

PROFESSIONAL SERVICES AGREEMENT
(City of Calabasas / *MV Transportation, Inc.*)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas, a California municipal corporation (“City”), and MV Transportation, Inc. a California corporation (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Operation and Maintenance of fixed-route public transit service.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are specifically required by the City to satisfy its transportation needs, and set forth in Consultant’s April 14, 2011 proposal to City, attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s May 1, 2013 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: April 1, 2013.
- 3.4 “Expiration Date”: June 30, 2014.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties, with the option of two (2) one-year extensions, or terminated earlier in accordance with Section 17 (“Termination”) below.

5. CONSULTANT'S SERVICES

5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Eight Hundred Seventeen Thousand Seven Hundred Eighty-four Dollars (\$678,618) unless specifically approved in advance and in writing by City.

5.1.1 Changes to this Agreement shall be effective only upon written agreement between the parties to this Agreement. Each change to this Agreement shall be sequentially numbered as an Amendment hereto and signed by authorized representatives of the City and Consultant. Amendments shall only amend the specific portions of this Agreement as written in the Agreement and shall not change any other portion of this Agreement.

5.1.2 The City may, at any time, request changes within the general scope of this Agreement, including but not limited to changes to be made in routes, frequency, shop locations, and equipment. Said changes will be requested of Consultant in writing 5 days in advance of implementation. Consultant shall, upon receipt of written notice, institute such change in the most expedient manner possible and not later than the sixth day after notice is given. If any such requested change would cause an anticipated increase in the cost of, or the time required for, the performance or any part of the work under this Agreement, result in an anticipated increase of vehicle deadhead miles or hours, or would result in an anticipated increase or decrease of ten percent (10%) or more to Consultant's estimated annual vehicle revenue hours of 12,504 hours, the parties shall meet to negotiate an equitable adjustment to Consultant's rate and the Agreement will be amended accordingly.

5.1.3 In the event any Federal, State, or local law, rule, regulation or ordinance becomes operative during the term of this Agreement that has the effect of increasing Consultant's operating costs, to include, but not limited to, laws, rule, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on energy consumption or type of fuel used; changes in the Americans With Disabilities Act; or government mandated increases to employee wages and/or benefits, to include health care benefits, the City and Consultant

shall meet to discuss the impact of these unanticipated additional costs and negotiate an equitable adjustment to Consultant's rates.

- 5.2 In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of (\$877,874), unless specifically approved in advance and in writing by City.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Cheryl Seifert** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of

Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of Seven Million Dollars (\$7,000,000) per claimant and Seven Million dollars (\$7,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out

the necessary insurance and pay, at Consultant's expense, the premium thereon.

- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant’s services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant’s performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant’s and City’s regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Calabasas
100 Civic Center Way
Calabasas, CA 91302
Attn: **Robert Yalda**
Telephone: (818) 224-1600
Facsimile: (818) 225-7338

If to Consultant:

MV Transportation, Inc.
2024 College Street
Elk Horn, IA 51531
Attn: Daniel Lee
Contracts Division
Telephone: (712) 764-3779
Facsimile: (707)646-7942

With courtesy copy to:

Scott H. Howard, Interim City Attorney
Colantuono & Levin, PC
300 South Grand Avenue, Suite 2700
Los Angeles, CA 90071-3137
Telephone: (213) 542-5722

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

18.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph

or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.

18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Calabasas

“Consultant”
Name of Company or Individual

By: _____
Fred Gaines, Mayor

By: _____
Brad Cornelson, Chief Financial Officer

Date: _____

Date: _____

By: _____
Daniel Lee, Director, Contracts Administration

Date: _____

Attest:

By: _____
Maricela Hernandez, MMC
City Clerk

Date: _____

Approved as to form:

By: _____
Scott H. Howard, Interim City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK

Section 1. Equipment and Facilities.

- A. All of the buses, equipment, and facilities required by this Agreement shall, during the term hereof, be maintained by CONTRACTOR in good order and repair and in a condition satisfactory to the CITY and the State of California except all major repairs including but not limited to the following: engine, transmission, and major drive train components.
- B. The City shall provide Consultant with sufficient number of vehicles to perform the services identified in the Scope of Services. At a time and place mutually agreed to by City and Consultant, which shall occur in a reasonable amount of time prior to the Commencement Date, City and Consultant shall jointly inspect the vehicles to be provided by the City to Consultant using the inspection criteria contained in Exhibit C. During the joint inspection, vehicle defects will be identified and documented for each vehicle.
- C. After the initial inspection, the City shall ensure that all agreed upon defects are repaired prior to the Commencement Date. The day prior to the Commencement Date, the City and Consultant shall conduct a final inspection of the vehicles to ensure items identified during the preliminary vehicle inspection were completed. In the event the final inspection reveals new defects arising since the preliminary inspection, or defects that were not repaired by the City, City may authorize Consultant to make the repairs at the hourly service rate of \$85.00/hour, or at the rates charged by an outside contractor if the City determines the repairs should be performed by an outside contractor. If, after obtaining the City's written consent, Consultant provides the replacement parts, the City shall reimburse Consultant for the cost of the parts as a pass through expense.
- D. Bus interiors shall be cleaned and swept prior to placing a bus in service on each day of operation, and exteriors shall be washed weekly.
- E. CONTRACTOR shall provide and maintain appropriate fixed maintenance facilities for the servicing of the buses and equipment utilized under this Agreement. Such facilities shall be subject to approval by the CITY.
- F. All required repairs shall be the responsibility of the CONTRACTOR. The CITY shall be responsible for all costs associated with major repairs including but not limited to the following: engine, transmission, and major drive train components. All repairs and parts shall performed consistently with the requirements of the manufacturer's warranty.
- G. The CITY reserves the right in its sole discretion to review maintenance records of, inspect and reject temporarily or permanently, by notice to the

CONTRACTOR, any vehicle the CONTRACTOR utilizes which the CITY deems unacceptable. Necessary repairs made to the vehicles shall be made within 3 days of notice of repair by the CITY. The CONTRACTOR shall submit to a subsequent vehicle inspection on or before the fourth day following the notice date. Failure to comply with this provision shall entitle CITY to terminate this agreement.

- H. The CONTRACTOR shall maintain and operate all fixed-route transit at its expense with the exception of fuel costs and all major repairs including but not limited to the following: engine, transmission, and major drive train components. Fuel will be provided by the CITY for shuttle and trolley services. Operating costs shall include, but not be limited to: vehicle maintenance and repair; all required insurance; wages, taxes and fringe benefits; licensing; dispatching; radio equipment; training; supervision; data collection; management; advertising; publications; storage; parking charges; and fines.
- I. All vehicle replacement parts, equipment, and all repairs shall be provided by the CONTRACTOR at CONTRACTOR'S expense except all major repairs including but not limited to the following: engine, transmission, and major drive train components.
- J. CONTRACTOR shall make cell phones available to all drivers for use in an emergency.
- K. Daily ridership logs shall be forwarded to the CITY on a monthly basis detailing the number of riders boarding and exiting at each bus stop.
- L. All Vehicles are to be used for their designated routes only. Vehicles shall be returned to the Las Virgenes Unified School District Office facility, or CITY designated parking facility, upon the completion of the service route except for fueling and maintenance.

Section 2. Planned Route Frequency and Days of Service.

With the exception of the Trolley Route, all routes shall operate on weekdays, holidays excluded, at times and stops described in attached Exhibit D.

The Trolley Route will operate on weekends, including holidays, at times and stops described in Exhibit E.

CITY may cancel bus trips with a one-day notice without penalty.

Section 3. Non-Compensation:

In the event CONTRACTOR is precluded from starting the service described herein on any day for a reason listed in Section 7 hereinafter, CONTRACTOR shall not receive compensation under this Agreement for the period of the excusable delay. If the excusable delay occurs following the start of regularly scheduled service on any day, CONTRACTOR shall be compensated as specified in this Section 4 for that day. Execution of the contract agreement by the CITY and CONTRACTOR that \$1,000 per violation is the minimum value of the cost and actual damages caused by failure of the CONTRACTOR to perform the work required herein, that such sum shall not be construed as a penalty, and that such sum may be deducted from payments due the CONTRACTOR if such delay occurs.

Section 4. Liquidated Damages:

The parties further acknowledge that consistent, reliable, and safe Transit and Transportation Service is of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and CITY'S residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 21, and in accordance with Civil Code Section 1671 and Government Code Section 53069.85, the parties agree that the liquidated damages amount defined in this Article represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Agreement, including the relationship of the sums to the range of harm to CITY, customers and the community as a whole that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. Party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

The City shall provide a thirty (30) day grace period from the first day of the executed agreement, wherein notification of infractions may still be served to consultant but no damages will be assessed. Upon the thirty first (31) day after the execution of this agreement, the liquidated damages will be assessed as detailed

herein.

CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following amounts:

	Item	Amount
A	Failure or neglect to resolve complaints within 2 weeks.	\$100.00 per incident per Service Recipient.
B	Failure to clean up spillage or litter caused by CONTRACTOR.	\$100.00 per incident per location.
C	Failure to repair damage to customer property caused by CONTRACTOR or its personnel.	\$500.00 per incident per location.
D	Damage to CITY streets caused by CONTRACTOR or equipment of CONTRACTOR, normal wear and tear excepted.	\$1,000 or incident and the actual cost of repair to CITY'S satisfaction, whichever is greater – no cost to CITY.
E	Failure to maintain vehicles cleanliness.	\$50.00 per incident per day.
F	Failure to maintain equipment in a safe and sanitary manner.	\$500.00 per incident per day.
G	Failure to have a vehicle operator properly licensed.	\$1,000.00 per incident per day.
H	Failure to maintain office hours as required by this Agreement.	\$500.00 per incident per day.
I	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.	\$250.00 per incident per day.
J	Failure to display CONTRACTOR'S name, as operators, and customer service phone number on transit vehicles.	\$500.00 per incident per day.
K	Failure to comply with the hours of operation as required by this Agreement.	\$1,000.00 per incident per day.
L	Changing routes without proper notification to the City Representative.	\$100.00 per incident per day.
M	Failure to have CONTRACTOR personnel in proper uniform.	\$250.00 per incident per day.
N	Failure to provide required communications equipment.	\$100.00 per incident per day.

Procedure for Review of Liquidated Damages. The City Representative may assess liquidated damages pursuant to this Article 16 on a monthly basis. At the end of each month during the term of this Agreement, the City Representative

shall issue a written notice to CONTRACTOR ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment. The assessment shall become final unless, within ten (10) calendar days of the date of 'the notice of assessment', CONTRACTOR provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.

The City Representative shall schedule a meeting between CONTRACTOR and the City Manager or the Manager's designee as soon as reasonably possible after timely receipt of CONTRACTOR'S request.

The City Manager or the Manager's designee shall review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to CONTRACTOR. The decision of the City Manager shall be final.

In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the City Representative's determination shall be final and CONTRACTOR shall submit payment to CITY no later than that tenth (10th) day. Or at the sole option of CITY, if monies are owed to CONTRACTOR, CITY may deduct the liquidated damages from amounts otherwise due to CONTRACTOR.

CITY'S assessment or collection of liquidated damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR'S failure to perform the work and services in the manner set forth in this Agreement.

Section 5. Claims for Payment and Reports:

Claims for payment will be submitted monthly to the City of Calabasas (Public Works Department) by CONTRACTOR for the bus/vehicle hours operated during the previous month. No payment shall be made without submittal of ridership logs and a statement of bus/vehicle hours operated, signed under penalty of perjury by a person legally authorized to bind CONTRACTOR. The basis of the claim for monthly payment will be substantiated by records kept by CONTRACTOR as set forth below. All claims for payment must be presented by the fifteenth of the month to allow their payment on or about the first of the second month following.

The CONTRACTOR shall be required to maintain reports and to keep the CITY informed regarding the activities of all its transit services. The following reports shall be completed during the term of this Agreement, as indicated below.

- A. To be submitted to the CITY:
1. Vehicle Accident Report. Submitted within twenty-four (24) hours after any accident.
 2. Invoice. Submitted to the Public Works Department no sooner than the first day of the month after that in which the services were rendered, and payable by the CITY within forty-five (45) days of receipt.
 3. Daily Systems Trip Sheets. Such sheets shall be approved by the CITY and shall contain the pick-up time, date, site, destination, time, driver, and mileage (odometer reading).
 4. Monthly activity report summarizing the number of trips, by day, passenger and date as detailed in daily trip sheet. Such report shall be presented with any invoice to the CITY. Invoices will not be paid until such time as monthly activity reports are submitted to the CITY.
- B. To be retained by the CONTRACTOR:
1. Daily System Trip Sheets: 36 months after termination of contract
 2. Monthly Activity Report 36 months after termination of contract
 3. Daily Vehicle Inspection Report: 36 months after termination of contract
 4. Accident Case Files: 36 months after termination of contract
 5. Vehicle Maintenance Records: Maintenance Records indicating all warranty work, preventive maintenance and repairs performed on each vehicle shall be maintained so as to fulfill applicable state or federal requirements, as well as any needs of the CITY to enable it to accurately evaluate the CONTRACTOR'S maintenance performance.

Section 6. CONTRACTOR'S Service Requirements.

- A. Monitoring of Schedule and Service (CONTRACTOR). CONTRACTOR shall monitor schedules, service and report ridership to CITY and indicate the need to maintain, reduce or increase the frequency of operations. Ridership shall be recorded daily and submitted monthly to the CITY.
- B. Personnel. CONTRACTOR shall supply a sufficient number of properly qualified personnel to operate and maintain its equipment and to provide the service required hereunder. All of CONTRACTOR'S employees shall at all times while on duty in the performance of the services required herein be neatly and cleanly dressed, and shall at all times maintain a courteous, cooperative attitude in their contact with the public. All such personnel who are likely to be in contact

with the public shall be trained to give accurate information concerning the routes and schedules of operation of the bus system. Personnel in regular contact with minor children shall be fingerprinted at CONTRACTOR's expense for legally required criminal background checks.

During the scheduled bus operating hours, CONTRACTOR shall have a staffed office to accept emergency calls and to provide information regarding bus service.

Upon notice from CITY concerning the conduct, demeanor or appearance of such persons in the employ of CONTRACTOR who are not conforming to the above standards, CONTRACTOR shall forthwith take steps necessary to address the objection.

The CONTRACTOR shall be solely responsible for the satisfactory work performance of its employees.

The CONTRACTOR shall be solely responsible for payment of all employees' and/or subcontractor's wages and benefits. CONTRACTOR'S personnel wages and work hours shall be in accord with applicable law.

Without any expense to the CITY, the CONTRACTOR shall comply with requirements of employee disability, worker's compensation, employment insurance, and social security contributions.

CONTRACTOR shall hold harmless the CITY from any liability, damage, claims, costs, and expenses of any nature arising from alleged violations of personnel requirements.

CONTRACTOR shall use appropriate driver screening and selection criteria to employ drivers. These criteria will include a review of each driver's Department of Motor Vehicles record.

A sufficient number of regularly scheduled drivers and standby drivers shall be employed to ensure consistent and reliable service. Each driver shall wear a name tag or the driver's name shall be clearly displayed inside the vehicle while performing his or her duties.

CONTRACTOR'S Personnel shall report all passenger complaints and/or any operational problems with sufficient detail to allow CONTRACTOR to meaningfully evaluate and respond to complaints.

C. On Time Performance:

CONTRACTOR shall operate buses strictly according to the current bus schedules provided by the CITY and to a reasonable on-time performance standard except where service is interrupted for those reasons stated in Section 7 below. If service is interrupted, CONTRACTOR shall notify CITY immediately and estimate when service on schedule can be expected to resume.

Section 7. Changes in Routes, Frequency, Stops and Equipment.

CITY may from time to time require changes to be made in routes, frequency, stop locations and equipment. Said changes will be requested of CONTRACTOR in writing 5 days in advance of implementation. CONTRACTOR shall, upon receipt of written notice, institute such change in the most expedient manner possible and not later than the sixth day after notice is given.

Section 8. Force Majeure.

CONTRACTOR shall not be charged, nor shall CITY demand from CONTRACTOR Damages because of failure to provide services indicated in the Agreement due to unforeseeable cause beyond the control and without the fault or negligence of CONTRACTOR. Such causes of excusable delay may include acts of federal and/or state governments, acts of CITY, acts of public enemy, fires, floods, and snow storms, epidemic, quarantine, strikes, embargoes, and public road closures, but in every case the delay is excusable only for so long as, and to the extent that, the excusable delay continues.

In the event that the CONTRACTOR is unable to provide the services indicated due to any cause, it shall make a reasonable attempt at its expense to notify the public patronizing the service.

Section 9. Default by CONTRACTOR.

If CONTRACTOR fails to commence bus service within the time specified and, in the manner specified, does or causes to occur any of the acts or omissions indicated in Section 8, above, or if CONTRACTOR is not carrying out the intent of the Agreement, the CITY may serve written notice upon CONTRACTOR and the surety that provided the faithful performance bond declaring the Agreement in default and demanding satisfactory compliance with the Agreement.

If CONTRACTOR or its Surety does not comply with such notice within 5 days after receiving it, or after starting to comply, fails to continue, CITY may complete and continue the service by contracting for the unfinished service with

another contractor or providing for and continuing the services with its own personnel and/or equipment. In such event, the cost of completing the service shall be charged against CONTRACTOR and its Surety, and may be deducted from any money due or becoming due to CONTRACTOR. If the sums due CONTRACTOR under the Agreement are insufficient for payment of costs of completion, CONTRACTOR or Surety shall pay to CITY all cost in excess of the Agreement price, but not to exceed the maximum amount of the Faithful Performance Bond required in Section 10.

If the Surety assumes any part of the service, it shall take CONTRACTOR'S place in all respects, and shall be paid by CITY for all services performed by it in accordance with this Agreement. If the Surety assumes the entire Agreement, all money due CONTRACTOR at the time of its default shall be payable to the Surety, subject to the terms of the Agreement.

Section 10. In-Lieu Performance by CITY.

In event that CONTRACTOR fails, neglects or is unable to timely perform any of the services as specified herein, CITY reserves the right, without terminating the Agreement as specified in Section 8, and without declaring the Agreement in default as specified in Section 9, to provide such services, until such time as CONTRACTOR demonstrates its ability to continue performance. CONTRACTOR agrees to pay CITY for the reasonable costs thereof.

Section 11. Non-Discrimination.

CONTRACTOR agrees that in hiring employees for work under this Agreement, or any subcontract hereunder, neither it, nor any person acting on its behalf, shall by reason of race, religion, color, national origin, ancestry, physical handicap, gender or any other unlawful basis, discriminate against any person who is qualified and available to perform the work. Nor will CONTRACTOR discriminate against or intimidate any employee hired for the performance of this Agreement on any such basis. In the event of CONTRACTOR'S noncompliance with this nondiscrimination provision, CITY shall impose such sanctions as it may determine to be appropriate, including but not limited to: (a) withholding payments to the CONTRACTOR until the CONTRACTOR complies, and/or (b) cancellation, termination or suspension of this Agreement, in whole or in part.

Section 12. Modification.

This Agreement fully expresses all understandings of the parties concerning its subject matter. No addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents or

employees, shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by the parties.

This Agreement shall be binding on, and accrue to the benefit of, the heirs, executors, assigns and successors in interest of the parties hereto.

Section 13. Inspection.

CITY, or any person representing CITY, shall at all times have access and the right to inspect CONTRACTOR'S equipment and facilities utilized in the performance of this Agreement.

EXHIBIT B
APPROVED FEE SCHEDULE

Ryan Thompson

From: Wayne Fritz <wfritz@mvtransit.com>
Sent: Tuesday, May 14, 2013 11:39 AM
To: Ryan Thompson
Cc: Douglas J. Gies; Cheryl Seifert
Subject: RE: Contract Extension and Cost Increase

Good morning Ryan,

In discussing the extension with our corporate office we are in agreement that the 2.03% increase is acceptable to MV. As you know the successful operation of the Calabasas service depends a lot on our continuing the operation in Thousand Oaks. It is for that reason that MV is requesting the extension term to be through June 30, 2014 which coincides with our Thousand Oaks (TO) agreement. Although we do not anticipate any problems in Thousand Oaks we would be challenged to effectively run the Calabasas service past June 30, 2014 if we were to lose the TO service.

So, we are agreeable to the 2.03% adjustment as stated. We in turn request the extension period to end June 30, 2014 instead of the current August 2014.

Please let me know if this is acceptable Ryan. We truly value service the Calabasas community and look forward to continuing our relationship.

I look forward to hearing from you and am of course available if you have any questions.

W.Wayne Fritz
Vice President and General Manager
MV Transportation, Inc.
Cell: 480-516-6282

From: Ryan Thompson [<mailto:rthompson@cityofcalabasas.com>]
Sent: Tuesday, May 14, 2013 11:27 AM
To: Wayne Fritz; Cheryl Seifert
Cc: Marc Seferian
Subject: Contract Extension and Cost Increase

Good Morning Wayne and Cheryl,

I spoke with our Traffic Engineer and the Public Works Director concerning the request to increase the hourly rate from \$34.49 to \$40.71 for the contract extension. The Director and Traffic Engineer felt that the rate increase requested was too high and have denied the request. After discussions, a more modest increase of up to 2.03% (on par with the Cost of Living Allowance utilized for inflation by the City) would be acceptable.

Please let me know your thoughts on the matter, and I look forward to our continued partnership.

Sincerely,

Ryan

Ryan Thompson
Assistant Transportation Planner

City of Calabasas

Email: rtompson@cityofcalabasas.com

Phone: (818)224-1673

Fax: (818)225-7338