

**AGREEMENT FOR THE MANAGEMENT AND OPERATION OF A FIXED-ROUTE
MUNICIPAL TRANSIT SERVICE**

This AGREEMENT, is made and entered into this first day of September 17, 2013, by and between the CITY OF LYNWOOD, a municipal corporation located in the County of Los Angeles, State of California, hereinafter referred to as "CITY" and MV TRANSPORTATION, INC., a California corporation, hereinafter referred to as "CONTRACTOR." CITY and CONTRACTOR are sometimes hereinafter referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH

WHEREAS, CITY desires to engage CONTRACTOR to perform the operation of community fixed route transportation services on designated routes within the City of Lynwood.

The parties hereto do agree as follows:

SECTION 1. RECITALS. This Agreement is entered into with respect to the following facts:

- a. That CITY wishes to engage the services of a qualified contractor to provide community fixed-route transportation services; and
- b. That the CONTRACTOR will commit to perform a responsive, cost effective, high level of service over the five-year contract term;
- c. That CONTRACTOR has agreed to perform the services required in the time and manner set forth in this Agreement; and
- d. That the legislative body of CITY has heretofore determined that the public interest, convenience and necessity require the execution of this Agreement.

SECTION II. SERVICES. CONTRACTOR agrees, during the term of this Agreement, or any extension thereof, to provide community fixed route transportation services in the time and manner required pursuant to the provisions of this Agreement and as specified in the Request for Proposals issued by the City on June 13, 2013, as amended by Addenda #1, #2, and #3 and Scope of Work attached hereto as **Exhibit A**.

SECTION III. TERM. This Agreement shall commence on November 1, 2013. The term of this Agreement shall continue for a period of five (5) years. CITY reserves the right to extend this Agreement for a two (2) year period if mutually agreed upon by CITY and CONTRACTOR.

SECTION IV. PERFORMANCE BOND. The selected Contractor will be required to procure, at its expense, and keep in effect at all times during the term of the Agreement, a surety bond equivalent to 10% of the annual Agreement amount, excluding capital cost, in favor of the City and executed by a corporate surety authorized to conduct business as a surety in the State of California. Contractor shall provide a letter from an admitted surety insurer stating Contractor's ability to be bonded prior to the contract execution." Contractor shall use the chart below in securing the amount of surety bond.

	Annual Agreement Amount	Total Capital Cost Exclusions	Annual Agreement Amount Subject to 10%	Surety Bond Amount
Year 1	\$701,593	\$121,357	\$580,236	\$58,024
Year 2	\$703,392	\$121,357	\$582,034	\$58,203
Year 3	\$713,311	\$121,357	\$591,954	\$59,195
Year 4	\$732,615	\$121,357	\$611,257	\$61,126
Year 5	\$753,605	\$121,357	\$632,247	\$63,225
Average Annual Surety Bond Amount	\$720,903	\$121,357	\$599,546	\$59,955

SECTION V. CONTRACT DOCUMENT. The Contract Documents which are applicable to this Agreement include:

- a. Request for Proposals issued by CITY on June 13, 2013 along with Addenda #1, #2, and #3.
- b. CONTRACTOR's proposal.
- c. CONTRACTOR's proposal on pricing for CNG vehicles and use of two (2) buses and two (2) trolleys.

The provisions of this Agreement shall control all Contract Documents; in the event of any ambiguity or inconsistency, the same shall be resolved by reference first to the language of any written amendments signed by both parties, then to the language of the Agreement, then to the Contract Documents in the order above set forth.

SECTION VI. COMPLIANCE WITH THE LAW. All services rendered hereunder shall be provided in accordance with the requirements of relevant local, State, and Federal Law. Without limiting the foregoing, CONTRACTOR shall further comply with the duties and obligations imposed upon it under Labor Code subsection 1072(c), as may be amended, regarding the provision of employee information, including but not limited to, wage rates, benefits, and job classifications of those employees to bona fide bidders of any future award by the City of the services provided under this Agreement. Additionally, CONTRACTOR shall provide any successor service contractor with the information required per Labor Code subsection 1072(c), as may be amended, including the names, addresses, dates of hire, wages, benefit levels and job classifications of employees.

SECTION VII. FAMILIARITY WITH WORK. By execution of this Agreement, CONTRACTOR warrants that:

- a. It has thoroughly investigated the continuation of the services.
- b. It has expertise in the areas of provision of community fixed- route transit services.

- c. It fully understands the difficulties and restrictions attending the performance of the work under this Agreement.

SECTION VIII. COMPENSATION.

- a. Services Described in Proposal. For the provision of all services rendered under this Agreement in accordance with the Scope of Work described as **Exhibit A** and all expenses associated therewith, CITY shall pay CONTRACTOR in accordance with the following Revenue Service Hour Rate for the vehicles to be operated, inclusive of vehicle capital expense for operation with new vehicles:

Two CNG Regular Buses (Route A and Route B)			
	Revenue Service Hour Rate	Not to Exceed Revenue Service Hours	Not to Exceed Billing Amount
Year 1	\$50.80	6,362	\$323,164
Year 2	\$51.39	6,362	\$326,917
Year 3	\$52.46	6,362	\$333,724
Year 4	\$54.22	6,362	\$344,921
Year 5	\$56.12	6,362	\$357,007

Two CNG Trolleys (Route C and Route D)			
	Revenue Service Hour Rate	Not to Exceed Revenue Service Hours	Not to Exceed Billing Amount
Year 1	\$52.28	7,239	\$378,429
Year 2	\$52.01	7,239	\$376,474
Year 3	\$52.44	7,239	\$379,587
Year 4	\$53.56	7,239	\$387,694
Year 5	\$54.79	7,239	\$396,597

COMBINED TROLLEYS AND BUSES		
	Annual Not to Exceed Revenue Hours	Not to Exceed Billing Amount
Year 1	13,600	\$701,593
Year 2	13,600	\$703,392
Year 3	13,600	\$713,311
Year 4	13,600	\$732,615
Year 5	13,600	\$753,605
Total 5-Year		\$3,604,515

Notwithstanding the timeline for Contractor to provide the new vehicles, as described in Section F of Exhibit "A", the above rates shall apply beginning on November 1, 2013, the commencement date of this Agreement, and continue to apply throughout the of this Agreement, as defined in Section III above.

The phrase "revenue service hour" as used herein shall mean that figure estimated to be within 10% above or 10% below the estimated annual hours. Total revenue service hours are based upon actual hours in operation and estimated based upon historical experience. Revenue service hours are those hours that are actually completed with the vehicles in revenue service on behalf of City. The City will not make payment on schedule runs not made or not completed or for deadhead time.

- b. Adjustments to Services. Upon written approval by the CITY, CONTRACTOR shall be compensated following any change to the service level outside of the proscribed 10% levels based on the hourly service rate quoted by CONTRACTOR in its proposal.

Invoicing and payment shall occur as provided in the **Scope of Work, I. Invoicing attached** hereto at **Exhibit A.**

SECTION IX. TERMINATION

This Contract shall be terminated prior to the expiration of the term or terms hereof, only in accordance with the following:

- a. By CONTRACTOR, and subject to Article XVI, Miscellaneous, (e) Cure of Default and Termination:
 - (1) If CITY fails to make timely payments of sums required to be made pursuant to the provisions hereof or for any other default, provided the default is not cured within the applicable cure periods described in Section XVI e.
 - (2) For convenience with no less than one hundred eighty (180) days notice to the City, and/or

(3) In either case of CONTRACTOR-initiated termination discussed above, CITY shall have the option at its sole discretion of purchasing all or part of the CONTRACTOR's fleet of four (4) vehicles dedicated to use in providing the service contemplated in this Agreement. The option must be exercised at or prior to the effective date of termination, and the exercise of the option shall be conditioned upon the following: (i) all outstanding sums due and owing CONTRACTOR, together with the purchase price which shall be the amount due and owing on said vehicles, shall be paid to CONTRACTOR at or prior to the effective date of termination, unless CONTRACTOR, in its sole discretion, agrees to received deferred payment pursuant to the terms of a purchase agreement and/or note in form satisfactory to CONTRACTOR and CONTRACTOR's counsel, (ii) vehicles will be sold based on a valuation of the fleet based on an independent appraisal to be conducted by a mutually-selected third party and pursuant to a purchase agreement containing such terms for the conveyance of the vehicles as are customary and reasonable within the industry in a form satisfactory to the CONTRACTOR and CITY and their respective counsel, provided such approval shall not be unreasonably withheld.

b. By CITY and subject to Article XVI, Miscellaneous, (e) Cure of Default and Termination:

(1) If CONTRACTOR fails to maintain insurance as is required pursuant to the provision of this Agreement; and/or

(2) If CONTRACTOR makes a general assignment or general arrangement for the benefit of creditors; if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against CONTRACTOR and is not dismissed within thirty (30) days; if a trustee or receiver is appointed to take possession of substantially all of CONTRACTOR's assets and possession is not restored to CONTRACTOR with thirty (30) days; or if substantially all of CONTRACTOR's assets are subjected to attachment, execution or other judicial seizure which is not discharged with thirty (30) days; and/or

(3) If CONTRACTOR fails, for any reason, to perform the services required pursuant to this Agreement in a reasonably satisfactory manner as determined by the City Council of CITY, including:

(a) Four (4) or more consecutive months of liquidated damage assessments for missed service hours; and/or

(b) Four (4) or more consecutive months of liquidated damage assessments for on-time performance; and/or

(c) Four (4) or more consecutive months of liquidated damage assessments for any reason in any twelve (12) month period during the term of this Agreement, as may be extended.

(4) If CONTRACTOR fails or refuses to comply with any reasonable instruction of the CITY or with applicable laws, including but not limited to, the States of California Administrative Code Title 13, entitled "Motor Vehicles", published by

the State of California Office of Administrative Procedures, Department of General Services; and/or

(5) If CONTRACTOR fails to notify the CITY within twenty-four (24) hours after receiving an "unsatisfactory" rating from the California Highway Patrol Motor Car Safety Inspectors; and/or

(6) If CONTRACTOR fails within thirty (30) days of receipt of an "unsatisfactory" rating from the California Highway Patrol to make necessary operational changes to obtain a satisfactory rating and to schedule a repeat inspection with the California Highway Patrol.

(7) If CONTRACTOR fails to comply with the terms of this Agreement.

SECTION X, COORDINATION OF WORK.

- a. Selection of Representatives. The following designated managers of CONTRACTOR are hereby designated as the manager and representatives of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and to make all decisions in connection therewith, except for termination of the Agreement or approval of the purchase agreement described in Section VIII. b.:

Steve Allan, General Manager

The foregoing designated manager may not be changed by CONTRACTOR without the express written approval of CITY, unless said designated manager is no longer an employee of the CONTRACTOR. The CITY shall have the right to request replacement of a designated manager or managers for cause. CONTRACTOR shall notify CITY when either of the designated managers leaves the employment of the CONTRACTOR within three (3) business days of the termination of employment and shall immediately name an interim replacement and so notify the CITY.

- b. Contract Officer. The Contract Officer for the City shall be the Director of Public Works/City Engineer or such other person as may be designated by the Director of Public Works/City Engineer. It shall be the CONTRACTOR's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the CONTRACTOR shall refer any decision which must be made by approval of CITY required hereunder shall mean the approval of the Contract Officer.

SECTION XI. INDEPENDENT CONTRACTOR

- a. Contractor Status. CONTRACTOR is an independent contractor and not an employee of CITY. Neither CITY nor any of its employees shall have control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth and, CONTRACTOR expressly warrants not to, in any time or in any manner, represent that CONTRACTOR, by any of CONTRACTOR's officers, employees, or agents, are in any manner officers, employees, or agents of CITY. It is distinctly understood that said CONTRACTOR shall at all times remain as to the CITY a wholly independent contractor, and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

- b. Contractor's Personal Services - Inducement. This Agreement contemplates that the CONTRACTOR's personal services and those of CONTRACTOR's officers, employees and agents are a substantial inducement to the CITY for entering into this Agreement. CONTRACTOR may not assign any interest in this Agreement, except upon written consent of CITY.

Furthermore, unless expressly provided otherwise in CONTRACTOR's proposal, CONTRACTOR shall not subcontract any portion of the performance contemplated under this Agreement without the prior written approval of the CITY, Nothing in this Agreement shall be construed as preventing CONTRACTOR from employing as many employees as CONTRACTOR deems necessary for the proper and efficient execution of this Agreement.

- c. Assignment. CONTRACTOR shall not be permitted to assign any of its rights or obligations hereunder, except the payment of funds due from the CITY, without the prior written consent of the CITY. The consent of the CITY to an assignment shall not be unreasonably withheld but prior to approving any assignment involving the performance of any obligations pursuant hereto, the City Council be satisfied by competent evidence that the proposed assignee is fully capable of performing those services proposed to be assigned. In the event of such assignment, the City Council may condition the same to ensure compliance with the provisions of the Agreement.

SECTION XII. INDEMNITY

- a. CONTRACTOR is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and CITY is relying upon the skill and knowledge of CONTRACTOR to perform said services and duties.
- b. CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to CONTRACTOR or any other person for, and CONTRACTOR shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring as a result of or allegedly caused by the CONTRACTOR's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of CONTRACTOR, its agents, officers, directors, subcontractors, subcontractors or employees, committed in performing any of the services under this Agreement. In the event of a claim against Indemnitees, CONTRACTOR shall have the right to control the defense of any claim or action. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the CITY's sole negligence or willful acts or omissions.
- c. CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, subcontractor or any other person or entity involved by, for, with or on behalf of

CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required in this Section, CONTRACTOR agrees to be fully responsible according to the terms of this Section. *Failure of the CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder.* This obligation to indemnify and defend Indemnitees as set forth herein shall survive the termination of this Agreement for a period of four years, or such shorter period as established by applicable law, and is in addition to any rights which CITY may have under the law. This indemnity is effective without reference to the existence of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to CITY.

SECTION XIII. INSURANCE

Without limiting CONTRACTOR's liability pursuant to the hold harmless and indemnity provisions of this Agreement, CONTRACTOR shall maintain, at a minimum, the insurance coverage listed below:

a. Worker's Compensation Insurance. Including:

- Statutory California worker's compensation coverage.
- Employer's liability with minimum limits of \$1,000,000 per accident and \$1,000,000 per disease, each employee and policy limit.
- An endorsement stating the CITY shall receive at least thirty (30) day's notice prior to cancellation or non-renewal of coverage.

b. Liability Insurance shall be provided as follows:

- General liability insurance (or equivalent form) including:
 - Blanket contractual liability coverage.
 - Broad form property damage liability coverage.
 - Personal injury liability coverage
 - Products and completed operations liability coverage
- .Automobile liability insurance (or equivalent form) including:
 - Coverage for owned, non-owned and hired vehicles.
 - Blanket contractual liability coverage.

The liability coverage shall be written on an occurrence from subject to a minimum of \$10,000,000 per occurrence and in the annual aggregate where aggregates are applicable. The policy or policies, if coverage is provided by combination of policies, shall include:

- (1) Cross liability coverage (i.e., permitting cross suits between insureds)
- (2) An endorsement stating the CITY shall receive at least thirty (30) days' notice prior to cancellation, non-renewal, or substantial change in coverage.

(3) An endorsement naming City of Lynwood, its elected and appointed officials, officers, employees and volunteers as additional insured for liabilities arising out of transit operations

(4) An endorsement stating the insurance required by this Agreement is primary and that the CITY's self-insurance fund and any insurance purchased by the CITY shall apply in excess of the insurance purchased by the CONTRACTOR.

c. CONTRACTOR shall:

Furnish properly executed Certificates of Insurance and policy endorsements to CITY prior to commencement of work under this Agreement. The certificates and endorsements shall clearly evidence all coverage requirements described above. All insurance by this Agreement shall be maintained in full force and effect for the entire term of this Agreement. 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 contract. CITY, at its sole option, may forthwith terminate this Agreement and obtain damages from the Contractor resulting from said breach. Alternatively, CITY may purchase such required insurance coverage, and without further notice to CONTRACTOR, CITY, may deduct from sums due to CONTRACTOR any premium costs advanced by CITY for such insurance.

d. All notices regarding this insurance shall be sent to:

Director of Public Works/City Engineer
City of Lynwood
11330 Bullis Road
Lynwood, CA 90262
TEL (310) 603-0220, ext.287

SECTION XIV. PERFORMANCE STANDARDS

Contractor shall provide timely and reliable transit service. This includes maintaining high trip completion levels and operating within the specified arrival and departure times. To encourage this, the liquidated damage and described below shall be assessed by CITY against Contractor, unless waived for good cause in the sole discretion of CITY.

Determination of liquidated damage shall be made utilizing sampling methods mutually agreed to by CITY and CONTRACTOR. The following liquidated damage clauses shall apply:

- a. Missed service hours in excess of four (4) of scheduled service hours per month the CONTRACTOR shall pay to the CITY as liquidated damages the amount of Two Hundred Fifty Dollars (\$250.00) for each separate instance of service missed in excess of one-half hour, a maximum of \$1,000 may be deducted monthly.
- b. On-time performance of 90% of sampled runs per month is the minimum level of acceptability. The CONTRACTOR shall be assessed by the CITY the amount of Two Hundred and Fifty Dollars (\$250.00) per month if sampled trips reflect on time performance below 90%.

- c. Liquidated damages -- Complaints that are customer complaints verified to have a basis in fact, received by the City within 48 hours of the incident and meet or exceed a rate of eight (8) per 10,000 passenger trips during any calendar month may result in a liquidated damages assessment of Two Hundred and Fifty Dollars (\$250) for that month.
- d. The parties hereto acknowledge and agree that the actual damages which would be suffered by the CITY for CITY's damages in the event CONTRACTOR acts or fails to act in the manner set forth in sections a. through d-c. above would result in substantial damages to the CITY but the amount of such damages would be difficult, if not impossible to ascertain due to the nature of this Agreement and the nature of such damages. Accordingly, the parties, pursuant to applicable law, have determined to establish the provision of this Section as and for CITY's damages for such acts or failures to act, and not as a penalty and further agree that such damages are reasonable. Each of the parties hereto specifically acknowledges agreement to the reasonableness thereof under the circumstances. CITY shall be entitled to take such other legal remedies as may be appropriate for such acts or failures to act, including but not limited to termination of this Agreement.

SECTION XV, COMMUNITY EXCURSIONS AND TRIPS.

CONTRACTOR shall provide the sum of \$2,000 annually to the CITY towards the transportation cost of community excursions and trips sponsored by the CITY's Recreation and Community Services. The CONTRACTOR shall make the payment July 1st of each year during the term of this Agreement, as may be extended.

SECTION XVI, MISCELLANEOUS

- a. Ownership of Documents. All reports, as well as all original reproducible drawings, plans, studies, traffic counts, memoranda, computation sheets, computer disks, and other documents assembled or prepared by CONTRACTOR or CONTRACTOR's agents officers or employees in connection with this Agreement shall be the property of the CITY and shall be delivered to the CITY upon either the completion or termination of the Project. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY, except as required by law.
- b. Records. CONTRACTOR shall maintain all of its business records for a period of five (5) years after the termination of this Agreement. CITY shall be entitled, upon reasonable notice, to inspect and copy any or all such records.
- c. Notices. Any notices to be given under this Agreement shall be given by enclosing the same in the sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

CITY:

Director of Public Works/City Engineer
City of Lynwood
11330 Bullis Road
Lynwood, CA 90262

TEL (310) 603-0220, ext 287

CONTRACTOR:

Mr. Steve Allan, *General Manager*
7209 East Rosecrans, Paramount, CA 90723
Office (562) 259-9911 ext 5004
Cell (714) 719-1749

With copy to: Office of the General Counsel
MV Transportation, Inc.
5910 North Central Expressway
Suite 1145
Dallas, Texas 75206
Office (972) 391-4600

Either CITY or CONTRACTOR may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions. Notices shall be deemed effective upon receipt or three (3) business days following deposit in the mail as provided herein, whichever occurs first.

- d. Enforcement of Agreement. This Agreement shall be construed and interpreted as to both validity, and performance of the parties, in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and CONTRACTOR covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
- e. Cure of Default and Termination. In the event a party is in breach of this Agreement the other party shall give notice of the default to the party in breach. Unless a different period is specified in Subsections VIII, a. and b. above, a party in default related to the payment of money to the other shall have ten (10) working days to cure the default and if it is not cured within said period the other party may terminate the Agreement if authorized by Section VIII., Subsections a. or b. above or may take such further legal action as is authorized by this Agreement. If the default involves a breach of the Agreement for failure to obtain insurance or the default is an immediate danger to the health, safety or general welfare, the CITY may immediately suspend this Agreement and the CONTRACTOR's right to perform upon written or telephonic notice and if the default is not cured as provided in this Subsection may terminate the Agreement pursuant to Section VIII., procure the required insurance, and/or may take such further legal action as is authorized by this Agreement. Unless a different period is specified in Section VIII. Subsections a. and b, above, if the default involves a breach of the Agreement for matters other than the payment of money, the defaulting party shall have fifteen (15) working days to cure the default and if the default is not cured as provided in this Subsection, may terminate the Agreement if authorized by Section VIII., Subsections a, or b. above or may take such further legal action as is authorized by this Agreement, unless the default is not capable of being cured in which case no cure period shall apply. If said default cannot be cured in such 15 day period, the defaulting party must commence to cure the default within said 15 day period and diligently and with best efforts pursue the cure until complete,

provided that the defaulting party shall not have more than ninety (90) calendar days maximum to affect the cure. The effective date of the termination shall be the date of notice served in compliance with this Agreement. The termination may be rescinded within ten (10) working days of service of the notice.

- f. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. CITY's, consent or approval of any act by CONTRACTOR requiring CITY's consent to or approval of any subsequent act of CONTRACTOR shall not be construed as a waiver. Any waiver by a party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.
- g. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercises by either party of one of more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default to any other default by the other party.
- h. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.
- i. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs of suit from the losing party.
- j. Licenses. At all times during the term of this Agreement, CONTRACTOR shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.
- k. Integration. This Agreement represents the entire understanding of the CITY and the CONTRACTOR. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may not be altered, amended or modified except in writing by both parties hereto.
- l. Amendment. This Agreement may be amended only by the written mutual consent of the parties.

[Signatures appear on following page]


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed with all the formalities required by the law on the respective dates set forth opposite their signatures.

CITY OF LYNWOOD

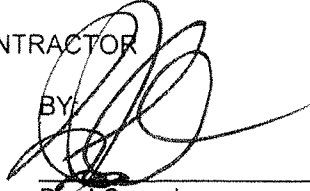
CONTRACTOR

BY:

BY:



Sal Alatorre
Mayor, City of Lynwood

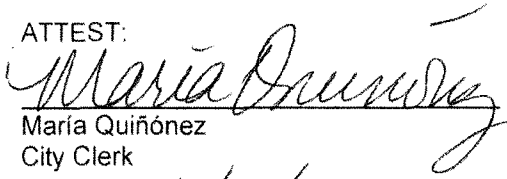


Brad Cornelsen,
Chief Financial Officer

DATE: 10-30-2013

DATE: 10/24/13


ATTEST:



María Quiñonez
City Clerk

DATE: 10/31/13

APPROVED AS TO FORM:



City Attorney

DATE: 10/29/13

**EXHIBIT A
SCOPE OF WORK**

A. Approach

Monitoring: Contractor shall establish adequate monitoring systems, both administratively and in the field, to assure the providing of quality service.

Project Manager: Contractor shall identify a Project Manager with whom the City will have regular contact on daily operational issues. The Project Manager may designate an Operations Manager to oversee the day-to-day service delivery functions. The Project Manager, or a backup staff with the authority to make decisions, must be available in person or by telephone to make decisions at any time during operational hours. The Project Manager should have a minimum of three years' experience in transit management. If it becomes necessary to replace the Project Manager, the Contractor must identify a qualified interim Project Manager who will serve until such time that the Project Manager may be permanently replaced.

B. Service

Operating Hours: Fixed-route service will be provided on the four designated routes A, B, C and D as follows:

	<u>SEP. 1 THROUGH JUN. 30</u>		<u>JUL. 1 THROUGH AUG. 30</u>		<u>HOLIDAYS</u>
	<u>WEEKDAYS</u>	<u>WEEKENDS</u>	<u>WEEKDAYS</u>	<u>WEEKENDS</u>	
ROUTES A, B & C	7:00 AM-5:30 PM	10:00 AM-4:00 PM	9:00 AM-5:30 PM	10:00 AM-4:00PM	NO SERVICE
ROUTE D	7:00 AM-6:00 PM	7:00 AM-6:00 PM	7:00 AM-6:00 PM	7:00 AM-6:00 PM	NO SERVICE

Holidays include New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

C. Adjustments to Services

It is expected that service will continue to be adjusted, as determined by the City. Modifications may include, but are not limited to, adding, modifying or deleting bus stops, extending, modifying, deleting or adding routes, or parts of routes, and expanding, modifying or decreasing service hours by up to 10% in either direction without changing the revenue service hour rate proposed by the successful Contractor.

Any such modifications in the number of service hours within the 10% levels established in this Scope of Work shall not require a modification of the revenue service hour rate provided in Section VII. Part 1a. of the Agreement. Such occurrences of an increase or decrease within the 10% level shall be agreed upon and provided for in writing.

Any other change by the City in the Scope of Work that results in a modification to the number of service hours outside of the proscribed 10% levels shall result in corresponding amendment to the compensation paid to the Contractor under the agreement between City and Contractor, which modification shall be based on the hourly service rate quoted by Contractor in its proposal.

D. Resources and Facilities

The Contractor shall provide adequate resources to perform the work as described, providing the City with a quality of service that is responsive to customers. Facilities shall be located sufficiently close to the Lynwood service area to minimize the time involved in responding to road calls and exchanging vehicles. Specifically, the Contractor shall be required to bring a back-up vehicle into service within thirty (30) minutes of the call.

E. Personnel

The Contractor shall be solely responsible for the provision and satisfactory work performance of all employees. The Contractor is encouraged to solicit qualified personnel from within the City of Lynwood. The City shall have the right to demand removal from the project, for reasonable cause, any personnel furnished by the Contractor, throughout the term of this agreement.

All proposals shall comply with the requirements of Labor Code sections 1070 et seq. To this end, and without limiting the proposer's obligations in this regard, the proposer must declare as part of its proposal, whether or not it will retain the employees of the prior contractor or subcontractor for a period of not less than 90 days per Labor Code section 1072(a) and subject to the section 1072(c). The City will seek to secure the information required per Labor Code section 1072(c) from the existing service contractor, including the obligation of such existing service contractor to provide same to any bona fide proposer and the selected proposer. Any successful proposer shall indemnify and defend the City for any action, costs, attorney's fees or other expenses for any violation of Labor Code sections 1070 et seq., including, but not limited to, any action brought under section 1073.

Dispatch Office: Personnel with dispatch capabilities will staff the Contractor's Office during regular service hours of weekdays from 6:30 a.m. to 6:30 p.m., or other times when vehicles are in revenue service. Telephone service shall be provided at Contractor's expense. This shall include special service periods, such as evening service during December and/or Saturday service, if added. Staff must be adequately trained for their tasks; must be sensitive to the special needs of older adults and persons with disabilities and must exhibit patience and professionalism even in the face of occasional abusive or unreasonable behavior exhibited by riders or callers. In addition, Contractor must have the ability to service Spanish speaking only clientele in addition to others.

Project Manager: The Contractor must designate and provide the services of a Project Manager. The Project Manager will have overall responsibility for the services delivered under the Agreement. The Contractor's named Project Manager shall be available to City staff during regular business hours. The Project Manager shall not be replaced without naming a replacement acceptable to the City and ensuring sufficient lead-time to prevent a gap in on-site management.

Driver Qualifications: The Contractor shall furnish drivers who are at all times:

- Legally licensed to operate a bus in the State of California with a valid California Class B driver's license and medical examination certificate, as well as any other licenses required by applicable Federal, State or local regulations.
- Alert, careful, courteous and competent in their driving habits.

- Neat and clean in appearance and properly uniformed. At contractor's expense, each driver shall be provided with a minimum of two uniforms of a color to be approved by the City.
- Drivers, who shall each be enrolled in the DMV pull notice program, shall meet the following:

No more than three (3) moving violations during the five (5) year period preceding application for this program;

No more than one (1) moving violation within the twelve (12) month period preceding application for this program; this will continue to be monitored during each semi-annual review of the driving record;

Prior to employment must not have been convicted of any felony or drug or alcohol offense and, if convicted after employment of such offense, shall be considered grounds for immediate dismissal from this program;

No reckless driving violations shall be allowed; evidence of reckless driving violation shall be grounds for removal from this program;

Under no condition shall an applicant be accepted as a driver for this program if he or she has ever been convicted of a felony and/or he or she has ever been convicted of a drug or alcohol offense or had his or her license suspended due to a drug or alcohol offense. The City shall review and consider any license suspension for reasons other than drug or alcohol.

Testing and Driving Records: To the extent legally permissible, Contractor shall provide a program for drug testing of drivers and other personnel in a form reasonably acceptable to the City. Contractor shall have in place pre-employment and random testing procedures in full compliance with Federal drug-testing law (40 USC, Section 702, Drug-Free Workplace Act, 1988; 40 CFR, Part 29.600-29.635, Subpart F. Drug-Free Workplace).

The Contractor shall submit to the City semi-annually, updated listings of drivers employed to provide service to the City of Lynwood. In no event shall the Contractor employ any person as a driver who possesses a driving record with a citation for driving under the influence or a history of motor vehicle moving violation or accidents.

Training: All drivers shall receive initial and ongoing training in, at minimum the following:

- defensive driving
- emergency first aid
- cardio-pulmonary resuscitation
- passenger assistance techniques, including operation of lift-equipment
- general vehicle handling and safety
- passenger relations

"New Hire" training shall be no less than the minimum required by law and shall include both classroom and behind-the-wheel training. The City requires that drivers receive at least 50% of

their defensive driver training and the "hands on" portion of the sensitivity training prior to providing service in this program. All remaining new-hire driver training must be completed no more than thirty (30) days after any given driver begins providing service.

"Refresher" training is required for all drivers on an annual basis and may be addressed through routine safety meetings. Monthly safety meetings shall be conducted for all staff associated within this contract to advise them of changes in procedure and to reinforce practices related to provision of quality service. The Contractor shall maintain records of new-hire training completion and safety meeting attendance.

Driver Wage Levels: The Contractor shall pay driver wages at least the minimum wage required by law. Contractor is encouraged to exceed this minimum rate.

Driver Responsibilities: In addition to their routine driving responsibilities, drivers shall, when requested by the City, hand out notices to passengers or otherwise render assistance in City's monitoring and marketing activities. Drivers are required to collect fares, tokens, and honor special passes, accept and distribute transfers. Should the City implement an alternative cashless fare-paying method, the drivers will be expected to attend City-provided training associated with any new fare payment/passenger data collection device and, following the training, to properly utilize such equipment on their vehicles.

City may routinely require driver cooperation with on-board passenger surveys, bus stop alighting counts, reporting of bus stops/signs conditions or similar data collection processes.

Passenger Fares: Fares of \$0.25, or transfer equivalents, will be collected from every person boarding the vehicle, with the exception of young children who are accompanied by a fare paying adult. Some exceptions in fare payment may be extended by City policy. The City reserves the right to adjust passenger fares at any time.

Fare Collection and Reporting: Contractor personnel shall be responsible daily for counting fare box revenue. Fares shall be credited to the City in the monthly invoice. City reserves the right to audit passenger fares and fare collection procedures at any time, at its sole discretion, and charge Contractor penalties and/or interest for underreporting or underpayment. At the City's direction, Contractor shall agree to implement a reasonable method to monitor and ensure the accurate accounting of fare collections. City reserves the right to modify or change said monitoring method at any time, as it deems necessary. The cost of implementation shall be deemed inclusive in the proposed contract hourly rates

F. Vehicle-Related Requirements

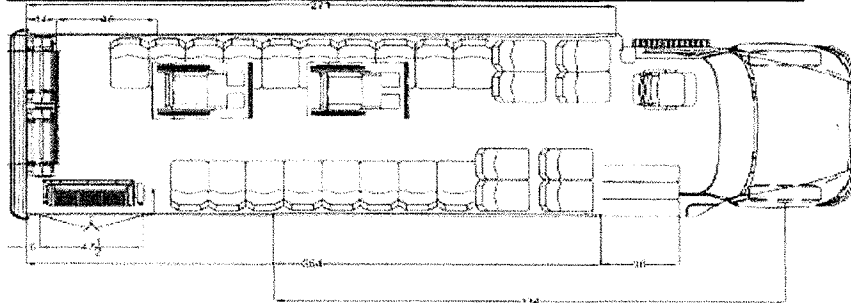
The Contractor shall provide four (4) new CNG-powered vehicles to be exclusively operated under this contract, comprising of two (2) new CNG-powered buses and two (2) new CNG-powered trolleys, both as shown and described immediately below. Contractor shall commence use of the 2 new CNG-powered buses by no later than January 1, 2014 and the 2 new CNG-powered trolleys by no later than June 1, 2014. The following shall be the make and model of the vehicles to be provided:

TWO (2) REGULAR BUSES (CNG)



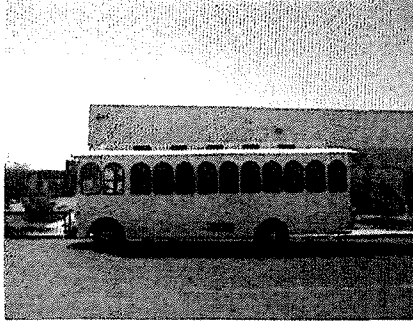
Creative Bus Sales

7/18/2013



2013 STARCRAFT ALLSTAR XL 32' TRANSIT BUS
- 30 SEATED PASSENGERS OR
- 27 + 1 WHEELCHAIR OR
- 24 + 2 WHEELCHAIRS
FORD F550 XL CHASSIS WITH 19,500LB. GVWR
6.8L V10 GASOLINE ENGINE
40 GALLON GASOLINE TANK

TWO (2) TROLLEY BUSES (CNG)



- 32' Overall
- New 2013 Ford Supreme Classic American Trolley
- 30 Passenger Capacity
- Ford V-10 Gas Engine meets Carb requirements
- Ford Auto Transmission
- 22,000 GVWR
- 200 amp Mitsubishi Alternator
- Dual 8D Battery's
- ADA including Wheelchair Lift, two (2) sets of wheelchair tie downs, flip-seat over wheelchair area, ADA signage and lighting, separate wheelchair door
- Front section of trolley forward facing seats, rear section perimeter with two (2) wheelchair area positions per spec
- Authentic wood or wood laminated interior of trolley
- White exterior paint scheme with identical pin stripping and lettering per city of Lynwood photo
- Cow Catcher
- Center Headlight
- Brass Headlight Bezel's
- Exterior Roof mounted Brass Bell
- Interior Brass Passenger Chimes
- AM/FM/CD Player
- PA System with three (3) Speakers
- Electric Entrance Door
- RCA Transit Flooring
- Authentic trolley arched windows with etching
- Authentic trolley cupola with etching
- Safety equipment

Vehicles shall be at least thirty-passenger vehicles. All four (4) vehicles shall be painted with markings specific to Lynwood trolley fixed-route service. The vehicles must comply with California Air Resources Board and South Coast Air Quality Management District requirements. Proposer shall indicate the type of vehicle it is required to operate by the California Air Resources Board and the South Coast Air Quality Management District. The Contractor shall cause to be provided any additional vehicles necessary to ensure that performance standards related to on-time performance and missed trips are met.

Vehicle Configuration: All vehicles, whether new or used, shall be lift-equipped and comply with the American with Disabilities Act (1990), with seating configuration as follows:

- first four seats shall be forward-facing
- 2 wheel chair stations in the mid-vehicle area
- all remaining seats shall be perimeter seating

No substitutions shall be made without City approval.

Licensing: the Contractor shall keep all vehicles fully licensed and permitted as required by the regulation of the State of California. The Contract shall comply with all state, county and local vehicle registration, permitting and regulatory requirements.

Radios: Each vehicle shall be equipped with two-way radio equipment. Contractor shall ensure that drivers are trained in the proper use two-way radios. The successful contractor shall be responsible for obtaining a licensed radio frequency on which to operate.

Cameras: Each vehicle shall be equipped with security cameras to record the interior of the vehicle and outside the vehicle. The successful contractor shall be responsible for installation of all cameras and installation of proper signage.

Public Address System: Consistent with ADA requirements for new vehicles over 22 feet, all vehicles shall be equipped with a functioning public address system.

Usage: The four (4) vehicles used in this service by the Contractor and painted in the City's color scheme shall be used exclusively for this service. Personal usage and/or Contractor use for any other purpose is prohibited.

G. Maintenance

All vehicles used in service to the City shall be maintained in safe, comfortable and clean working order. Contractor at his sole cost and expense, shall provide all repairs, parts, lubricants and supplies required for operation of buses. Contractor shall ensure that adequate preventative maintenance is in place at reasonable intervals to prevent the need for major repairs. Contractor shall have the facilities and personnel to provide all routine and selected major repairs, although sub-contracts for bodywork or selected major repairs are acceptable. Maintenance records must be maintained and kept current.

All vehicle repair or maintenance work must be performed or approved by a certified vehicle mechanic. Contractor personnel must have the ability to repair or to procure service for accessory equipment such as, but not limited to, fare boxes, radios and lift equipment.

CHP Yard Inspections: The Contractor shall obtain satisfactory ratings from the California Highway Patrol Motor Carrier Safety inspectors. on their annual terminal inspection and certification process, pursuant to the California Vehicle Code (Section 3450 1 (c) and (e). The Contractor shall provide the City with a copy of the inspection certification and documentation of the repair or replacement of any items so cited within thirty (30) days of receipt from California Highway Patrol. The Contractor shall notify the City within twenty-four (24) hours of an "unsatisfactory" rating. In the event of such a rating, the Contractor is required to undertake actions necessary to obtain a "satisfactory" rating within thirty (30) days and to be responsible for scheduling a repeat inspection with the California Highway Patrol.

Safety Inspections: the Contractor shall perform daily safety inspections of vehicles prior to beginning each day's service. Vehicles failing the daily inspection shall not be used in service until the reason for failure is corrected. The City reserves the right to ensure that vehicles are properly maintained and in safe operating condition at all times. For passenger comfort, the heating and air conditioning units of all vehicles must be kept in proper working order. The City may inspect vehicles at any reasonable time and may bar a vehicle from a service until any identified problem is corrected. The Contractor may be required, at Contractor's expense, to transport the vehicles to City's designated inspection facilities. The Contractor is required to replace all vehicles taken out of service with similar-type, unmarked vehicles to minimize service interruptions.

Vehicle Cleaning: All vehicles shall be cleaned throughout, both inside and out. Vehicle interiors shall be cleaned prior to each day of service, including daily sweeping and wiping of surfaces as required. Twice weekly washing of interior sidewalls, floors, seats, handrails and stanchions, and inside windows shall be required. Vehicle exteriors shall be washed two times weekly or more often if needed. Contractor shall maintain an up-to-date record of all washings and major cleanings. Said record shall be made available to City upon request. Vehicles may be removed from service upon request by City for unacceptable interior or exterior appearance.

Graffiti: Graffiti shall be removed daily and at no time shall a vehicle be in service that has graffiti visible.

Physical Damage: All physical damage to vehicles shall be repaired within ten (10) working days of occurrence in a high quality manner, regardless of cause. Any extension of days required for repair must be authorized by the City.

Security: Contractor shall provide for sufficient security at the Contractor's yard in order to ensure adequate protection of the vehicles in use for this service.

H. Americans with Disabilities Act

The Contractor shall fully comply with all elements of the Americans with Disabilities Act of 1990 relating to the operation of the fixed-route service.

I. Invoicing

The Contractor shall submit a detailed invoice to the City on a monthly basis. The City will pay the Contractor within thirty-five (35) working days from the date of submission, contingent upon receipt of monthly summary passenger and other requested operating statistics. Without the Contractor's timely submittal of the monthly reporting summaries the monthly invoice will not be

paid. The City may, at any time, conduct an audit of any and/or all records kept by the Contractor related to this service.

The City may deduct from the invoice payment any liquidated damage assessments, based upon the City's determination of performance in relation to liquidated damage clauses of the contract after such clauses are implemented.

J. Records and Reports

The City will work closely with the Contractor in monitoring use patterns of service and the viability of the schedules. Changes to the routing and/or scheduling, as it relates to accessing regional transportation services, may be anticipated and will require the cooperative efforts of the Contractor and the City.

Routine reporting requirements over the term of the contract will include but may not be limited to the data items detailed below. The City reserves the right to request modifications or additions to Contractor's reporting format and content.

Monthly reporting to the City shall include, at a minimum, but not limited to:

Total Passengers - number of riders (noting fare type, free boardings and transfers for in-service vehicles, system wide and by route.

Passenger Boarding on the Lift - system wide and by route.

Total Vehicle revenue Hours - number of hours vehicles are in revenue operation, system wide and by route

Total Vehicle Hours - including deadhead, system wide and by route.

Total Vehicle Revenue Miles - number of miles vehicles travel in revenue service, system wide and by route.

Total Vehicle Miles - including deadhead, system wide and by route.

Total Revenues Collected - total cash fares collected from passengers and total non-cash fares recorded, system wide and by route.

Total Accidents - All types.

Late loops and missed loops per billing period - All.

On- Time Performance - sample from each route of at least five time checks per route per reporting period, reporting percent of time vehicles are at time points zero minutes early and up to five minutes late of time points checked.

Missed Service Hours - hours or fractions thereof of scheduled service not provided.

At City's request, bus stop counts of passenger on-off counts by stop will be collected by the driver or other staff, as mutually agreed to by City and Contractor.

The City participates in the National Transit Database Program (NTD). As such, the contractor shall comply with the reporting requirements of the program and work with the City during audits of this program.

Complaint Handling and Records: The City has a dedicated complaint telephone number. The Contractor will be expected to respond to complaint inquiries from City staff within 24 hours during the work week.

Contractor' records, including NTD Program records, shall be stored for no less than five (5) years after end of contract term or termination in a safe and secure place.

K. Performance Standards and Liquidated Damages

The Contractor shall strive at all times to provide a service in a manner that will maximize service reliability and at the same time maximize customer service. This includes maintaining a high trip completion level and operating within the specified arrival and departure times. To encourage this, liquidated damage clauses were included in Section XIII of the Agreement and may be implemented by the City upon written notice to the Contractor in advance of implementation.

Related to measurement of performance, the Contractor and the City shall develop a mutually agreeable method for sampling on-time performance; it is anticipated that the Contractor shall be responsible for trip sampling presented in its monthly report and that City shall undertake its own on-time performance checks.

L. Ongoing Planning and Marketing

The Contractor shall participate with the City in the design and implementation of any reasonable changes in the system's operating characteristics. The Contractor shall advise the City of any observations that suggest modifications to the service in such areas as routing, scheduling, marketing, customer service and so forth for purposes of improving the transit service. Implementing the Contractor's suggestions will be at City discretion.

City will be responsible for the design, printing, and procurement of all schedules, passes, tickets and like materials required by service operations. Contractor shall assist with distribution and dissemination of such materials in accordance with the Scope of Work.

M. Insurance

Insurance levels are detailed in Section XII of the Agreement and represent the minimum insurance requirements to be in force at all times during the execution of revenue service as described herein. Certificates of Insurance, dully executed, shall be provided to the City before work commences.

N. Compliance With All Air Quality/Pollution Laws

Contractor shall comply with all federal, state and its subdivisions, county and local air quality/pollution control laws and regulations applicable to the operation of the contractor's transit fleet.

