

**VENTURA COUNTY TRANSPORTATION COMMISSION  
HERITAGE VALLEY TRANSIT SERVICES AGREEMENT**

This Transit Services Agreement (“Agreement”), dated as of \_\_\_\_\_, entered into by and between the VENTURA COUNTY TRANSPORTATION COMMISSION (hereinafter “COMMISSION” and also “VCTC”) and MV TRANSPORTATION, INC., a California corporation (hereinafter “CONTRACTOR”). For the purposes of this Agreement, the COMMISSION and CONTRACTOR shall be jointly referred to as “Parties” and singularly as “Party.”

**RECITALS**

**WHEREAS**, CONTRACTOR represents that it has the management and technical personnel, qualifications, expertise, skill and other assets necessary for the support of the COMMISSION’s transportation project; and

**WHEREAS**, COMMISSION is party to the Heritage Valley Transit Service Cooperative Agreement, entered into between the Cities of Santa Paula, Fillmore, the County of Ventura, and the VCTC, and is responsible for administration of the transit service; and,

**WHEREAS**, COMMISSION wishes to contract out daily management, operation and maintenance functions of the Heritage Valley Transit Service, which includes, Fixed-Route, Dial-a-ride and ADA Paratransit Services for the Heritage Valley (“Project”); and

**WHEREAS**, COMMISSION wishes to enter into an Agreement with CONTRACTOR to provide services for this Project.

**NOW, THEREFORE**, in consideration of the foregoing recitals and mutual covenants and agreements contained herein, COMMISSION and CONTRACTOR hereto agree as follows:

1. Purpose. COMMISSION hereby contracts with CONTRACTOR to provide all necessary transportation management, personnel, equipment, materials, supplies, operations and maintenance services subject to the terms and conditions of this Agreement.
2. Standard of Performance. CONTRACTOR shall perform all services required pursuant to this Agreement according to the highest standard of care observed by a competent and professional common carrier.
3. Definitions.

i. “Transit Facility” refers to the CONTRACTOR’s local base of operations for

dispatch, administration, maintenance and vehicle parking operated in the performance of this Agreement.

- ii. “Revenue Vehicle(s)” or “Transit Vehicle(s)” refers to the transit buses used to operate the service, and provided to the CONTRACTOR by VCTC, as well as any transit buses provided by CONTRACTOR pursuant to this Agreement.
- iii. “Vehicle Revenue Hours/Miles” refers to scheduled transit service transporting fare-paying customers. Revenue service does not include lunches/meal breaks or driver shuttle time, or time spent by driver between split shifts in the field or at the yard.
- iv. “Key Personnel” refers to the following CONTRACTOR employee positions: Project Manager (also referred to as General Manager), and Maintenance Manager.
- v. “Scheduled Time-points” are bus stops with departure times specifically noted (or for the last stop on a route, the noted arrival time) in the VCTC transit route schedules distributed for public consumption.
- vi. “Layover” refers to scheduled time for bus driver to be stopped at a bus stop or transit center when driver may be engaged with passengers. Does not include non-revenue service hours.
- vii. “Recovery” refers to the extra driver service time scheduled between trips that is not included on published schedules distributed for public consumption.
- viii. “Deadhead time/miles” as used herein, refers to the miles and hours that a revenue vehicle travels when out of revenue service. Deadhead includes revenue vehicles leaving or returning to the garage or yard facility, or when there is no expectation of carrying revenue passengers, but does NOT include any costs for providing driver reliefs, shift changes, shuttling vehicles to off-site fueling, etc. Deadhead does not include charter service, school bus service, operator training, or maintenance training. The COMMISSION does pay contractor for approved deadhead time incurred for provision of Dial-a-ride/ADA Paratransit service. COMMISSION approves the amount of deadhead time paid each month (reported by CONTRACTOR) based upon the existing schedule.
- ix. “Driver Break” or “10-minute break” used herein refers to the legally required paid rest breaks given to drivers while in the field.
- x. “Split Shifts” refers to a driver’s daily assignment that has at least two shifts of work (typically a morning or “A” piece and an afternoon or “B” piece) with greater than thirty-one minutes (31) of unpaid time during the course of his/her daily assignment that occurs between the two or more pieces of work/shifts.

- xi. "Duty Free Meal breaks" or "Lunches" refers to legally required driver breaks when driver is freed from all duties by employer as required by California law.
  - xii. "Dial-a-ride Service" refers to curb to curb on-demand transportation, including ADA Paratransit services.
  - xiii. "On-demand" refers to trips scheduled in advance through CONTRACTOR dispatch/reservations staff.
  - xiv. "Scheduling Database" or "CAD system" refers to computer scheduling software provided by VCTC and required for use by CONTRACTOR used to log and record all trip reservations, including pickups and drop-offs.
  - xv. "Business Day(s)" refers to days that the VCTC administrative offices are open for business, typically Monday through Friday. Does not include Saturdays and Sundays or when federally recognized holidays occur and VCTC transit service is not operated.
  - xvi. "Calendar Day(s)" all days of the week, excluding days when federally recognized holidays occur and VCTC transit service is not operated.
  - xvii. "Driver Vehicle Inspection Report" or "DVIR" or "Pre-trip Inspection Report" is the daily vehicle inspection report required by law that is completed by each transit vehicle operator prior to, and following the completion of, operation of a revenue vehicle.
  - xviii. "Spare vehicles" refers to revenue vehicles that are not in use but available for service.
4. **Scope of Work:** CONTRACTOR shall provide services at the time and place and in a manner specified as set forth in Exhibit "A" (Scope of Work), Exhibit "B" (Request for Proposals), Exhibit "C" (Contractor Proposal and Contractor Response to Request for Clarification), Exhibit "D" (Vehicle Lease Agreement), and Exhibit "E" (Federal Transit Administration Requirements) all of which are attached hereto and incorporated herein by reference, which services and tasks are subject to review and approval, as required, by COMMISSION. In event of a conflict or inconsistency between this Agreement and the terms of Exhibit "C," this Agreement shall control.
5. **Term.** The term of this Agreement shall begin on March 2, 2015, and shall end on March 1, 2020 ("Initial Term"), unless the term of this Agreement is otherwise terminated or

extended in accordance with this Agreement.

The COMMISSION may, in its sole discretion, exercise an option to extend this Agreement for a maximum of three (3) additional years, either as individual one (1) year extensions or a single three (3) year extension. In the event VCTC exercises its options to extend this Agreement, VCTC will provide written notice of its decision to exercise Option Year One no later than twelve (12) months prior to the expiration of the Initial Term. To exercise subsequent options (i.e., Option Year Two and Option Year Three), VCTC will provide written notice of its decision to exercise its option no later than six (6) months prior to the expiration of the current Option Year term. The exercise of the options shall be within the sole discretion of VCTC and the exercise of one option does not guaranty or mean that the succeeding option or options will be exercised; provided, however, that the subsequent options may not be exercised unless the immediately preceding option has been exercised. VCTC's written notice to exercise any renewal option does not preclude VCTC from soliciting proposals from other transportation service providers. The schedule of the Initial Term, and subsequent option years, unless modified in writing, follows in the table below:

<b>Term</b>	<b>Start Date</b>	<b>End Date</b>
Initial Term	03/02/2015	03/01/2020
Option Year One	03/02/2020	03/01/2021
Option Year Two	03/02/2021	03/01/2022
Final Option Year Three	03/02/2022	03/01/2023

6. **Effective Date of Agreement.** This Agreement shall become effective when executed by the Parties. However, CONTRACTOR will not commence Revenue Services until the Initial Term. VCTC may issue a preliminary written Notice to Proceed ("NTP") to CONTRACTOR to allow CONTRACTOR to perform only reasonably necessary start-up activities in preparation for Revenue Services.
7. **Maximum Compensation.** For the Initial Term of the Agreement, COMMISSION agrees to pay CONTRACTOR in consideration for all of its services provided as described in the Scope of Work. In no event shall the total amount of this Agreement exceed Twelve Million Dollars (\$12,000,000), ("Maximum Compensation") for the initial term of this Agreement, notwithstanding any contrary indications that may be contained in Exhibit C. The Maximum Compensation excludes any adjustments made to compensation due to CONTRACTOR as a result of performance incentive payments or assessment of liquidated damages.
8. **Price Formula.** For the Initial Term, COMMISSION agrees to pay CONTRACTOR for performance of the Scope of Work set forth in this Agreement as follows:
  - i. CONTRACTOR shall be paid a single fixed hourly rate for billable hours operated,

as defined by service mode. VCTC shall set the total number of scheduled hours.

- a. Fixed Route Service mode: Billable time for Fixed Route Service begins when passenger service begins; that is when the transit or revenue vehicle is operating along the scheduled fixed route or engaged in revenue service, and, ends when out of route or no longer engaged revenue service as identified in the Fixed Route Schedules. This billable time is also referred to as Vehicle Revenue Hours or VRH. Request for reimbursement for Fixed Route VRH operated above and beyond the scheduled times shall be reviewed on a case by case basis, and be subject to validation and approval by VCTC staff.

Fixed Route VRH does not include deadhead, vehicle check-in/check-out time, time needed for fueling the vehicles, time when vehicle is inoperable on the road, or, duty free meal periods. Price paid per VRH shall include full compensation for furnishing all administration, management, facilities, services, maintenance, and items including labor materials, tools, equipment and incidentals as required by the Agreement for the provision of Fixed Route Services.

- b. Dial-a-ride/ADA Paratransit Service mode: Billable time for Dial-a-ride/ADA Paratransit Service begins when the Transit Vehicle is in “revenue service” (i.e. during Vehicle Revenue Hours or VRH). In addition, for Dial-a-ride and ADA Paratransit service only, CONTRACTOR shall be paid for limited deadhead time: this includes time to the first passenger pickup after leaving the Transit Facility, and until vehicle returns to the Transit Facility after dropping off the last passenger.

For the purposes of this section, “deadhead” time refers to the actual time required to travel directly from the CONTRACTOR’s transit facility to pick up the first revenue passenger, and, to travel directly to the CONTRACTOR’s transit facility after dropping off the last revenue passenger. However, reimbursement shall be based on actual on actual deadhead time expended and limited to an average per day of thirty (30) minutes each way per vehicle. Deadhead time in excess of this amount will not be reimbursed. Deadhead travel times may be verified using the trip reservation and scheduling database.

Billable time for Dial-a-Ride/ADA Paratransit does not include vehicle check-in/check-out time at the yard, duty free meal breaks, time taken to fuel vehicles, time when vehicle is inoperable on the road or deadhead time in excess of thirty minutes each way for each vehicle when travelling from the Transit Facility to begin revenue service or to the Transit Facility when ending revenue service. Price paid per vehicle VRH and limited deadhead shall include full compensation for furnishing all administration, management, facilities, services, maintenance, and items, including labor, materials, tools, equipment and

incidentals as required by the Agreement for the provision of Dial-a-ride/ADA Paratransit Services.

- ii. Fixed Hourly Rate. CONTRACTOR shall be reimbursed according to the following rate schedule:

<b>BASE PACKAGE SCHEDULED VEHICLE REVENUE HOURS (ANNUAL)</b>	<b>HOURLY RATE YEAR 1</b>	<b>HOURLY RATE YEAR 2</b>	<b>HOURLY RATE YEAR 3</b>	<b>HOURLY RATE YEAR 4</b>	<b>HOURLY RATE YEAR 5</b>
19240 - 28860 *	\$60.93	\$58.00	\$58.96	\$59.95	\$61.16

\*= 24,050 hours +/- 20%

- a. Increases to the Vehicle Revenue Hours. In the event that VCTC increases the scheduled Fixed Route VRH, and/or increases the available Dial-a-Ride/ADA Paratransit VRH greater than twenty percent from the total amount of hours in the Base Package identified in the Scope of Work, VCTC shall reimburse CONTRACTOR according to the Option exercised. There are three Options:

- OPTION A: Expansion of Fixed Route Service;
- OPTION B: Expansion of Dial-a-ride Service
- OPTION C: Any Combination of Option A (Expanded Fixed Route) and Option B (Expanded Dial-a-ride/ADA Paratransit)

CONTRACTOR shall be reimbursed for Expansion Options according to the following table. Expansion Option shall be determined based on the type of the hours of service added to the project, i.e. Fixed Route and/or Dial-a-ride.

<b>SCHEDULED VEHICLE REVENUE HOURS (ANNUAL)</b>	<b>Expansion Option Exercised</b>	<b>HOURLY RATE YEAR 1</b>	<b>HOURLY RATE YEAR 2</b>	<b>HOURLY RATE YEAR 3</b>	<b>HOURLY RATE YEAR 4</b>	<b>HOURLY RATE YEAR 5</b>
28861 – 43860	Option A: FR*	\$52.24	\$50.28	\$51.19	\$52.12	\$53.22
28861 – 34860	Option B: DAR**	\$58.28	\$55.85	\$56.82	\$57.80	\$58.99
28861 – 49860	Option C: DAR+FR	\$51.76	\$50.10	\$50.98	\$51.96	\$53.04

\*FR = Fixed Route

\*\*DAR = Dial-a-ride

- b. Rates for Option Year Extension(s). Upon expiration of the Initial Term, rates for Agreement extension(s) shall be negotiated prior to the beginning of each

extension no more than thirty (30) days from the date of COMMISSION's written notice to extend the Agreement.

- c. Except as specifically provided elsewhere in this Agreement, the fixed hourly rate specified in Section 8 shall provide for all costs necessary to operate transit services defined in this Agreement.
  - d. Except as set forth herein, CONTRACTOR shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Specifically, CONTRACTOR shall provide office, garage, bus wash, fueling and parking facilities; facility upgrade, repair and landscape maintenance; telephone and telephone maintenance, and all utilities, including high-speed internet at CONTRACTOR's proposed Transit Facility located at 215 North 12<sup>th</sup> Street, Santa Paula, CA, pursuant to Exhibits "A", "B" and "C" of this Agreement; all fuel, oil, solvents, grease, tires, batteries; all maintenance supplies such as filters, headlamps, anti-freeze and bus washer chemicals; vehicle parts inventory; facility insurance; radios; fare revenue processing and accounting equipment; public telephone information service during specified hours; lost and found collection; and shop equipment at the bus facility.
9. Invoices and Payment. COMMISSION shall pay the CONTRACTOR based on the costs contained in the submitted cost proposal, but not to exceed the annual budget approved by COMMISSION, for the complete and satisfactory performance of the terms and conditions of this Agreement for the period agreed upon. COMMISSION shall set and monitor the annual budget. The annual budget will be approved by the COMMISSION at June Commission meeting.
- a. Contractor Invoice: CONTRACTOR shall submit invoices for payment with documentation thereof in the form and number required by COMMISSION within the time specified by COMMISSION. These invoices shall be based on the fixed hourly rate(s) contained in the contract and the actual amount of vehicle revenue service hours operated.

For Dial-a-ride/ADA Paratransit service, CONTRACTOR shall schedule service and complete "trip check-in" functions or "trip reconciliation" using the CAD system provided by COMMISSION.

Hourly costs shall be directly traceable by dispatcher and/or driver trip sheets which will be available for review by COMMISSION; additionally, COMMISSION may use Computer Aided Dispatch (CAD) records, Automated Vehicle Locator ("AVL") monitoring systems and/or in-field service monitoring to validate CONTRACTOR invoices. CONTRACTOR is required to utilize CAD and AVL systems and shall have access to same systems to assist with invoice preparation and validation.

- b. Invoice Review: Upon receipt of the invoice, VCTC staff shall promptly review and approve the CONTRACTOR's request for payment and shall submit the invoice to VCTC's Accounting Department within ten (10) business days of receipt of the invoice for payment. If any further information or any corrections are required, the review period will be extended until such information has been received and VCTC has made corrections.
- c. Invoice Payment: All payments by COMMISSION shall be made in arrears after the service has been provided. COMMISSION will pay all undisputed invoices from CONTRACTOR within thirty (30) days of receipt of the invoice by VCTC's Accounting Department unless the monthly reporting has not been submitted. Payment may be withheld by VCTC if monthly reports have not been submitted or other disputes exist. In the event of a disputed invoice, COMMISSION shall pay undisputed portion(s) of the invoice within thirty (30) days of receipt by VCTC's Accounting Department and the Parties shall meet as soon as possible to resolve the dispute(s). Following resolution of the dispute, the resolved portion(s) of the invoice shall be paid within thirty (30) days of receipt of the resolved portion(s) by VCTC's Accounting Department.

Any Liquidated Damages assessed against CONTRACTOR shall be deducted from the payments to CONTRACTOR. Any Liquidated Damages imposed under this Agreement shall be in accordance with the Scope of Work attached as Exhibit "A" to this Agreement.

COMMISSION has the authority to withhold funds under this Agreement pending a final determination by VCTC of questioned expenditures or indebtedness to COMMISSION arising from past or present agreements between COMMISSION and the CONTRACTOR. Upon final determination by COMMISSION of disallowed expenditures or indebtedness, COMMISSION may deduct and retain the amount of the disallowance or indebtedness from the amount of the withheld funds.

Payments to the CONTRACTOR may be withheld by COMMISSION if the CONTRACTOR fails to comply with the provisions of this Agreement. Payment of outstanding invoices from CONTRACTOR may be withheld by COMMISSION, without interest accruing to CONTRACTOR, if the monthly report is not submitted by CONTRACTOR in a timely manner and if non-performance has resulted in COMMISSION demand against CONTRACTOR's Performance Bond.

No advance payments will be permitted.

- 10. Cost of Living Adjustment. It is agreed that the annual adjustments to the fixed hourly rate and fixed monthly rate set forth in Section 8 of this Agreement provide for the usual



cost of living and inflation growth associated with expenditures, including for fuel. In the event that circumstances arise beyond the Contractor's control that significantly affect the cost of operation, VCTC would be willing to discuss, without obligation, the possibility of adjusting the rate(s) pertinent to the changed circumstances, without any commitment on the part of VCTC to make any such adjustment. VCTC's decision on any adjustment of rates is final and binding on CONTRACTOR. Requests for rate adjustment(s) must be made in writing no less than ninety days from the effective date of the requested adjustment(s).

11. Management and Overall Staffing. During the term of this Agreement, CONTRACTOR shall provide sufficient staffing necessary and required to perform its duties and obligations under the terms hereof. Staffing levels shall at a minimum, not fall below the position levels described in Exhibit "C" and identified in section 11(a) of this agreement. These minimum staffing levels shall be maintained at all times with the exception of normal employee vacations and other excused absences. Reasonable time caused by employee turnover shall be allowed, including in the case of discharge or lack of notice by employee. Any position vacant more than fifteen (15) working days shall be filled by a temporary employee. The temporary employee may be a current CONTRACTOR employee on temporary assignment. However, in the event a position remains unfilled after thirty (30) calendar days for any reason, CONTRACTOR shall ensure timely replacement and provide reasonable assurances to COMMISSION of its efforts to fill the position. CONTRACTOR shall notify VCTC Transit Services Program Manager within forty-eight (48) hours when any Key Personnel positions become vacant. Failure to provide notice shall result in liquidated damages of \$50 deducted from payment owed the CONTRACTOR. CONTRACTOR shall provide monthly staffing reports indicating staffing levels and record of time and efforts for any unfilled positions in excess of thirty (30) calendar days, and may have the salary of the unfilled position deducted by the COMMISSION for key positions (Key Personnel) unfilled after sixty (60) days. Failure by the CONTRACTOR to continually maintain minimum staffing levels shall be considered failure to perform. Employee records shall be made available to COMMISSION for audit to certify validity and accuracy of monthly reports submitted.

CONTRACTOR shall assign only experienced management, maintenance and supervisory personnel to perform the services pursuant to this Agreement. Any Key Personnel assigned to this Project must remain in that position for a period of (2) years unless VCTC requests the CONTRACTOR to reassign the employee, the CONTRACTOR terminates the employee for reasonable cause, or the employee permanently separates employment from CONTRACTOR.

Irrespective of the foregoing, if for any reason the a Key Personnel position (Project/General Manager or Maintenance Manager) remains open or not permanently filled for more than sixty (60) days with a qualified, full-time employee approved by

VCTC, a liquidated damage equal to the employee's monthly salary may be immediately assessed by VCTC and collected through a reduction in payment owed the CONTRACTOR in the next invoice cycle, or as otherwise agreed to at VCTC's discretion. Such liquidated damage may continue to be collected for each subsequent month in which no permanent employee is designated and assigned to this contract. The intent of this language is to provide stability and continuity of management and supervision for VCTC services. VCTC does not intend to arbitrarily or capriciously restrict anyone's career ambitions; however, CONTRACTOR and CONTRACTOR's Key Personnel candidates must recognize that frequent changes of management/supervision inflict intangible costs to the quality of service provided to VCTC. Should the CONTRACTOR have Key Personnel considered for promotion or transfer, within the two year period identified above CONTRACTOR shall request approval from VCTC prior to moving the key personnel from the project.

a. Minimum Staffing Levels: The following positions and number of employees shall be maintained at a minimum by CONTRACTOR during the term of this Agreement:

<u>Category</u>	<u>Position</u>	<u>Base Package</u> #FT / #PT Employees	<u>Option A</u> #FT / #PT Employees	<u>Option B</u> #FT / #PT Employees	<u>Option C</u> #FT / #PT Employees
Key Personnel	Project Manager ("General Manager")	1 / 0	1 / 0	1 / 0	1 / 0
Operations	Operations Supervisor	1 / 0	1 / 0	1 / 0	1 / 0
Key Personnel	Maintenance Manager	1 / 0	1 / 0	1 / 0	1 / 0
Maintenance	Lead Mechanic ("A" Mechanic)	1 / 0	1 / 0	1 / 0	1 / 0
Maintenance	Mechanic (B or C)	0 / 0	0 / 1	0 / 0	1 / 0
Operations	Dispatchers	3 / 0	3 / 0	3 / 1	3 / 1
Operations	Reservationist	1 / 0	1 / 0	1 / 1	1 / 1
Operators	Drivers	13/3	20/4	16/3	22/5
Maintenance	Utility Service Worker	1 / 0	1 / 1	1 / 1	1 / 1

- *Number of drivers may vary based on service expansion, contractor's run cut, overtime and other operational needs and decisions by the contractor.*

12. Uniforms. CONTRACTOR shall purchase uniforms for employees and shall require the employees to wear them, in accordance with CONTRACTOR policy and in compliance with this Agreement. The design, type, and logo of the uniform shirt shall be subject to COMMISSION's approval.

13. Merger and Modifications of Agreement. This writing constitutes the entire Agreement between the Parties relative to the subject matter of this Agreement and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both Parties to this Agreement.
14. Renewals. If VCTC exercises its Option to extend the Initial Term of this Agreement, the Parties shall meet prior to twelve (12) months before the expiration date of this Agreement to develop a budget for the subsequent period to consider renewal; however, COMMISSION retains the right to solicit competitive proposals for renewal at any time before the end of the Agreement period.
15. Assignment and Subcontracting. This Agreement is for the performance of transportation services for the Project and the CONTRACTOR, may not assign or subcontract its rights under this Agreement nor delegate the performance of its duties without the COMMISSION's prior written consent. The CONTRACTOR, its assigns and subcontractors will complete all obligations under this Agreement. Any subcontract, assignment or delegation without the COMMISSION's prior written consent will be void.
16. Relationship of the Parties. At all times during the term of this Agreement, CONTRACTOR shall be an independent contractor and shall not be an employee of VCTC. VCTC shall have the right to control CONTRACTOR only insofar as the results of CONTRACTOR's services rendered pursuant to this Agreement and assignment of management personnel as set forth in Section 8, and Exhibit "A"; however, VCTC shall not have the right to control the means by which CONTRACTOR accomplishes services rendered pursuant to this Agreement. Notwithstanding any other VCTC, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by VCTC, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of VCTC and entitlement to any contribution to be paid by VCTC for employer contributions and/or employee contributions for PERS benefits. Except as VCTC may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of VCTC in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind VCTC to any obligation whatsoever.
17. Compliance with Federal Transit Administration (FTA) Requirements. The CONTRACTOR shall comply with all of the FTA contractual provisions required for agencies that accept Federal Grant Funds. The provisions contained in the FTA Requirements attached to this Agreement in Exhibit "E" are incorporated into this

Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

18. Compliance with all Applicable Laws. CONTRACTOR shall comply with all laws applicable to the performance of the work hereunder.
19. License and Permits. CONTRACTOR represents and warrants to VCTC that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. CONTRACTOR represents and warrants to VCTC that CONTRACTOR and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to perform the services required pursuant to this Agreement.
20. Force Majeure. Neither party, VCTC or the CONTRACTOR, shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that Party's reasonable control and occurring without its fault or negligence, including, without limitation failure of suppliers, subcontractors, and carriers, or Party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non-liability, the Party experiencing the difficulty shall give the other prompt written notice as soon as reasonably possible and known, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Such events may include, but are not restricted to, the following: 1) governmental restrictions or limitations; 2) failure or shortage of fuel, water, fuel oil or other utility or services; 3) riot, war, insurrection or other national or local emergency; 4) natural disasters; or 5) route impasses due to construction, accidents or other reasons.

In the event that circumstances arise beyond the CONTRACTOR's control that significantly affect the cost of operation, VCTC will meet and confer with CONTRACTOR to discuss, without obligation, the possibility of adjusting the hourly rate pertinent to the changed circumstances, without any commitment on the part of VCTC to make any such adjustment.

## 21. Bond and Insurance Requirements

### a. Bond Requirements:

- i. Performance Bond. Prior to February 1, 2015 and annually thereafter, CONTRACTOR shall provide VCTC with a faithful performance bonds or a letter of credit (“Bond”) in the amount of seventy-five percent (75%) of Contract Price for year one, seventy-five percent (75%) for year two, and fifty percent (50%) of the annual contract price during years three through five in a form approved by VCTC, unless VCTC determines that a lesser amount would be adequate to cover damages from the contractor in failing to perform the services required and provide the equipment as contracted for. Annual surety bonds or letter of credit amount will be rounded to the nearest hundred dollars.

For the purposes of this section (Section 22.a.i) of the Agreement only, “Contract Price” shall be based on the CONTRACTOR’s Cost Proposal as attached as Exhibit “C” and submitted by CONTRACTOR. If Vehicle Revenue Hours increase and new rates become effective, respective to the caused Expansion Option, the corresponding performance bond or letter of credit will be provided by CONTRACTOR upon the Bond’s annual renewal.

As attached and contained in Exhibit “C,” the Contract Price and subject bond amounts are as follows:

**BASE PACKAGE**

<b>Contract Year</b>	<b>Total Contract Price</b>	<b>Percent Applied</b>	<b>Bond Amount</b>
Year 1	\$1,465,289	75%	\$1,098,967
Year 2	\$1,394,953	75%	\$1,046,215
Year 3	\$1,418,072	50%	\$709,036
Year 4	\$1,441,882	50%	\$720,941
Year 5	\$1,470,959	50%	\$735,480

**EXPANSION OPTION A**

<b>Contract Year</b>	<b>Total Contract Price</b>	<b>Percent Applied</b>	<b>Bond Amount</b>
Year 1	\$1,909,496	75%	\$1,432,122
Year 2	\$1,837,657	75%	\$1,378,243
Year 3	\$1,871,138	50%	\$935,569
Year 4	\$1,904,920	50%	\$952,460
Year 5	\$1,945,178	50%	\$972,589

**EXPANSION OPTION B**

<b>Contract Year</b>	<b>Total Contract Price</b>	<b>Percent Applied</b>	<b>Bond Amount</b>
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Year 1	\$1,693,063	75%	\$1,269,797
Year 2	\$1,622,517	75%	\$1,216,888
Year 3	\$1,650,733	50%	\$825,367
Year 4	\$1,679,223	50%	\$839,612
Year 5	\$1,713,519	50%	\$856,760

**EXPANSION OPTION C**

<b>Contract Year</b>	<b>Total Contract Price</b>	<b>Percent Applied</b>	<b>Bond Amount</b>
Year 1	\$2,150,603	75%	\$1,612,952
Year 2	\$2,081,801	75%	\$1,561,351
Year 3	\$2,118,118	50%	\$1,059,059
Year 4	\$2,159,039	50%	\$1,079,520
Year 5	\$2,203,692	50%	\$1,101,846

ii. Changes in this Agreement, or extensions of time, made pursuant to this Agreement, will in no way release the Bond obligation. The Performance Bond will remain in effect until the expiration of six (6) months after the period in which verified claims may be filed as provided in Section 1192.1 of the Code of Civil Procedure.

**b. Insurance Requirements:**

i. **Liability Insurance.** The CONTRACTOR, at its own cost and expense, will procure and maintain during the Term of this Agreement all liability insurance coverage of the following types, written on an “occurrence” form and with not less than the following limits of liability:

GENERAL PUBLIC LIABILITY AND PROPERTY DAMAGE - \$2 million per occurrence.

This coverage will include, but not be limited to:

- a. Operations - Premises Liability;
- b. Independent Contractors Liability - Broad Form;
- c. Contractual Liability covering the CONTRACTOR’s obligations herein;
- d. Personal Injury Liability extending to claims arising from employees of the Contractor; and
- e. Completed Operations and Products Liability.

AUTOMOBILE LIABILITY INSURANCE FOR PROPERTY AND LIABILITY COVERAGE FOR OWNED AND NON-OWNER HIRED

AUTOMOBILES - \$10 million per occurrence a combination of primary and excess policies may be utilized to meet the required limit).

No later than thirty (30) business days prior to the commencement of work, the Contractor must furnish VCTC the following:

1. Certificate of insurance evidencing satisfaction of the above coverage requirements;
  2. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted no later than thirty (30) business days prior to commencement of work;
  3. Upon COMMISSION's written request, copies of insurance policies shall be provided. Said policy copies shall be submitted within thirty (30) days of COMMISSION's request. Certified copies may be requested.
- ii. Workers Compensation Insurance. As required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), the CONTRACTOR will secure the payment of Worker's Compensation to its employees in accordance with the provisions of Section 3 700 of the California Labor Code and will furnish the COMMISSION with a certificate evidencing such coverage.
- iii. Additional Insurance Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
- a. All required insurance shall be maintained during the entire Initial Term of the Agreement, and for all Option Year extensions, with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire Initial Term and all Option Year Extensions of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.
  - b. **All Auto and General Liability insurance required above shall be endorsed to name as additional insured:** Ventura County Transportation Commission, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Association of Governments; the State of California, the Trustees of California State University and the employees, officers and agents of each of them; and the County of Ventura.

- c. For any claims related to this Agreement or the work hereunder, the CONTRACTOR's insurance covered shall be primary insurance as respect to the COMMISSION, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VCTC, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- d. Comprehensive and Collision. With respect to the vehicles to be used under the terms of the Agreement, including CONTRACTOR owned or VCTC provided vehicles, CONTRACTOR shall maintain in full force and effect vehicle physical damage coverage (Comprehensive and Collision) to include such perils as fire; lightning; explosion; theft; windstorm; hail; earthquake; flood; mischief; vandalism; and overturn or collision with another object. The most CONTRACTOR will pay for any one loss is the lesser of: 1) the actual cash value of the damaged stolen property as of the date of the loss; or 2) the cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or 3) the property's stated value of the fleet inventory. An adjustment for depreciation and physical and condition will be made in determining actual cash value in the event of a "total loss". If a repair or replacement results in better than the like kind of quality, CONTRACTOR will not pay for the amount of the betterment. The vehicle physical damage coverage shall name the VCTC as a loss payee for VCTC owned/provided. CONTRACTOR shall provide the VCTC with a Certificate of Insurance showing compliance with the requirement of this paragraph.
- e. Coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to VCTC. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to VCTC.
- f. Certificates of Insurance. No later than thirty (30) business days prior to the commencement of work under this Agreement, CONTRACTOR shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to VCTC, evidencing that all required insurance coverage is in effect. VCTC reserves the rights to require the CONTRACTOR to provide complete, copies of all required insurance policies. Additionally, certified copies shall be provided upon request by VCTC.
- g. Subcontractors. CONTRACTOR shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.



- h. Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
  2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
  3. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.
  4. A copy of the claim reporting requirements must be submitted to VCTC for review prior to the commencement of any work under this Agreement.
- i. Required Language. CONTRACTOR Insurance Certificates Automobile and General Liability must contain the following language:  
*"The Agencies as specified by the VCTC Agreement(s) including the Ventura County Transportation Commission, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, and the employees, officers and agents of each of them; and the County of Ventura, are additional insureds."*  
  
*"Liability not covered by the above insurances whether under the Hold Harmless or Indemnity clauses of the Agreement(s) is assumed by the CONTRACTOR."*  
  
*"The policy will not be canceled or materially changed without thirty (30) days prior written notice to the COMMISSION."*
- iv. All Policies Requirements:
- a. Acceptability of Insurers. All insurance required by this section is to be placed with insurers with an AM Best rating of no less than A-VII or better, with

deductible amounts acceptable to VCTC. Acceptance of CONTRACTOR's insurance by VCTC shall not relieve or decrease the liability of CONTRACTOR hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of CONTRACTOR.

- b. Deductibles and Self-Insured Retentions. CONTRACTOR shall disclose to and obtain the written approval of VCTC for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the VCTC, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the VCTC, its officers, employees, and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the VCTC guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- c. Wasting Policies. No policy required by this Section shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- d. Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the CONTRACTOR, its employees, agents, and subcontractors.
- v. Remedies. In addition to any other remedies VCTC may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, VCTC may, at its sole option exercise any of the following remedies, which are alternatives to other remedies VCTC may have and are not the exclusive remedy for CONTRACTOR's breach:
  - a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - b. Order CONTRACTOR to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or terminate this Agreement.
- vi. Material Breach. If CONTRACTOR, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of Agreement. COMMISSION, at its sole option, may

terminate this Agreement and obtain damages from CONTRACTOR resulting from said breach. Alternatively, COMMISSION may purchase such required Insurance coverage and, without further notice to CONTRACTOR, COMMISSION may deduct from sums due to CONTRACTOR any premium costs advanced by COMMISSION for such insurance. These remedies shall be In addition to any other remedies available to COMMISSION.

22. Indemnification. CONTRACTOR will defend, indemnify and hold harmless the Ventura County Transportation Commission, the County of Ventura, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Association of Governments; the State of California, the Trustees of California State University and the employees, officers and agents of each of them (the "VCTC Group") from any and all liability costs, damages or expenses, including attorneys' fees, arising out of or incurred in connection with the CONTRACTOR and its employees', agents', and subcontractors' acts or omissions in the performance of the services provided pursuant to this Agreement, and agrees at its own cost, expense and risk to defend, with legal counsel acceptable to VCTC, any and all resulting actions, suits or other legal proceedings brought or instituted against the VCTC Group arising out of its performance of this Agreement, and to pay and satisfy any resulting judgments, claims, damages and costs.

CONTRACTOR agrees to defend, with legal counsel acceptable to VCTC, and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the VCTC Group based upon an infringement or alleged infringement of such letters patent, or any other intellectual property claims, and to indemnify and save harmless the VCTC Group from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit, or adjudged or sustained by reason of the equipment to be furnished hereunder constituting an infringement of any letters patent or adjudged or sustained by reason of inability of the VCTC Group to use said equipment because of any infringement or alleged infringement of any letters patent.

23. Service Expansion and Reduction. VCTC may occasionally, at its sole discretion, increase or decrease scheduled vehicle revenue hours to accommodate service demands with written notification to the CONTRACTOR. These changes may occur, annually, seasonally or as needed.

For increases or decreases of scheduled vehicle revenue hours or Driver service hours, CONTRACTOR will be reimbursed using the fixed hourly rate, pursuant to Section 8 of this Agreement.

24. Notice of Service Change. VCTC reserves the right to order an increase or decrease in the level of service provided, with a minimum of fifteen (15) days' notice to the CONTRACTOR. For service increases that require additional driver personnel in excess of ten percent of the driver workforce at the time of notice, VCTC will negotiate the effective date of the scheduled service increase, which in no case shall be more than thirty days from date of first notice. Service expansion in excess of the hours contained in this Agreement that require additional personnel and/or vehicles shall be subject to negotiation between VCTC and CONTRACTOR.
25. Performance Monitoring by COMMISSION. The failure of VCTC to insist upon strict performance by the CONTRACTOR of any provision of this Agreement in any one or more instances shall not constitute a waiver of such provision by VCTC nor shall, as a result, VCTC relinquish any rights, which it may have under this Agreement.
26. No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
27. Termination of the Contract.
- a. Termination for Cause. VCTC may at any time prior to completion of the work, terminate the Agreement with the CONTRACTOR for any cause, upon (30) days written notice to the CONTRACTOR days prior to the effective date of such termination. For cause termination includes, but is not limited to: (1) default by the CONTRACTOR, (2) CONTRACTOR'S bankruptcy, insolvency, or assignment for the benefit of creditors. Upon such notice, CONTRACTOR shall have ten (10) business days in which to cure the default alleged in the notice.

The CONTRACTOR shall promptly submit its termination claim for payment to the VCTC. If the CONTRACTOR has any property in its possession belonging to VCTC, the CONTRACTOR shall account for the same, and dispose of it in the manner VCTC directs.

Upon receiving notice of Agreement termination the CONTRACTOR will begin transition of service and equipment back to VCTC and VCTC's designated replacement CONTRACTOR in an amount of time to be determined by VCTC.

If VCTC determines that the CONTRACTOR has not materially complied with the terms of the contract, VCTC shall notify the CONTRACTOR of such noncompliance and reserves the right to terminate this Agreement. Reasons for such termination may include, but shall not be limited to the failure to provide service within agreed performance standards as evidence by VCTC inspection, through surveys, or by communications from users of a service. Termination shall be effected by giving a notice of termination to the CONTRACTOR setting forth the manner in which the

CONTRACTOR is in default.

In the event of termination for default of CONTRACTOR, the CONTRACTOR shall only be paid the contract price for supplies delivered and accepted, and for services performed in accordance with the manner of performance set forth in this Agreement.

In the event of contract termination due to noncompliance, the CONTRACTOR may request a delay in such termination in order to present an appeal to VCTC board of Commissioners.

In case of default by CONTRACTOR, VCTC reserves the right to procure the articles or services from other sources and to hold the CONTRACTOR responsible for any excess costs incurred by VCTC. In addition, the CONTRACTOR will be required to operate the services for a minimum of six (6) months from the time the first request is granted and/or until VCTC is able to place a new CONTRACTOR in place. The contract rates will not be renegotiated for the remainder of the contract, unless entering an option year of the contract in which case the rate will be increased only by CPI pursuant to this Agreement.

- b. Termination for Convenience. VCTC, by written notice, may terminate this contract, in whole or in part, for convenience when it is in VCTC's interest on forty-five days (45) days' written notice to CONTRACTOR. If this contract is terminated, VCTC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Similarly, VCTC retains the right to terminate the work of a subcontractor for convenience, or any cause, including but not limited to default by the subcontractor upon written notice to the CONTRACTOR at least thirty (30) days prior to the effective date of such termination. Good faith efforts will be made by both VCTC and the CONTRACTOR to correct identified problems and issues prior to contract termination.

Under no circumstances may CONTRACTOR have the right to terminate this Agreement for convenience.

- 28. Taxes and Other Charges: The CONTRACTOR shall pay all taxes of whatever character that may be levied or charged upon its equipment, facilities improvements, fixtures, or upon its operation hereunder. CONTRACTOR shall also pay all licenses or permit fees necessary or required by law or VCTC for the conduct of its operation hereunder.

It is expressly understood and acknowledged by the parties hereto that any amounts payable hereunder shall be paid in gross amount, without reduction for any other governmental taxes or charges. CONTRACTOR is responsible for assuming and

remitting any applicable federal or state withholding taxes, estimated tax payments, social security payments, unemployment compensation payments, or any other fees, taxes or expenses whatsoever.

29. Conflict of Interest. CONTRACTOR promises that it presently has no interest which would conflict in any manner or degree with the performance of services hereunder. CONTRACTOR further promises that in performance of this Agreement, no person having such interest shall be employed. CONTRACTOR may contract with other entities, but none whose activities within the service territory of VCTC or whose business, regardless of location, would place CONTRACTOR in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq. CONTRACTOR shall not employ any VCTC official or employee in the work performed pursuant to this Agreement. No officer or employee of VCTC shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq. CONTRACTOR understands that, if this Agreement is made in violation of Government Code § 1090 et seq., the entire Agreement is void and CONTRACTOR will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CONTRACTOR will be required to reimburse VCTC for any sums paid to the CONTRACTOR. CONTRACTOR understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.
30. Conflict of Transportation Interests. CONTRACTOR shall not divert any revenues, passengers, or other business from COMMISSION’s project to any taxi, shuttle or other transportation operation of the CONTRACTOR.
31. Marketing. VCTC has retained a consultant for marketing, public relations, and advertising; therefore, these costs shall not be included in the cost proposal. The CONTRACTOR shall cooperate with VCTC and VCTC’s marketing agency in all promotional activities through VCTC in newspapers, radio, television, leaflets, and identify VCTC as the project sponsor and administrator. The CONTRACTOR shall ensure that all vehicles contain an adequate supply of service schedules, and other passenger information to be provided by VCTC. The CONTRACTOR shall also put up, maintain, and remove Car Cards, Rider Alerts, etc., on all vehicles as required by VCTC.
32. Promotional Use of Vehicles. The CONTRACTOR shall provide such buses as VCTC may, from time to time, specify for promotional appearances, uses, and photographs at no additional cost to VCTC if the request for a vehicle operator is for three hours or less. If greater than three hours, reimbursement shall be at the Out of Contract Rate to be established by separate letter agreement between the Parties.
33. Contacts with Media and Contacts with Media during Major Incidents. CONTRACTOR

shall refer all media requests to VCTC and shall not provide any information without prior approval by VCTC. In the event of a major incident affecting CONTRACTOR's operation of VCTC revenue service, the CONTRACTOR shall defer all media inquiries to VCTC. The CONTRACTOR shall not issue a press release or initiate other media contact regarding the VCTC project without first receiving approval from the VCTC Executive Director or his/her representative.

34. Conduct of Surveys and Data Collection. Additional documentation of the project will be provided through passenger surveys. Authorized representatives of VCTC will administer these surveys. It is the responsibility of the CONTRACTOR to ensure the cooperation of all personnel with any operational procedures pertaining to survey work, including the distribution of survey questionnaires, etc.
35. Advertising on Vehicles. CONTRACTOR shall cause only such advertising material or audio, video, or similar devices as may be specified by VCTC from time to time to be affixed to such location or locations of the buses as VCTC shall request.

CONTRACTOR shall cooperate with the VCTC and the VCTC's transit vehicle advertising services vendor in providing access to the buses and access to the maintenance facility for the installation and removal of advertisement materials. VCTC shall bear the costs of installation and removal of advertising, including repair of any damage caused by VCTC's advertising services vendor.

No portion of any revenue or consideration received by VCTC in connection with such advertising shall be paid to the CONTRACTOR. CONTRACTOR shall not affix and shall not permit to be affixed to or distributed on any bus any other advertising, political, or other printed or published material, and shall not utilize or permit to be utilized, any loudspeaker, video, or other device for the purpose of such advertising or other communication other than as designated by VCTC. In the event that CONTRACTOR receives any payment or other consideration from VCTC's bus advertising firm or other source, paid in connection with any advertising material, said payment or consideration shall be promptly delivered to VCTC, and any and all advertising revenues shall be the property of VCTC.

36. VCTC Representative Authorization. The CONTRACTOR shall refrain from any action, which would create or tend to create obligations, express or implied, on behalf of VCTC. It is understood that the CONTRACTOR is not and shall not be the legal representative or agent of VCTC and that the CONTRACTOR shall not be authorized to make any promise, warranty or representation except as specifically provided for in this agreement or as otherwise agreed to in writing between the Parties.
37. VCTC Identified Meetings and/or Training Sessions. The CONTRACTOR shall be required to attend all meetings and/or training sessions as identified by VCTC, including

regular operations meetings. The CONTRACTOR may be excused from attendance only by prior written consent from VCTC.

38. **Liaison with Municipal Agencies.** The CONTRACTOR shall coordinate closely with affected municipal representatives on all matters that affect the daily operation of transit service, e.g., road closures, accidents, and inclement weather. CONTRACTOR shall immediately advise VCTC of all such efforts.
39. **Operating During a Declared Emergency.** Upon declaration of any emergency VCTC may be requested to assist with a number of transportation-related activities, including the development of emergency travel routes, and the coordination with other agencies supplying common carrier services. In the event of a declared emergency, the CONTRACTOR shall deploy vehicles in a manner described by the VCTC Executive Director or his/her designee. VCTC shall be obligated to compensate the CONTRACTOR for Service, which exceeds the normal expense of operating the service during such period of declared emergency.
40. **Operating Non-declared Emergency Service and/or Special Event.** The CONTRACTOR may, from time to time, be required to provide non-declared emergency service, which does not necessarily require declaration by the local authorities. Such emergency service will require re-routing of regular service, notification of passengers, and increased road supervision and monitoring. These situations, which may be prompted by unforeseen road construction, road closures, and special events, or police incident, may require the Contractor to provide a re-route of service. In the event that such an occurrence takes place where no advance notice is given, then the CONTRACTOR shall take the responsibility to produce a re-route, which minimizes interruptions to service, immediately notify VCTC, dispatch a supervisor to monitor the area and the situation, and return to the normal route/operation as quickly as possible. When advance notice is received, the CONTRACTOR shall work with VCTC staff to develop a re-route plan, post rider alert bulletins, and in some situations pick-up and post signs provided by VCTC. The CONTRACTOR shall also be responsible for removing the rider bulletins and signs as soon as the emergency is over.
41. **Audit and Inspection of Records.** The CONTRACTOR agrees that VCTC or any of its duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts with regard to the project.

At any time during normal business hours and as often as VCTC may deem necessary, the CONTRACTOR shall make available to VCTC for examination, all necessary records with regard to the service provision, start-up, and capital purchase costs. VCTC shall have the authority to audit, examine and make excerpts or transcripts from records, including all contracts, invoices, materials, payrolls, records of personnel, conditions of



employment, and other statistical data relating to all matters covered by this Agreement.

VCTC reserves the right to dispatch auditors of its choosing to any site where any phase of the project is being conducted, controlled, or advanced in any way, however tangible or intangible. Such sites may include the home office, any branch office, or other locations of the CONTRACTOR if such sites or the activities performed thereon have any relationship to the program covered by this Agreement. VCTC auditors shall be provided with adequate and appropriate workspace in order to conduct audits and shall be allowed to interview any employees of the CONTRACTOR. If CONTRACTOR's employees are interviewed, it will occur at such a time so as to minimize the impact to service delivery and in the presence of a CONTRACTOR manager. It is the responsibility of the CONTRACTOR to insure the cooperation of all employees with any procedure pertaining to the audit.

All project records prepared by the CONTRACTOR shall be owned by VCTC and be made available to VCTC at no additional charge. VCTC may elect to authorize representatives of other project funding partners to inspect, audit and analyze the records of the CONTRACTOR in operating this service, preparing the bid for this service.

VCTC shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguisher, sprinkler system, etc., to safeguard property and/or equipment authorized by this Agreement.

When a fiscal or special audit determines that the CONTRACTOR has received payments from VCTC which are questionable under the criteria set forth herein, the CONTRACTOR shall be notified and given the opportunity to justify questioned items prior to VCTC's final audit report.

If such audit finds that VCTC's dollar liability for such service is less than payments made by VCTC to CONTRACTOR, then CONTRACTOR agrees that the difference shall be either:

- repaid forthwith by CONTRACTOR to VCTC by cash payment, or
- deducted against any future payments hereunder to CONTRACTOR.

If such audit finds that VCTC's dollar liability for service is more than payments hereunder to CONTRACTOR, then the difference shall be paid to CONTRACTOR by VCTC, provided that in no event shall VCTC's maximum obligation, as set forth in this Contract, be exceeded.

VCTC shall determine any amount to be paid to the CONTRACTOR during the period of audit. VCTC has the authority to withhold funds pending a final determination by VCTC of any questionable expenditure.

- a. Maintenance of Records. The CONTRACTOR shall maintain records for expenditures incurred directly or indirectly under this Agreement as it relates to the provisions of service, start-up costs, or purchase of capital equipment authorized under this Agreement. Documentation shall include, but not be limited to, time cards, driver/dispatch log sheets, vehicle maintenance records, invoices, and any other documents pertinent to the capital and/or start-up expenditures. A record of such expenditures by line item shall be maintained in a file and be made available for examination in accordance with this Agreement.

Records, in their original form, shall be maintained in accordance with requirements covered by this Agreement and in support of service provision, start-up, capital expenditure, quarterly, monthly, daily statistical and/or FTA- NTD reports. Such records shall be retained for a period of five (5) years after termination of this Agreement if all other pending matters are closed. "Pending matters" include but are not limited to an audit, litigation, or other action involving the records. VCTC may, at its discretion, take possession and retain said records.

Records in their original form pertaining to matters covered by this Agreement shall at all times be retained within Ventura County unless authorization to remove them is granted in writing by VCTC.

The cost of audits of any original documents and records maintained by the CONTRACTOR in Counties, other than Ventura and Los Angeles, shall be paid to VCTC by CONTRACTOR.

Results of record inspection may indicate the need for changes and or modifications. The CONTRACTOR shall cooperate with VCTC to establish and improve the system and maintain flexibility so the modifications may be implemented quickly.

42. Validity of Financial Documentation Submissions. Financial reports required to be prepared and submitted by the CONTRACTOR to VCTC shall be accurate and correct in all respects. Should repeated occurrences of inaccurate reports be submitted to VCTC, VCTC may require the CONTRACTOR to secure the services of an independent certified public accountant. The costs of such accounting services are to be borne by the CONTRACTOR, unless specifically agreed to between the CONTRACTOR and VCTC in a written amendment.
43. Records and Audits of Subcontracts. Records shall be maintained in accordance with requirements prescribed by VCTC with respect to all matters covered by any subcontract. Such records shall be retained within Ventura County for a period of five (5) years after receipt of final payment under this Agreement, unless authorization to remove them is granted in writing by VCTC.

Expenditures pertaining to subcontracts shall be supported by properly executed documents evidencing in detail the nature of the expenses. At such time and in such forms as VCTC may require, there shall be furnished to VCTC such statements, records, report, data and information as VCTC may request pertaining to matters covered by any subcontract.

These records shall be made available to VCTC for copying, audit, and inspection at any time during normal business hours.

44. Proprietary Rights. All inventions, improvements, discoveries, proprietary rights, patents, and copyright made by CONTRACTOR under this Agreement shall be made available to COMMISSION with no royalties, charges, or other costs, but shall be owned by CONTRACTOR. All manuals, forms and operational documentation prepared by CONTRACTOR under this Agreement shall be made available to COMMISSION at no charge and become property of COMMISSION. Software code or explanation of CONTRACTOR software protected by copyright shall not become the property of the COMMISSION. The required financial and activity reports per other sections of this Agreement are excluded from this provision and shall be owned by COMMISSION. CONTRACTOR may make presentations and releases relating to the project. Any report, public releases, papers, and other formal publications shall be subject to the approval of COMMISSION before they are released.

45. Notices. All notices provided pursuant to this Agreement must be in writing and sent to:

TO COMMISSION:

Darren M. Kettle, Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, California, 93003

TO CONTRACTOR:

Office of the General Counsel  
MV Transportation, Inc.  
5910 N Central Expressway, Suite 1145  
Dallas, Texas 75206

46. Modifications. This Agreement may not be altered, amended or modified except by written instrument signed by the duly authorized representatives of both parties.

47. Governing Law. This Agreement will be governed by and in accordance with the domestic laws of the State of California with no regard to the choice of law doctrine.

48. COMMISSION acknowledges that the CONTRACTOR provided computer software and business processes (hereinafter "Intellectual Property") are the intellectual property of CONTRACTOR, and COMMISSION does not acquire any ownership interest in the Intellectual Property under this Agreement. All right, title and interest, including copyright interests and any other intellectual property, in and to the Intellectual Property, object code, source code, interfaces

or similar computer code and written materials produced or provided or used by Contractor during its performance of the services hereunder, including all enhancements, modifications and derivative works under this Agreement (collectively, the "Intellectual Property") shall be the property of Contractor. COMMISSION acknowledges that a license (the "License") to COMMISSION to utilize any Intellectual Property provided by CONTRACTOR is limited in time and scope, is non-exclusive and non-transferable, and COMMISSION may not (i) sublicense, assign, transfer, rent or lease the Intellectual Property; (ii) copy, distribute or otherwise provide the Intellectual Property or use thereof to any third party without the express written consent of CONTRACTOR (which consent may be withheld in CONTRACTOR's sole discretion), or (iii) modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Intellectual Property. The Intellectual Property License may be used only for the internal business purposes of COMMISSION and only during the Term of this Agreement. COMMISSION's License and any right to use the Intellectual Property or any trademark, service mark or copyrighted CONTRACTOR material ceases immediately upon termination or expiration of this Agreement, and upon such event, COMMISSION shall return to CONTRACTOR or destroy any CONTRACTOR Intellectual Property (including manuals or other written materials relative to the Intellectual Property).

49. Miscellaneous.

- i. Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- ii. Dispute Resolution. VCTC and CONTRACTOR agree to resolve the dispute in accordance with the following process if any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations:

Each party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority.

If the dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any mediator, and shall bear their own attorney's fees for the mediation.

The alternative dispute resolution process in this section is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code Section 900, et. seq.

In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Ventura or in the United States District Court.

This process is not applicable to Cost of Living Adjustments as set forth in Section 10 and Force Majeure adjustments set forth in Section 20. VCTC's decision on any adjustment of rates is final and binding and is not subject to alternate dispute resolution.

- iii. Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- iv. No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- v. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- vi. Use of Recycled Products. CONTRACTOR shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- vii. Nondiscrimination and Equal Opportunity. CONTRACTOR shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by CONTRACTOR under this Agreement. CONTRACTOR shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of CONTRACTOR thereby.

CONTRACTOR shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

- viii. Solicitation. CONTRACTOR agrees not to solicit business at any meeting, focus

group, or interview related to this Agreement, either orally or through any written materials.

- ix. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between VCTC and CONTRACTOR shall survive the termination of this Agreement. Specifically, CONTRACTOR's obligations to provide insurance and bonds and indemnification as set forth in Sections 21 and 22 shall survive termination of this Agreement. Additionally, CONTRACTOR's obligations to maintain records pursuant to Section 43 shall survive termination of this Agreement.
- x. This Agreement contains the entire understanding between the parties. Any prior Agreement, whether oral or written, shall be invalid upon execution of this Agreement.

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**IN WITNESS HEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives. Each party represents to the other party that this Agreement has been executed by a duly authorized agent of the party so representing.

COMMISSION:

VENTURA COUNTY  
TRANSPORTATION COMMISSION

By: \_\_\_\_\_  
Peter Foy, Chairperson

CONTRACTOR:

MV TRANSPORTATION, INC.

By: \_\_\_\_\_  
David Brown, Chief Financial Officer

ATTEST:

\_\_\_\_\_  
Donna Cole  
Clerk of the COMMISSION

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven Mattas  
General Counsel of the COMMISSION

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Darren Kettle  
Executive Director of the COMMISSION