenant shall not preclude

CONTRACTOR from raising issues or defenses (including CONTRACTOR's right to appeal) concerning any such claims, charges, or petitions.

10.2 It is understood by both CONTRACTOR and CITY that this Agreement shall not under any circumstances be construed or considered to create any employer-employee relationship or joint venture.

10.3 CONTRACTOR, its agents, officers, and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and not as employees or agents of CITY.

10.4 CONTRACTOR shall determine the method, details and means of performing the work and services to be provided by CONTRACTOR under this Agreement.

10.5 If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other terms of employment or requirement of law shall be determined by the CONTRACTOR.

10.6 It is understood and agreed that as an independent contractor and not an employee or agent of CITY neither the CONTRACTOR or CONTRACTOR'S assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of the CITY in any capacity whatsoever as an agent, or to bind the CITY to any obligation whatsoever.

10.7 It is further understood and agreed that CONTRACTOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONTRACTOR'S personnel.

10.8 As an independent Contractor, CONTRACTOR hereby indemnifies and holds CITY, its elected and appointed officials, officers, agents and employees harmless from any and all claims that may be made against CITY, its elected and appointed officials, officers, agents and employees based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

11. EMPLOYEE CONDUCT. CONTRACTOR will assure that all its employees present a neat appearance and conduct themselves in a courteous, efficient manner while performing services under this Agreement. The CITY will have the right to inspect the performance of CONTRACTOR'S employees at all times. In the event that any employee is found to be discourteous or not to be performing properly the services required by this Agreement, CONTRACTOR will initiate necessary corrective measures not inconsistent with any applicable provisions of any agreement between CONTRACTOR and any labor organization representing its employees.

12. CITY ACCESS TO VEHICLES. CITY shall be permitted access to all vehicles during the hours of operation and at all other times which may be acceptable to CONTRACTOR for the purpose of conducting inspections, surveys or related activities as CITY may deem necessary for the proper administration of the provisions of this Agreement.

13. CALL RECORDER. CONTRACTOR shall supply a call recording system for use with the receptionists/dispatching. Said recording system shall be utilized to monitor all

incoming and outgoing telephone calls. All recordings shall be made available to the CITY upon request. CONTRACTOR shall maintain taped recordings for six (6) months unless otherwise directed by CITY.

14. BILINGUAL DISPATCH. CONTRACTOR shall utilize the bilingual capabilities of existing staff to ensure the maximum level of service is provided to Transit patrons. CONTRACTOR shall attempt to increase bilingual capabilities during future hiring (as needed) for the dispatching/receptionist positions.

15. SCHEDULES, PRINTED MATERIALS, TICKETS AND ADVERTISING.

CONTRACTOR will provide and maintain an adequate supply of printed materials, for, among other uses, distribution on vehicles and throughout the area of service.

CONTRACTOR shall provide all necessary tickets and/or fare media for use during the term of this Agreement. Tickets shall be available to the public at the Lodi Station during regular business hours as well as on vehicles as may be necessary. Additionally, tickets shall be made available to the City of Lodi Finance Department for sale to the public.

Any changes to tickets and/or fare media shall be at the sole discretion of the Transportation Manager for the CITY. CONTRACTOR shall cooperate with CITY as necessary to promote bus ridership through any advertising, marketing or promotional effort or campaign directed or ordered by CITY. CITY reserves the exclusive right to place advertising or rider information material on the interior or exterior of vehicles. If required by CITY, CONTRACTOR shall install and remove such advertising material as directed by CITY. CONTRACTOR shall not install any advertising material inside or outside the vehicles except as directed by CITY. All printed materials provided by CONTRACTOR, including tickets and fare media are subject to review and approval by CITY'S Transportation Manager.

16. INSURANCE AND INDEMNIFICATION

A. Insurance

CONTRACTOR shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to CITY, naming the CITY as additional insured, as may be required by the Risk Manager of CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of CITY by certified mail, return receipt requested, for all of the following stated insurance policies.

1. Workers' Compensation – in compliance with the statutes of the State of California, plus employer's liability with a minimum of liability of \$500,000. The Workers' Compensation insurer shall agree to waive all rights of subrogation against CITY, its agents, officers, employees, and volunteers for losses arising from work performed by CONTRACTOR for CITY.

2. General Liability insurance with a minimum limit of liability per occurrence of \$2,000,000 for bodily injury and \$200,000 for property damage or \$2,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; and products and completed operations.

3. Automobile Liability. CITY shall provide a policy or policies of automobile liability and property damage insurance to protect CITY and CONTRACTOR with a minimum limit of liability per occurrence of \$20,000,000 for bodily injury and \$5,000,000 for property damage. CITY shall be responsible for any deductible or self insured retention. CONTRACTOR shall be named as additional insured on said policy. The insurance premiums for the automobile liability and property damage policy shall be split 50/50 with the CITY to cover the insurance costs for transit. The policies shall be placed

with such insurance carriers as required by CITY. CITY shall notify CONTRACTOR of the coming year's premium and the CONTRACTOR's portion as soon as that information is presented to the CITY. CITY shall issue a bill to the CONTRACTOR. CITY will make one payment to the California Transit Insurance Pool (CalTIP) for the total payment.

4. Employee Dishonesty insurance with a minimum limit of liability per occurrence of \$50,000. This coverage to insure all CONTRACTOR officials, agents and employees with access to funds received by CONTRACTOR.

B. If at any time any of said policies if insurance shall be reasonably unsatisfactory to CITY, as to form or substance, or if a company issuing such policy shall be reasonably unsatisfactory to CITY, CONTRACTOR shall promptly obtain a new policy, submit the same to CITY'S Risk Manager for approval, and submit certificate(s) thereof as hereinabove provided. On failure of CONTRACTOR to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of CITY, may be forthwith declared suspended, or terminated. Failure of CONTRACTOR to obtain and/or maintain any required insurance shall not relieve CONTRACTOR from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of CONTRACTOR concerning indemnification.

C. CITY, its elected and appointed officials, agents, officers, employees, and volunteers shall be named as additional insureds on all insurance policies required herein, except Worker's Compensation. CONTRACTOR'S insurance policy(ies) shall include a provision that the coverage is primary as respects CITY; shall include no special limitations to coverage provided to additional insured; and shall be placed with

insurer(s) with acceptable Best's rating of A:VII or with approval of CITY'S Risk Manager.

D. CONTRACTOR shall either require any subcontractor (if necessary) to procure and to maintain during the term of any subcontract all insurance in the amounts and on the terms specified above, or shall insure the activities of subcontractors in the amounts and on the terms specified above.

E. Indemnification and Hold Harmless.

CONTRACTOR shall hold CITY, its elected and appointed officials, agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of CONTRACTOR, whether or not the act or omission arises from the sole negligence or other liability of CONTRACTOR, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement, except to the extent that any claim, loss, liability, damage, cost or expense is as a result of the negligence of CITY, its employees, officials and agents.

CITY maintains a policy of automobile liability insurance for the operation of the vehicles to be used in accordance with the terms of this Agreement therefore, CITY agrees that CONTRACTOR'S duty to indemnify CITY shall not include nor extend to any claim, loss, liability or damage from any cause, including but not limited to injury to person or property or wrongful death, including payment of reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of

CONTRACTOR, whether or not the act or omission arises from the sole negligence or other liability of CONTRACTOR, or its agents, officers, employees, or volunteers **relating to the operation of passenger buses unless such negligence is the direct result of CONTRACTOR'S driver's negligence in the operation of passenger buses is the result of improper training of driver by CONTRACTOR pursuant to this Agreement** and that CITY and CITY's insurer waives any right of subrogation with respect to automobile liability.

17. RECEIVERSHIP, BANKRUPTCY, INSOLVENCY. The PARTIES agree that the appointment of a receiver to take possession of all or substantially all of the assets of CONTRACTOR, or a general assignment by CONTRACTOR for the benefit of creditors, or any action taken by or suffered by CONTRACTOR or its creditors under any insolvency or bankruptcy act shall constitute a breach of this Agreement by CONTRACTOR and shall at the option of CITY result in termination of this Agreement and the rights and privileges granted herein.

18. INTERRUPTION OF SERVICE. In the event the service required to be performed by CONTRACTOR under this Agreement is interrupted by a labor dispute or for any other cause, and service is discontinued in whole or in part for more than forty-eight (48) hours, CITY or another contractor under CITY'S control, shall have the immediate right, to take temporary possession of CONTRACTOR'S office, equipment located therein, and all equipment supplied by CONTRACTOR for the purpose of continuing the service which CONTRACTOR has agreed to provide under this Agreement in order that CITY can preserve and protect the public interest and welfare. In the event of a service interruption, CITY reserves the sole authority to determine if continuation of the service in the manner described above best serves the public interest and welfare. CITY shall provide insurance coverage or its equivalent for all CONTRACTOR'S equipment

temporarily acquired by CITY equal to that provided by CONTRACTOR prior to CITY taking control of said equipment. CITY agrees to treat CONTRACTOR as an additional insured and hold CONTRACTOR harmless to the same extent as provided by CONTRACTOR to CITY under paragraph 16.E of this Agreement. In the event CITY or another contractor takes possession of said CONTRACTOR-supplied equipment, CONTRACTOR shall be reimbursed by CITY for the actual cost of the temporary use of said facilities and equipment. CITY shall have the right to possession of such facilities and equipment and to render the required service until CONTRACTOR can demonstrate to the satisfaction of CITY that required services can be reliably resumed by CONTRACTOR, provided, however, that such temporary assumption of CONTRACTOR'S obligation under this Agreement shall not be continued by CITY for more than one hundred twenty (120) days from the date such operations were undertaken. Should CONTRACTOR fail to demonstrate to the sole satisfaction of CITY that required services can be reliably resumed by CONTRACTOR prior to the expiration of the aforementioned one hundred twenty (120) days, this Agreement shall terminate and the rights and privileges granted in this Agreement shall be cancelled. During the period in which CITY has temporarily assumed the obligations of CONTRACTOR under this Agreement, CITY shall pay costs and expenses applicable to said period, and CONTRACTOR shall not be entitled to receive payment as provided for by Paragraph 26 herein. Employees of CONTRACTOR may be temporarily employed by CITY during any period in which CITY temporarily operates the DAR or Fixed-Route service under the foregoing provisions.

19. TERMINATION FOR DEFAULT. All the terms, conditions, and covenants of this Agreement are considered material and in the event CONTRACTOR breaches or defaults in the performance of any such terms, conditions, or covenants which are to be kept, done or performed by it, CITY shall give CONTRACTOR ten (10) days written

notice as set forth in paragraph 51 of this Agreement, describing such breach or default, if CONTRACTOR fails, neglects or refuses for a period of more than ten (10) days thereafter to remedy, or cure such a breach or default, then CITY without further notice to CONTRACTOR, may terminate this Agreement. In the event of termination of this Agreement as hereinabove specified, CITY shall have the right to take immediate possession of all equipment and facilities provided to CONTRACTOR by CITY and of the facilities and equipment supplied by CONTRACTOR under the provisions of this Agreement. In the event CITY does take possession of CONTRACTOR-supplied facilities and equipment, CONTRACTOR shall be reimbursed by CITY for the actual cost of the temporary use of said facilities and equipment as set forth in paragraph 18 of this Agreement.

CONTRACTOR shall not be deemed in default of any of the provisions of this Agreement in the event of interruption or diminution of service if said condition is solely the result of earthquake, flood, fire, riot, war, an act of terrorism, insurrection, or similar cause beyond the control of CONTRACTOR and which renders performance impossible.

20. TERMINATION FOR CONVENIENCE. CITY may terminate this Agreement in whole or in part at any time by giving written notice to CONTRACTOR as set forth in paragraph 51 of this Agreement.

- A. If CITY elects to terminate this Agreement for convenience during the three (3) years immediately following the date of commencement of this Agreement as specified in the Notice to Proceed, CITY shall give CONTRACTOR thirty (30) days' prior written notice of said termination. CONTRACTOR shall promptly submit its termination claim to CITY for payment. If CONTRACTOR has any property in its possession belonging to CITY, CONTRACTOR shall account for the same and shall dispose of it in the manner directed by CITY.

B. If CITY elects to terminate this Agreement for convenience at any time after the expiration of the three (3) years immediately following the date of commencement of this Agreement as specified in the Notice to Proceed, CITY shall give CONTRACTOR one hundred twenty (120) days' prior written notice of said termination. CONTRACTOR shall promptly submit its termination claim to CITY for payment. If CONTRACTOR has any property in its possession belonging to CITY, CONTRACTOR shall account for the same and shall dispose of it in the manner directed by CITY. CONTRACTOR compensation shall be governed by paragraph 26.

21. RIGHTS OF CITY UPON TERMINATION OR EXPIRATION OF CONTRACT AND WAIVER OF CLAIMS.

21.1 Upon expiration or earlier termination of this Agreement, CITY shall have the right to provide the services under this Agreement by means of its own employees, buses, or equipment, or pursuant to contract with other carrier(s) or otherwise. CONTRACTOR agrees to forever waive any claim, of any sort or nature, against CITY based upon CITY'S operation, or contracting for the operation, of these services, or any portion of it.

21.2 As further consideration for the compensation to be paid by CITY to CONTRACTOR for the provision of services hereunder, CONTRACTOR waives any right that it otherwise might have to claim entitlement to benefits afforded to private mass transportation companies under Section 3(e) of the Federal Transit Act of 1964 (49 U.S.C S1602(e)), as it now exists or hereafter may be amended. CONTRACTOR also hereby forever waives any claims of unfair competition that it otherwise might assert, and further waives any rights that otherwise might accrue to it under the above-mentioned provisions or under any other similar or comparable provisions of law.

22. NONASSIGNABILITY. This Agreement shall not be assigned by CONTRACTOR without the prior written consent of CITY.

23. BUSINESS LICENSE. CONTRACTOR shall obtain all pertinent and required business licenses, pay all fees and taxes required for such licenses, and keep such licenses and tax accounts in good standing at all times.

24. FAITHFUL PERFORMANCE. The faithful performance by CONTRACTOR of each and every term, condition, and provision of this Agreement is expressly made a condition precedent for the payment of any sums agreed herein to be paid to CONTRACTOR by CITY. CONTRACTOR shall post with the CITY'S City Clerk a bond or other acceptable security for use by CITY approved by CITY'S City Attorney or Deputy City Manager. Such bond or security shall be executed by CONTRACTOR and a surety company licensed to do business as such in the State of California. Such bond or security shall be in the amount of Two Hundred Fifty Thousand and No/100th Dollars (\$250,000.00) and shall at all times be kept in full force and effect. The bond and/or security may be a renewable one (1) year bond or security, and shall be renewed annually before its expiration date; provided, however, that such bond or security must remain in full force and effect from and after the date CITY makes any demands for payment on the bond or security until CITY releases such claim. CONTRACTOR'S surety shall not be held responsible should surety fail to renew bond, however, in this event, CONTRACTOR may substitute a letter of credit drawn on a US Bank, in favor of the CITY, in a like amount, to assure CITY of CONTRACTOR's performance hereunder. Provision of such bond or its equivalent, approved by CITY is a material covenant of this Agreement.

25. VEHICLE SERVICE HOURS. For purposes of this Agreement, "vehicle service hour" is defined as one (1) vehicle providing revenue passenger service for one (1) hour

during the hours of service herein specified. A vehicle service hour shall be deemed to have commenced when a vehicle enters the DAR service area boundary as shown in Appendix A of the Scope of Work for the purpose of providing passenger transportation pursuant to the requirements of the Scope of Work. A vehicle service hour shall not include any out-of-service vehicle time used for vehicle operator breaks or lunches. A vehicle service hour shall end when a vehicle terminates the provision of DAR and/or Fixed Route service by either exiting the DAR and/or Fixed Route service area boundary, or by returning to the CITY'S MSC or Lodi Multi-Modal Station.

26. PAYMENTS TO CONTRACTOR.

A. Basic Consideration:

In consideration of the performance of the terms and conditions set forth herein, CITY agrees to pay to CONTRACTOR the following rates for DIAL-A-RIDE and FIXED ROUTE service.

Type of Service	Year One	Year Two	Year Three	Year Four	Year Five	Year Six
Monthly Fixed Expense	\$50,143	\$51,887	\$53,837	\$55,432	\$57,438	\$59,208
Cost per Revenue Vehicle Hour	\$28.41	\$29.36	\$30.46	\$31.39	\$32.46	\$33.58
Liability Insurance	\$58,408	\$63,944	\$64,197	\$64,365	\$64,582	\$64,742
Total Cost	\$1,912,153	\$2,154,818	\$2,232,997	\$2,299,276	\$2,376,917	\$2,454,326

B. Payment for Additional Services: Additional services are those services which are described in Exhibit I – Scope of Work as potential future services for which CONTRACTOR payment will be adjusted should CITY require CONTRACTOR to provide said services or those services not covered in this Agreement or Scope of Work which CITY and CONTRACTOR mutually agree shall be performed by CONTRACTOR. In the event that additional services are undertaken by CONTRACTOR, either at the

direction of CITY or as the result of a written agreement between CITY and CONTRACTOR, payment to CONTRACTOR shall be adjusted to compensate CONTRACTOR for actual cost incurred to provide said additional services plus five percent (5%). CONTRACTOR shall provide documentation of costs incurred satisfactory to CITY.

C. Invoice: Within ten (10) days following the end of each month commencing August 2008, CONTRACTOR shall furnish to CITY an invoice for services provided during the previous month and the monthly report required by the Scope of Work. Invoice shall be in the format specified by CITY, which may revise said format at its sole discretion. Payments to CONTRACTOR shall be based upon said monthly report of vehicle service hours as modified by (B), (C), (D), (F), and (G) herein. Payments shall be made within fifteen (15) days following the receipt and approval of said invoices and monthly report by CITY, subject to certification of its authorized representative that all of the conditions of this Agreement have been complied with by CONTRACTOR.

D. Fixed Cost Adjustments: Consideration paid to CONTRACTOR pursuant to the terms herein set forth in subparagraph (A above) shall be adjusted to compensate CONTRACTOR for significant differences between the number of vehicle service hours operated by the CONTRACTOR and the base number of vehicle service hours for Dial-A-Ride (25,000) and Fixed Route (25,000). After the end of each twelve (12) month period of this Agreement (the "Adjustment Date"), the number of vehicle service hours operated during the previous twelve (12) month period by the CONTRACTOR will be determined. If the difference in vehicle service hours (either positive or negative) between said vehicle service hours and 25,000 for Dial-A-Ride and 25,000 for Fixed Route is greater than twenty percent (20%) of 25,000 for Dial-A-Ride and/or twenty percent (20%) of 25,000 for Fixed Route, the CONTRACTOR'S consideration during the

ensuing twelve (12) month period shall be adjusted (increased or decreased). If the difference in vehicle hours is less than twenty percent (20%) for Dial-A-Ride and/or twenty percent (20%) for Fixed Route, no adjustment will be made. If an adjustment is necessary, the CONTRACTOR'S consideration for each of the ensuing twelve (12) payments shall be increased or decreased, as appropriate, by an amount equal to one-twelfth (1/12th) of the total adjustment amount. If agreed upon by both parties, the adjustment will be made in one (1) lump sum. The adjustment amount shall be negotiated between the CITY and the CONTRACTOR.

27. PERFORMANCE ASSESSMENTS. CITY and CONTRACTOR agree to a system of assessments included as Appendix A: Scope of Work to ensure the performance required under this agreement.

28. DISADVANTAGE BUSINESS ENTERPRISE (DBE)

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 C.F.R. Part 23 and 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this Agreement. Consequently the DBE requirements of 49 C.F.R Part 23 and 26 apply to this Agreement.

29. EQUAL EMPLOYMENT OPPORTUNITY/GENERAL REQUIREMENTS.

In connection with the execution of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, 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. CONTRACTOR further agrees to insert a provision similar to the foregoing in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

If CONTRACTOR is required to submit and obtain Federal Government approval of its Equal Employment Opportunity (EEO) program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Agreement. Failure by CONTRACTOR to carry out the terms of that EEO program shall be treated as a violation of this Agreement. Upon notification to CONTRACTOR of its failure to carry out the approved EEO program, CITY may impose such remedies, as it considers appropriate, including termination of this Agreement.

30. ENVIRONMENT. CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R., Part 15), which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. CONTRACTOR shall report violation to FTA and to USEPA Assistant Administrator for Enforcement (EN-329).

31. TITLE VI CIVIL RIGHTS ACT OF 1964. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance with Regulations: CONTRACTOR shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (49 C.F.R.), as they may be amended from time to time ("the

Regulations”), which are herein now incorporated by reference and made a part of this Agreement.

B. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR’S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by CITY or Federal Transit Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of CONTRACTOR’S noncompliance with the nondiscrimination provisions of this Agreement, CITY shall impose such sanctions as

it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to CONTRACTOR under this Agreement until
CONTRACTOR complies, and/or,
2. Cancellation, termination or suspension of this Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subparagraphs (A) through (F) inclusive, of this Paragraph 31 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as CITY or Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY, and, in addition, CONTRACTOR may request the services of the Attorney General, in such litigation to protect the interest of the United States.

32. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

A. Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the services under this Agreement which may require or involve the employment of laborers shall require or permit any such laborer in any work week in which he or she is employed on such to work in excess of forty (40) hours in such work week unless such laborer receives compensation at a rate not less than one and a half (1 ½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

B. Violation: Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions of subparagraph A of this paragraph 32, 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 employed in violation of the provisions of subparagraph A of this paragraph 32, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph (A) of this paragraph 32.

C. Withholding for Unpaid Wages and Liquidated Damages. The 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 money payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal Contract with the same prime contract, 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 subparagraph (B) of this paragraph 32.

D. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the subparagraphs set forth in this paragraph 32 and also a provision requiring the subcontractor to include these subparagraphs A through C in any subcontract or lower tier subcontract.

33. PROHIBITED INTEREST. No official, officer, or employee of CITY during his or her tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

34. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS. In accordance with U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

35. DEBARRED BIDDERS. CONTRACTOR, including any of its officers or holders of a controlling interest, is obligated to inform CITY whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should CONTRACTOR be included on such a list during the term of this Agreement, it shall promptly so inform CITY. CONTRACTOR shall not award a contract of any amount to any party included on said debarred bidders' list.

36. CARGO PREFERENCE. CONTRACTOR shall abide by 46 U.S.C. Section 1241(B)(1) and 46 C.F.R. Part 381 which impose cargo preference requirements on shipment of foreign made goods.

37. FEDERAL GRANT CONDITIONS. This Agreement is subject to a financial assistance contract between CITY and the United States Department of Transportation (DOT), Federal Transit Administration (FTA). CITY and DOT agree to comply with all terms and conditions respectively required of them by reason of that contract. If FTA requires any change to this Agreement to comply with its requirements, the PARTIES agree to amend this Agreement as maybe required by FTA. If such amendment results in an increase or decrease in the work to be performed by CONTRACTOR or in the time

for such performance, then the compensation to be paid to CONTRACTOR and time of performance shall be equitably adjusted.

38. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.

CONTRACTOR agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to CONTRACTOR in connection with the performance of the requirements of this Agreement.

39. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS. CONTRACTOR

recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, apply to its actions pertaining to this Agreement. Accordingly, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the actions covered by this Agreement. In addition to other penalties that may be applicable, CONTRACTOR also acknowledges that if it makes 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, as amended, on CONTRACTOR to the extent the Federal Government deems appropriate.

40. REPORTING, RECORD RETENTION, AND ACCESS.

At a minimum, CONTRACTOR agrees to provide to FTA those reports required by DOT's grant management rules and any other reports the Federal Government may require.

CONTRACTOR agrees that, during the term of this Agreement and for three (3) years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to services provided to CITY under this Agreement as the Federal Government may require for the project.

Upon request, CONTRACTOR agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all work materials, payrolls, and other data, and to audit the books, records, and accounts of CONTRACTOR and its subcontractors pertaining to the services provided to the CITY under this Agreement. In accordance with 49 U.S.C. § 5325(a), CONTRACTOR agrees to require each subcontractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract and to audit the books, records, and accounts involving that contract as it affects the services provided to the CITY under this Agreement.

41. AIR QUALITY.

41.1 CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONTRACTOR agrees to comply with applicable requirements of U.S. Environmental Protection Agency (EPA) regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the project,

CONTRACTOR agrees to implement each air quality mitigation and control measure incorporated in the services provided to CITY under this Agreement. CONTRACTOR agrees that any project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the project described in the SIP.

41.2 CONTRACTOR agrees to report and require each subcontractor to any tier to report any violation of these requirements resulting from any project implementation activity of subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.

42. CLEAN WATER. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

CONTRACTOR agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.

43. DRUG AND ALCOHOL TESTING. CONTRACTOR agrees to establish a drug and alcohol testing program that complies with C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or CITY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Parts 653 and 654 before March 1 of each year and to submit the Management Information

System (MIS) reports before March 1 of each year to CITY'S Transportation Manager. 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.

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

45. CHARTER SERVICE OPERATIONS. CONTRACTOR agrees that while performing work in connection with this Agreement it will not engage in charter service operations, except as permitted by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued. Any applicable charter service agreement required by FTA regulations is incorporated by reference and made part of this Agreement.

46. SCHOOL BUS OPERATIONS. CONTRACTOR agrees that neither it nor any subcontractor performing work in connection with this Agreement will engage in school bus operations for the transportation of students or school personnel exclusively in competition with private school bus operators, except as permitted by 49 U.S.C. § 5323(f) and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued. Any applicable school bus agreement required by FTA regulations is incorporated by reference and made part of this Agreement.

47. FEDERAL, STATE, AND LOCAL LAWS. CONTRACTOR warrants and covenants that it shall fully and completely comply with all applicable Federal, State, and local laws and ordinances, and all lawful orders, rules, and regulations issued by any authority of competent jurisdiction in all aspects of its performance of this Agreement.

48. DISPUTE RESOLUTION CLAUSE.

48.1 All claims, controversies or disputes arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation or validity of this Agreement, including the determination of the scope or applicability of this paragraph shall be determined by binding arbitration in Lodi, san Joaquin County, California, by one (1) arbitrator. The American Arbitration Association shall administer the arbitration under its Commercial Arbitration Rules then in effect, subject to the modifications of those rules contained in this paragraph. This agreement to arbitrate shall be specifically enforceable under the prevailing law of any court having jurisdiction, and the award rendered by the arbitrator may be entered in any court having jurisdiction. The appropriate venue for any arbitration under this paragraph shall be in the Superior Court of San Joaquin County, California. This paragraph is not intended to and does not waive the claim filing requirements found at California Government Code Section 900 et seq. In the event that a timely and legally sufficient claim is filed by CONTRACTOR with CITY, and the claim is rejected in whole or in part by CITY, this paragraph shall result in the conclusive, final and binding resolution of all the issues presented in the claim. Claims rejected by CITY shall be submitted by CONTRACTOR to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association within ninety (90) days after the mailing of the written rejection by CITY to CONTRACTOR; otherwise, the claim or claims shall be deemed finally waived in their entirety.

48.2 The "fast track" rules of the American Arbitration Association shall apply to any claim or counterclaim less than ONE HUNDRED FIFTY THOUSAND AND 00/100 (\$150,000.00) DOLLARS. In arbitrations not proceeding under the "fast track" rules, the arbitrator shall have the power to order that depositions be taken and other discovery be made. Both CITY and CONTRACTOR shall have the right, upon written notice, to take no more than three (3) depositions of the other as a matter of right.

48.3 Whether or not CONTRACTOR and CITY may be engaged in interstate commerce, any controversy or dispute mentioned above shall be determined by and the PARTIES shall be bound by the substantive law of the State of California, and not the Federal Arbitration Act at 9 U.S.C. Section 1 et seq.

48.4 The arbitrator may grant any remedy or relief deemed just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party. The arbitrator shall, in the written award, allocate all the costs of the arbitration, including the fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

48.5 Notwithstanding anything in this paragraph 48 to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party's actual damages (excluding litigation cost and fees) against any party. The limitation of the arbitrator's powers under this subparagraph shall not operate as an exclusion of the issue of punitive damages from consideration by a court of competent jurisdiction with respect to that issue.

48.6 CONTRACTOR shall include in all subcontracts, if any, a clause whereby the subcontractor consents to being joined in an arbitration between CITY and CONTRACTOR involving the work performed by the subcontractor. CONTRACTOR'S failure to comply with this provision shall be a breach of this Agreement.

48.7 The parties to any contract of which this paragraph 48 is made a part by reference or otherwise shall, and hereby do, waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296 or any amendment thereto. In any proceeding brought hereunder the arbitrator's award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

49. WAIVER. The waiver by CITY of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions, ordinance, or law shall not operate as or indicate a continuing waiver of the same or any other right, privilege, covenant or condition hereunder.

50. ENTIRE AGREEMENT. This Agreement consists of the City of Lodi Fixed Route, Paratransit and Demand-Response Operations Contract Scope of Work; and CITY'S Request for Proposals for City of Lodi Fixed Route, Paratransit and Demand-Response Operations Contract (the "RFP"); CONTRACTOR'S proposal submitted in response to the RFP, and CONTRACTOR'S Best and Final Offer all of which are incorporated by reference as if fully set forth herein. Should conflicts exist among these documents, this Agreement and the Scope of Work (Appendix A) shall control over the RFP; the RFP and Final Offer shall control over CONTRACTOR'S Proposal. This Agreement supersedes any other oral or written representation between CITY and CONTRACTOR.

51. HEADINGS. The headings of the sections and subsections of this Agreement are for the convenience of the PARTIES and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

52. NOTICES. Any and all notices required to be given under the provisions of this Agreement shall be given in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally serviced or upon receipt by express or overnight delivery, postage prepaid, or in three (3) days from the time of mailing if sent by first class or certified mail, postage paid and addressed to the respective parties as follows:

TO CITY

City of Lodi
Public Works Director
P.O. Box 3006
221 West Pine Street
Lodi, CA 95241-1910 (95240)

TO CONTRACTOR:

Or at such other addresses as the PARTIES may file with each other for such purpose.

IN WITNESS WHEREOF, the City of Lodi, a municipal corporation, has caused this Agreement to be executed in duplicate by its City Manager and attested by its City Clerk under authority of Resolution No. _____, adopted by Council of the City of Lodi on the ____ day of _____, 2008, and CONTRACTOR has caused this

Agreement to be executed by a person or persons authorized to do so on behalf of
CONTRACTOR.

“CITY”

CITY OF LODI, a municipal corporation

By: _____
Blair King, City Manager

“CONTRACTOR”^{Footnote}

MV Transportation, Inc.

By: _____

(Corporate Seal)

CONTRACTOR’S Federal ID #

ATTEST:

By: _____
Randi Johl, City Clerk

APPROVED AS TO FORM:

By: 
Janice D. Magdich,
Deputy City Attorney

Footnote: Corporations – signature of two (2) officers required or one (1)
officer plus corporate seal

Partnership – signature of partner required

Sole Proprietorship – signature of proprietor required

RESOLUTION NO. 2008-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING THE CONTRACT FOR FIXED ROUTE,
PARATRANSIT AND DEMAND RESPONSE OPERATIONS
FOR FISCAL YEARS 2008/09 TO 2011/12

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed proposals were received and publicly opened on April 23, 2008, at 11:00 a.m. for Fixed Route, Paratransit and Demand Response Operations, described in the Request for Proposals therefore approved by the City Council on March 5, 2008; and

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

<u>Proposer</u>	<u>Rank</u>
MV Transportation, Inc., Fairfield, CA	1
Veolia Transportation, Inc., Oak Brook, IL	2

WHEREAS, the evaluation committee unanimously recommends award of the bid for Fixed Route, Paratransit and Demand Response Operations to MV Transportation, Inc., of Fairfield.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the award of the contract for Fixed Route, Paratransit and Demand Response Operations be made to MV Transportation, Inc., of Fairfield, California, for the four-year total of \$ 8,599,244.

Dated: June 18, 2008

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I hereby certify that Resolution No. 2008-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 18, 2008, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk