



AGENDA REPORT

Meeting Date: June 17, 2008
Item Number: F-13
To: Honorable Mayor & City Council
From: Aaron Kunz, Deputy Director of Transportation *ak*
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MV TRANSPORTATION, INC. FOR THE MANAGEMENT, OPERATION AND MAINTENANCE OF THE CITY'S TRANSIT SERVICES

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve a seven-year agreement, with three one-year options, between the City of Beverly Hills and MV Transportation, Inc. (MV) in an amount not to exceed \$626,630 for the first year of service, and a total amount not-to-exceed \$4,687,265 through June 30, 2015.

INTRODUCTION

The Cities of Beverly Hills and West Hollywood issued a joint Request for Proposal (RFP) on February 1, 2008, for the management, operation, and maintenance of the Cities' transit services. Staff recommends incumbent MV be selected to continue as the Cities' transit provider beginning July 1, 2008.

The City of West Hollywood City Council authorized staff to enter contract negotiations with MV at its May 19, 2008, City Council meeting. The proposed agreement with MV will amalgamate management, operation, and maintenance services, while retaining two distinct transit services for Beverly Hills and West Hollywood.

The Beverly Hills transit program includes a Dial-A-Ride (DAR) shuttle for seniors and disabled residents, community shuttles including the supermarket and Farmers' Market shuttles, the Beverly Hills Trolley, and as-needed transportation charters for City and community activities.

DISCUSSION

The Cities of Beverly Hills and West Hollywood issued a joint RFP to solicit proposals from local and national public transportation operators for the management, operation, and maintenance of DAR shuttle, trolley, and fixed-route transit systems. The purpose of issuing a joint RFP is to combine the number of service hours to provide economies of scale for both agencies and to attract a larger pool of qualified transit operators. The successful bidder will provide a project management team, dispatch and reservations staff, and shuttle/trolley drivers. Additionally, the successful bidder will operate the paratransit and trolley vehicles and maintain all mechanical functions of city-owned vehicles.

The contract term is extended from a three-year with two-year options to a seven-year with three-year options to allow for the spread of capital expenses, thus lowering the annual costs for both Cities. Beverly Hills and West Hollywood share the costs for project management, facility, and capital expenses in order to reduce the overall cost of operating the transit programs.

The RFP was mailed to 14 companies on February 1, 2008, and two proposals were received by the March 13, 2008 deadline: MV and Forsythe Transportation Inc. A seven-member review panel composed of three representatives each from the City of Beverly Hills and West Hollywood and one impartial representative from the City of Downey, independently evaluated and scored each proposal. Additionally, the Finance Director for West Hollywood and the Assistant Director Administrative Services-Finance for Beverly Hills reviewed the financial statements submitted by each operator.

Following group interviews on April 9, 2008, the panel supports staff's analysis and recommendation to award the transit services contract to the incumbent operator, MV. MV has been the transit operator for the Cities of Beverly Hills and West Hollywood since July 1, 2002, and the current five-year contract will expire June 30, 2008.

The interview panel unanimously agreed that MV is the strongest transit operator based on the following reasons:

1. Finance Directors' assessment of the company's financial portfolio and stability, and its available capital and personnel resources;
2. Strong management team, with the most comprehensive operating and maintenance plan;
3. Continuity of operations, thus no start up costs or operation transition issues;
4. Knowledge and awareness of community and demographics;
5. Improved wage and benefits package aimed at staff retention;
6. Industry-wide Trapeze dispatch system with proposed software upgrade, resulting in improved scheduling and data collection;
7. Video camera installation to record bus activity, improve driver performance and customer service, and aid with possible incidents onboard the transit vehicles; and

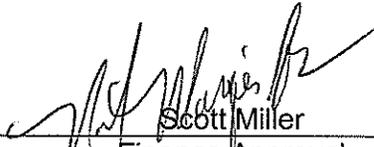
8. Proposed operating facility is located approximately five miles from Beverly Hills City Hall and securely accommodates all administration services, transit vehicles, maintenance shop, and covered trolley housing.

FISCAL IMPACT

MV's proposed cost for the first year of service is \$626,630, a 5% or \$31,744 increase from the current FY07-08 budget of \$594,886. Factors contributing to the increase include annual Consumer Price Index (CPI) adjustments, enhancements to the computerized dispatch system, vehicle cameras, and the addition of a customer service "Transit Ambassador" to aid passengers. Throughout the seven-year contract period, the annual costs of the contract will escalate an average of 3% per year to accommodate CPI increases.

Due to the continued fluctuation of fuel prices, the RFP and final agreement includes language to reflect increases in fuel costs. The base fuel rate for the first year of the contract is set at \$3.75 per gallon. MV will report the number of gallons used and the average price paid per gallon each month. If the average price per gallon is higher than the base price of \$3.75, the City will reimburse MV the cost difference. If the price is lower than \$3.75 per gallon, the City will deduct the difference from the monthly invoice.

The City's allocation of Proposition A and C transportation sales tax funds will cover the cost of the City's transit contract. The City receives approximately \$1.054 million annually in Proposition A and C funds, trolley fares, and program fees. Additionally, the City of Beverly Hills receives Proposition A Discretionary Incentive funds as a result of combining systems operation with the City of West Hollywood. The annual allocation varies based on the actual number of Dial-A-Ride service hours provided by Beverly Hills, but averages approximately \$100,000 each year.



Scott Miller
Finance Approval



David Gustavson
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND MV TRANSPORTATION, INC. FOR THE
MANAGEMENT, OPERATION AND MAINTENANCE OF
THE CITY'S TRANSIT SERVICES

This Agreement is made and entered into between the City of Beverly Hills, hereinafter referred to as "CITY" and MV Transportation, Inc., a California corporation, hereinafter referred to as "CONTRACTOR".

RECITALS

A. CITY desires to provide shuttle service to serve the residents and employees working in CITY. CITY also desires to provide a senior shuttle service for senior citizen and disabled residents of CITY. CITY desires to provide a seasonal trolley service. CITY also desires to charter trolley and shuttle services for private parties and other CITY programs and events. Said services shall be referred to in this Agreement as "Transit Services".

B. CITY desires to contract with a company to manage and operate these transportation services for CITY.

C. CONTRACTOR represents that it has the equipment, vehicles and personnel capable of providing high quality shuttle and trolley services.

D. CONTRACTOR represents that it is a corporation, organized and existing under the laws of the State of California and represents and warrants that each individual executing this Agreement is duly authorized to execute and deliver this Agreement on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, CITY and CONTRACTOR agree as follows:

Section 1. Scope of Services.

A. CONTRACTOR agrees to provide transportation management, operations and maintenance services as described in and pursuant to the terms and conditions set forth herein and in Attachment A, "Scope of Services" for the Beverly Hills Transit Services, attached hereto, incorporated herein and made a part of this Agreement by this reference.

B. CONTRACTOR shall provide the level of service specified in Attachment A subject to, and in accordance with, all of the terms and conditions set forth herein. CITY shall be responsible for decisions with respect to Transit Service system design, setting fare levels, marketing and promotion. CONTRACTOR shall provide all necessary information to assist CITY in making such decisions.

C. OPERATING DURING A DECLARED EMERGENCY. Upon declaration of any emergency by the Mayor, the Director of Transportation or their designee, CONTRACTOR is responsible for a number of transportation related activities, including the development of emergency travel routes, and the coordination with other agencies supplying common carrier services as directed by CITY. In the event of a declared emergency, CONTRACTOR shall deploy vehicles in a manner described by the Director of Transportation or designee as part of the Emergency Operations Plan. However, CITY shall be obligated to compensate CONTRACTOR for service which significantly exceeds the normal expense of operating the service during such period of declared emergency as determined by CITY.

D. CITY may adjust the level of service at its discretion. CONTRACTOR shall not make operational modifications which affect the level of service, including but not limited to, hours of operation, schedules, routes, and response times without prior written approval of CITY. The City Manager or his designee shall give CONTRACTOR thirty (30) days written notice of modifications that CITY determines are major, and may provide CONTRACTOR with less notice if CITY determines that the modifications are minor. If CITY makes modifications which increase or decrease the level of service more than twenty-five percent (25%) of the vehicle service hours set forth in Attachment A, CITY and CONTRACTOR may negotiate a change in the hourly rate.

Section 2. Special Services.

A. Upon request by CITY's Director of Transportation or his designee, special services, which are performed outside regular hours of operation, shall be provided by CONTRACTOR.

B. CITY agrees to pay CONTRACTOR for special services based on an hourly rate set forth in paragraph B of Section 4 of this Agreement.

Section 3. Compensation.

CITY agrees to pay CONTRACTOR for the services described in paragraphs A and B of Section 1 herein as set forth in Attachment B, attached hereto and incorporated herein.

Section 4. Compensation Formula

Compensation for the services described in paragraphs A and B of Section 1 herein shall be calculated based on the following formula, subject to adjustments as provided in Section 3 herein.

A. Payment of an hourly rate of \$29.20 for all regular shuttle service hours for the first contract year. For the second contract year payment of an hourly rate of \$29.72 for all regular shuttle service hours. For the third contract year payment of an hourly rate of \$30.56 for all regular shuttle service hours. For the fourth and subsequent years of the Agreement term, the rates shall be as set forth in Attachment B.

B. Payment of an hourly rate of \$32.32 for all regular trolley services for the first contract year, \$34.29 for the second year, and \$35.38 for the third year. For the fourth and subsequent years of the Agreement term, the rates shall be as set forth in Attachment B.

C. Payment of a variable hourly rate for special services performed outside regular service hours of operations shall be the same as the hourly rates set forth in paragraphs A and B of this Section.

D. For annual fixed costs which include: start-up costs, insurance expenses, trolley expenses, project management expenses, facility expenses, profit and other capital costs, CITY shall pay CONTRACTOR the amounts set forth in Attachment B.

E. The base price of fuel shall be \$3.75 per gallon for the period July 1, 2008 through June 30, 2009. On a monthly basis, CONTRACTOR shall submit supporting documentation identifying the number of gallons used in connection with this Agreement and the average price paid per gallon. If the average price is higher than the agreed upon base price, CITY will reimburse CONTRACTOR the difference times the number of gallons used. If the average price is less, CITY will deduct the difference from CONTRACTOR's invoice. The annual fuel rate may be modified by mutual written agreement during the term of the Agreement, including any extensions.

Section 5. CONTRACTOR Operations Facility. CITY shall have the right to approve the sublet or use of any portion of CONTRACTOR'S operating facility described in Paragraph 3.5 of Attachment A for any other service or program, or for CONTRACTOR's corporate purposes. CONTRACTOR shall submit to CITY for its prior written approval any and all data and information regarding the proposed use of a portion of CONTRACTOR'S operating facility required by CITY to enable it to evaluate the request. The sublet or other use of CONTRACTOR'S operating facility shall result in an equitable reduction of the monthly payment to CONTRACTOR based on its reduced overhead costs, in an amount to be negotiated by the parties in writing.

A. CONTRACTOR shall provide and maintain appropriate vehicle fixed storage and maintenance facilities for the garaging and servicing of the vehicles and vehicle equipment utilized in connection with this Agreement. The location of such facilities shall be subject to pre-implementation inspection by City Manager. If the maintenance or storage facilities are to be acquired, by CONTRACTOR shall indicate what actions will be taken to acquire those sites prior to the start of service. Maintenance and storage locations shall be located within 10 miles of CITY limits and approved by CITY prior to acquisition.

(1) CONTRACTOR Operating, Storage and Maintenance Facility shall be located at 5420 West Jefferson Blvd, Los Angeles. Facility shall provide office space for dispatch, and operations personnel for the combined Transit services. All operating vehicles shall be parked at the secured facility.

(2) CONTRACTOR shall provided a covered facility to house the Beverly Hills Trolley vehicles.

Section 6. Payments and Invoices.

A. CONTRACTOR shall submit a written itemized monthly invoice by the 15th day of each month for the services described in paragraphs A and B of Section 1 herein. In the event that there are special services performed, these items shall be identified in the monthly invoice. Each invoice shall contain a certification that all amounts billed were reasonably incurred, are consistent with and are related to the performance of services under this Agreement.

B. CITY shall pay CONTRACTOR within thirty (30) days from the receipt by CITY of CONTRACTOR's invoices. If CITY disputes any item(s) on an invoice with reasonable cause, CITY may delay payment of such invoice until the invoice is clarified or corrected.

C. Payment to CONTRACTOR shall be mailed, postage prepaid and addressed to:

MV Transportation, Inc.
360 Campus Lane, Suite 201
Fairfield, CA 94585

Section 7. Operating Revenue.

A. All operating revenues collected by CONTRACTOR are the property of CITY. Operating revenues include all fares, sales of tickets and passes collected by CONTRACTOR.

B. All operating revenues shall be emptied from the fare box, recorded and deposited daily by CONTRACTOR. All revenue collected from farebox, sales of tickets and passes shall be deducted from the monthly gross charges and credited on the final monthly invoice.

Section 8. Term.

This Agreement shall commence on July 1, 2008 and shall terminate at midnight on June 30, 2015, unless otherwise terminated pursuant to the termination provisions set forth in Attachment A or extended pursuant to this Section of this Agreement. This Agreement may be extended for three additional twelve month periods by mutual, written consent of the parties.

Section 9. Termination.

A. Termination for Convenience. CITY may terminate this Agreement without cause and in its sole discretion at any time by giving CONTRACTOR thirty (30) days written notice of such termination. City Manager or his designee is hereby empowered to give said notice subject to ratification by the City Council. In the event of such termination, CONTRACTOR shall cease services as of the date of termination and shall be compensated for services performed to CITY's satisfaction up to the date of termination. In the event of termination, CONTRACTOR shall reimburse CITY on a pro-rata basis for all monies received from CITY not yet expended for the operation of the terminated Beverly Hills Transit Services.

B. Termination for Cause. All terms, provisions, and specifications of this Agreement are material and binding, and failure to perform any material portion of the work described herein shall be considered a breach of this Agreement. Should the Agreement be breached in any manner, CITY may, at its option, terminate the Agreement not less than five (5) days after written notification is received by CONTRACTOR to remedy the violation within the stated time or within any other time period agreed to by the parties. In the event of such termination, CONTRACTOR shall be responsible for any additional costs incurred by CITY in securing the services from another contractor.

Section 10. Indemnification.

A. CONTRACTOR shall indemnify, defend, and hold harmless CITY, City Council and each member thereof, its officers, employees and agents ("CITY indemnitees"), from and against any and all causes of action, claim, liabilities, obligations, judgments, financial loss, or damages, including reasonable attorneys' fees and costs of litigation ("claims"), arising from CONTRACTOR's intentional, reckless, negligent or wrongful acts, errors, or omissions of CONTRACTOR in the performance of the services.

(1) CONTRACTOR shall indemnify, defend, and hold harmless CITY, City Council and each member thereof, its officers, employees and agents ("CITY indemnitees"), from and against any and all causes of action, claims liabilities, obligations, judgments, financial loss, or damages, including reasonable attorneys' fees and costs of litigation ("claims"), arising from CONTRACTOR's liability expense, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with CONTRACTOR's operations, or its services thereunder, including any Worker's Compensation suits, liability, or expenses arising from or connected with services performed on behalf of CITY by any person pursuant to this Agreement. In the event CITY indemnitees are made a party to any action, lawsuit, or other adversarial proceeding alleging negligent or wrongful conduct on the part of CONTRACTOR;

(2) CONTRACTOR shall provide a defense to CITY indemnitees or at CITY's option reimburse CITY indemnitees their costs of defense, including reasonable attorneys' fees, and costs incurred in defense of such claims; and

(3) CONTRACTOR shall promptly pay any final judgment or portion thereof rendered against CITY indemnitees with respect to claims determined by a trier of fact to have been the result of CONTRACTOR's negligent or wrongful performance.

Section 11. Insurance.

Without limiting CONTRACTOR'S indemnification of CITY, CONTRACTOR shall provide and maintain at its own expense during the term of this Agreement a program of insurance satisfactory to CITY covering its operations thereunder. When such coverage is provided by commercial insurance, such insurance shall be secured through a carrier satisfactory to CITY, and certificates evidencing such insurance, along with significant endorsements, shall be delivered to CITY no later than fifteen (15) days after execution of this Agreement. CONTRACTOR shall give CITY at least thirty (30) days written notice of any modification or

cancellation of any policy of insurance. CONTRACTOR shall acquire the following insurance coverage:

A. CONTRACTOR, at CONTRACTOR's own cost and expense, shall procure and maintain, for the duration of the Agreement, the following insurance policies:

(1) Workers' Compensation Coverage. CONTRACTOR shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, CONTRACTOR shall require any and every subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against CITY, its officers, agents, employees, and volunteers for losses arising from work performed by CONTRACTOR for City.

(2) General Liability Coverage. CONTRACTOR shall maintain commercial general liability insurance in an amount of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury, and property damage. Such insurance shall be primary to any other similar insurance, shall name CITY as additional insured, and shall contain a provision stating that the insurance carrier will provide thirty (30) day advance notification of cancellation of such insurance. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

(3) Automobile Liability Coverage. CONTRACTOR shall maintain automobile liability insurance covering bodily injury and property damage for all activities of CONTRACTOR arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than Ten Million Dollars (\$10,000,000) combined single limit for each occurrence.

(4) Crime Coverage. A comprehensive blanket crime coverage policy in an amount not less than Ten Thousand Dollars (\$10,000.00), insuring against loss of money, securities, or other property referred to thereunder which may result from (a) dishonesty or fraudulent acts of officers, directors, or employees (commercial blanket form) of CONTRACTOR; or (b) disappearance, destruction, or wrongful abstraction inside or outside the premises of CONTRACTOR while in the care, custody, or control of CONTRACTOR; or (c) sustained through forgery or alteration of checks, drafts, or any other order or direction to pay a certain sum in money. The policy shall be primary to any other similar insurance, shall include loss payee's endorsement naming City as additional insured, and shall contain a provision stating that the insurance carrier will provide thirty (30) day advance notification of cancellation of such insurance.

B. Endorsements. Each general liability and automobile liability insurance policy shall be issued by insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

(1) CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of CONTRACTOR, including materials, parts, or equipment furnished in connection with such work or operations.

(2) The policies of insurance required by this Agreement shall be considered primary insurance as respects CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by CITY, including any self-insured retention CITY may have, shall be considered excess insurance only and shall not contribute with this policy.

(3) The insurance coverage required by the Agreement shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(4) The insurer waives all rights of subrogation against CITY, its elected or appointed officers, officials, employees, or agents.

(5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its elected or appointed officers, officials, employees, agents, or volunteers.

(6) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' written notice has been received by CITY.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY. At CITY's option, CONTRACTOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

D. Certificates of Insurance. CONTRACTOR shall provide certificates of insurance with original endorsements on a form approved by CITY, to CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with CITY no later than fifteen (15) days after execution of the Agreement. Current certification of insurance shall be kept on file with CITY at all times during the term of this Agreement.

E. Failure to Procure Insurance. Failure on the part of CONTRACTOR to procure or maintain required insurance shall constitute a material breach of contract under which CITY may terminate this Agreement pursuant to Section 9(B) of the Agreement, at CITY'S discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by CITY shall be repaid by CONTRACTOR to CITY upon demand.

Section 12. Assignment and Subcontracting.

The parties recognize that a substantial inducement to CITY for entering into this Agreement is the professional reputation, experience, and competence of CONTRACTOR. Assignments of any or all rights, duties, or obligations of CONTRACTOR under this Agreement will be permitted only with the express written consent of CITY. CONTRACTOR shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of CITY. If CITY consents to such subcontract in writing, CONTRACTOR shall be fully responsible to CITY for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between CITY and subcontractor nor shall it create any obligation on the part of CITY to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law. CONTRACTOR understands that all work undertaken by a subcontractor shall be the responsibility and liability of CONTRACTOR.

Section 13. Compliance with Laws, Codes, Ordinances, and Regulations.

CONTRACTOR shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations, including, but not limited to, Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection, the Americans with Disabilities Act, Federal Transit Administration, Drug Testing requirements and other laws and regulations applicable to contracts utilizing federal funds. In connection with this Agreement, CONTRACTOR shall not discriminate on the grounds of race, color, or national origin.

Section 14. Taxes.

CONTRACTOR agrees to pay all required taxes on amounts paid to CONTRACTOR under this Agreement, and to indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. In the event that CITY is audited by any Federal or State agency regarding the independent contractor status of CONTRACTOR and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between CITY and CONTRACTOR, then CONTRACTOR agrees to reimburse CITY for all costs, including accounting and attorneys' fees, arising out of such audit and any appeals relating thereto.

Section 15. Workers' Compensation Law.

CONTRACTOR shall fully comply with the workers' compensation law regarding CONTRACTOR and CONTRACTOR's employees. CONTRACTOR further agrees to indemnify and hold CITY harmless from any failure of CONTRACTOR to comply with applicable workers' compensation laws. CITY shall have the right to offset against the amount of any compensation due to CONTRACTOR under this Agreement any amount due to CITY from CONTRACTOR as a result of CONTRACTOR's failure to promptly pay to CITY any reimbursement or indemnification arising under this Section.

Section 16. Licenses.

CONTRACTOR represents and warrants to CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to CITY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance, and approvals which are legally required of CONTRACTOR to practice its profession. CONTRACTOR shall maintain a City of Beverly Hills business license, if required under CITY ordinance.

Section 17. Conflict of Interest.

CONTRACTOR confirms that it has no financial, contractual, or other interest or obligation that conflicts with or is harmful to performance of its obligations under this Agreement. CONTRACTOR shall not during the term of this Agreement knowingly obtain such an interest or incur such an obligation, nor shall it employ or subcontract with any person for performance of this Agreement who has such incompatible interest or obligation.

Section 18. Non-discrimination and Equal Employment Opportunity.

CONTRACTOR represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of race, religion, color, medical condition, sex, sexual orientation and/or gender identity, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition.

Section 19. Records and Audits.

CONTRACTOR shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by CITY or any authorized representative, and will be retained for three years after the expiration of this Agreement. All such records shall be made available for inspection or audit by CITY at any time during regular business hours.

Section 20. Ownership of Documents.

It is understood and agreed that CITY shall own all documents and other work product of CONTRACTOR, except CONTRACTOR's notes and work papers, which pertain to the work performed under this Agreement. CITY shall have the sole right to use such materials in its discretion and without further compensation to CONTRACTOR. CONTRACTOR shall at its sole expense provide all such documents to CITY upon request.

Section 21. Independent Contractor.

CONTRACTOR is and shall at all times remain as to CITY a wholly independent CONTRACTOR. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees or agents, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or

employees are in any manner agents or employees of CITY. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of CITY or otherwise act on behalf of CITY as an agent.

Section 22. Governing Law.

This Agreement shall be governed by the laws of the State of California.

Section 23. Execution.

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 24. Authority to Enter Agreement.

CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

Section 25. Entire Agreement; Modification.

This Agreement supersedes any and all other agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein. Any agreement, statement, or promise not contained in the Agreement, and any modification to the Agreement, will be effective only if signed by both parties.

Section 26. Attorneys' Fees.

In any action brought to declare the rights granted herein or to enforce any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees in an amount determined by the court.

Section 27. Waiver.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this agreement. Payment of any invoice by CITY shall not constitute a waiver of CITY's right to obtain correction or replacement of any defective or noncompliant work product.

Section 28. Notices.

Written notices to CITY shall be given by registered or certified mail, postage prepaid , and addressed to the following address:

City of Beverly Hills
455 North Rexford Drive, Room 130
Beverly Hills, California 90210
Attention: Director of Transportation

or to such other address as CITY may designate by written notice to CONTRACTOR.

Written notices to CONTRACTOR shall be given by registered or certified mail, postage prepaid, and addressed to:

MV Transportation, Inc. Fax: (707) 863-8944
360 Campus Lane, Suite 201
Fairfield, CA 94585

or to such other address as CONTRACTOR may designate by written notice to CITY.

IN WITNESS WHEREOF, CITY and CONTRACTOR cause this Agreement to be executed this ____ day of _____, 200 ____.

CITY OF BEVERLY HILLS
A municipal corporation

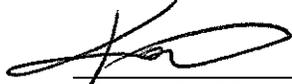
BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

[Signatures continue]

CONTRACTOR:
MV TRANSPORTATION, INC.,
A California corporation:

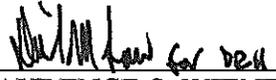


~~JON MONSON~~ Kevin Klika
~~Chief Executive Officer~~ President, Authorized Re



~~TODD FOSTER~~ Sean Kimble
~~Assistant Secretary~~ Cto

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

RODERICK WOOD
City Manager



DAVID D. GUSTAVSON
Director of Public Works & Transportation

KARL KIRKMAN
Risk Manager

ATTACHMENT A

BEVERLY HILLS TRANSIT SCOPE OF SERVICES

CONTRACTOR: MV TRANSPORTATION, INC.

360 Campus Lane, Suite 201

Fairfield, CA 94585

Contract Period: July 1, 2008 – June 30, 2015

Extension Options through June 30, 2018

CONTRACTOR. shall operate CITY’s fixed route and dial a ride transit services to provide transportation services for Beverly Hills residents and community members, in accordance with the terms specified herein.

No service will be provided on the following holidays: New Year’s Eve and New Year’s Day, Martin Luther King Holiday, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and day after Thanksgiving, Christmas Eve and Christmas Day.

Service Type	Operation Description	Vehicle Service Hours of Operation
Dial-A-Ride	Resident Seniors age 62+ and persons with disabilities. Service area: Non-medical trips within City limits; medical trips restricted UCLA Medical Ctr, Kaiser-Cadillac, Cedars Sinai, Century Park East Hospital, Veteran’s Hospital. 8000 Annual service hours	Monday – Friday Two vehicles – 8:30 a.m. to 4:00 p.m. One vehicle – 10:00 a.m. to 4:00 p.m.
Shuttle Services	Supermarket Shuttle, Roxbury Park, 99 Cent Store, Farmer’s Market	Daily, except Saturday 9 a.m. to approximately 3 p.m. One vehicle
Beverly Hills Trolley	Sites and Scenes trolley tour: narrated tour of City. All trolleys depart on the hour 11 a.m. to 4 p.m. from the corner of Rodeo Drive and Dayton Way. Tickets purchased from trolley docent on a first-come, first-served basis 700 Annual service hours	Summer Schedule; July 1 st – Labor Day weekend, Tuesday – Sunday Winter Holiday Schedule: Thanksgiving weekend – New Year’s weekend, Tuesday – Sunday Year-round Schedule: Saturday and Sunday only One vehicle
Special Charter Trips	Miscellaneous services within the Beverly Hills area, including Commission tours. Use of shuttles or trolley vehicle. Service hours vary.	Per requests.

1. PERFORMANCE REQUIREMENTS

1.1 **Program Administration.** Administration of this program includes processing trip requests, providing service information to the public, handling client questions and problem-solving, financial and statistical accounting and documentation, NTD reporting and the coordination of the service with City of Beverly Hills Dial A Ride, in addition to general program management responsibilities.

- 1.2 **Customer Relations And Service.** All personnel are responsible for knowledge of the transit services, other CITY transit programs and the CITY of Beverly Hills and Beverly Hills. Project personnel must maintain a courteous attitude, answering any client questions regarding this program and other CITY transit programs.
- 1.3 All personnel shall be trained to provide excellent customer service and to respond in a professional manner. shall be prepared to handle Senior, Disabled, and Russian émigré participants in this service. Spanish/English staff may be helpful, but is not necessary. Sensitivity and awareness of the Gay and Lesbian community is also required.
- 1.4 **Telephones.** CONTRACTOR shall have a toll free customer service telephone line to provide service information, dispatch and client assistance, Monday through Friday, 7 a.m. to 7 p.m. Separate phone numbers for the Cities of Beverly Hills and Beverly Hills are required. CONTRACTOR shall provide TDD communications. Comments and complaints may also be received on this number. A record of complaints and their resolution shall be submitted with the Monthly Report. All personnel shall be trained to respond in a professional manner. All staff shall be trained in proper procedures for responding to Russian constituents. The telephone numbers shall be owned by CITY and upon termination of the contract, CITY reserve all rights to the use of the reservation phone lines and numbers.
- 1.5 **Automated Call Directory (ACD) System.** CONTRACTOR shall provide an ACD system capable of the following:
- Distribution of calls to the next available reservationist.
 - Ability to measure how many calls are answered, how many calls are lost that hold at least 30 to 90 seconds, other measurable features which are normally associated with an ACD phone system, recorded hold messages which can be changed easily, and music and/or other recorded information while on hold. Any recorded instructions or messages shall be in English, Russian and Spanish.
 - A digital display that tracks the number of calls on hold and length of time on hold.
- 1.6 **Employee Salaries.** Driver and Trolley Narrator wages shall start at \$13 per hour without benefits. Driver salaries may exceed the starting hourly rates and annual CPI increases shall be incorporated into the salary structure. Wages shall be in compliance with CONTRACTOR'S proposal.
- 1.7 **Employee Medical Insurance.** CONTRACTOR shall provide to each employee whose compensation is derived in whole or in part from CITY funds under and pursuant to this Contract, a policy of medical insurance coverage or a stipend to be used for payment of personal medical insurance. The amount of stipend or description of coverage must be consistent with insurance described in the proposal.

- 1.8 **General Manager and Project Manager.** The General Manager will oversee the proper operation of the coordinated Beverly Hills and West Hollywood transit services. Both positions will be dedicated 100% to the coordinated project. The Project Management team will provide both on-line supervision and management of the project's accounts and operating records.
- 1.8.1 CONTRACTOR shall not change the General Manager or Project Manager without CITY's approval. The General Manager will provide both on-line supervision and management of the project's accounts and operating records.
- 1.8.2 On-line supervision shall include, but is not limited to, the following duties:
- a) Training and scheduling of all regularly assigned project personnel.
 - b) Arranging the assignment of backup personnel.
 - c) Distribution and collection of operating reports.
 - d) Daily monitoring of the service delivery, that an adequate level of service is maintained.
- 1.8.3 Project Management shall include, but is not limited to the following:
- a) Preparation of monthly summaries of the operational data.
 - b) Maintenance of project accounts.
 - c) FTA National Transit Data Collection and Reports
 - d) Preparation of a monthly invoice which will document all charges.
 - e) Immediate responsibility of any operational problems and passenger complaints and accurately reporting these problems to CITY promptly.
 - f) Oversight of Drug Testing Procedures
 - g) Oversight of DMV Pull Notice Program
 - h) Participate in regular meetings with CITY Staff and residents when necessary
- 1.9 **CONTRACTOR Personnel.** CONTRACTOR must notify CITY in writing within (2) days of all changes in personnel funded in full or in part by this contract and of all changes in administrative and fiscal staff having responsibility for this contract whether or not these positions are directly funded by CITY. CONTRACTOR must notify CITY in writing of all changes in Board Of Directors Membership.
- 1.10 **Vehicle Operators.** Vehicle operators will work on a schedule that ensures a consistent and overall quality of service. Vehicle operators must have a valid California Class II or Class B (with appropriate endorsements) Drivers' License

and Medical Examination Certificate, CPR and emergency First Aid, as well as any other license required by applicable federal, state and local regulations, including operator's permits issued by the City of Los Angeles.

- 1.10.1 Vehicle operators must be trained in all operational procedures relating to the system. Training must include techniques for dealing with the public in a helpful and courteous manner, basic information about the service and the CITY of Beverly Hills and Beverly Hills, and sensitivity training; this requirement pertains to regularly assigned and relief vehicle operators.
- 1.10.2 While performing their duties of the service, vehicle operators must maintain a clean and neat appearance, must be in a uniform that displays the operator's name. The uniform shall be of quality material and approved by CITY. Drivers shall have uniforms that are consistent with the vehicle color scheme.
- 1.11 CONTRACTOR shall conduct pre-employment DMV checks of all personnel hired for service and shall check DMV records at least every six (6) months for accidents, vehicle code violation, and valid driver's licenses of its employees whose job requires them to operate vehicles for this project.
- 1.12 Any required or voluntary drug testing and surveillance efforts on the part of CONTRACTOR shall be explained to the vehicle operators.
- 1.13 **Dispatchers.** Dispatchers must be trained as drivers and perform a minimum of 8 driving hours per month. Dispatchers wages shall be as stated in CONTRACTOR's proposal.
- 1.14 **Fare Structure.**
 - 1.14.1 Dial A Ride. There is no fare or donation; however, CONTRACTOR must work with CITY to accommodate fare collections if CITY determines, at a later date, that fare collections are necessary.
 - 1.14.2 Beverly Hills Trolley. Fare is \$5.00 per adult and \$1.00 per child 12 and under. CONTRACTOR must work with CITY to accommodate fare collections if CITY determines, at a later date, that fare rate adjustments are necessary.
- 1.15 **Drug Testing Policy.** CONTRACTOR shall comply with FTA drug testing regulations as provided in the proposal.
- 1.16 **Incident Procedure Manual.** CONTRACTOR shall maintain an Incident Procedure Program as provided in the proposal.
- 1.17 **Safety and Training Manual.** CONTRACTOR shall maintain a Safety and Training Program as provided in the proposal.

2. OPERATING STANDARDS

CONTRACTOR shall operate vehicles with due regard for the safety, comfort and convenience of passengers and the general public.

- 2.1 **Monthly Meetings.** CONTRACTOR and CITY shall meet monthly to evaluate performance of the system based upon these standards. If the standards are not fulfilling their intended purpose, they shall be adjusted based upon recommendations made by CONTRACTOR with the concurrence and final decision by CITY. Should it be found that CONTRACTOR's performance has contributed to the failure to achieve these standards, CONTRACTOR shall take all reasonable actions requested by CITY to correct deficiencies in performance.
- 2.2 Service shall be provided as scheduled or according to any adjusted schedule established by CITY. CONTRACTOR shall not be held responsible for the failure to provide on time service due to weather or traffic conditions, unavoidable vehicle malfunctions, and/or naturally occurring disasters.
- 2.3 **Standards for Performance.**
 - 2.3.1 Dial A Ride. The Dial A Ride Service is a free curb-to-curb shared ride for senior and disabled residents. The service area is generally within Beverly Hills city limits and the immediate area of Beverly Hills, and Los Angeles (Wilshire/Fairfax district, Kaiser Hospital-Sunset, Kaiser Hospital-Cadillac, and UCLA Veteran's Hospital). Trip types provided include medical, escort trips, personal and shopping.
 - 2.3.2 Dial A Ride. The service shall operate with four CONTRACTOR provided vehicles between 9:00 a.m. and 4:00 p.m., with the last pickup at 3:30 p.m. A dispatcher or reservation person is available between 7 a.m. and 7 p.m., Monday through Friday, for a total of 8,000 vehicle revenue service hours annually for a minimum of 24,000 trips. CITY shall provide DAR vehicles in year 2 of the contract period.
 - 2.3.3 Dial A Ride. Trips may be scheduled up to 1 hour before the pick up time. Only medical trips may be scheduled up to two weeks in advance. Last call for the same day trip is 3:15 p.m. Standard for pick up is 10 minutes before or 10 minutes after the scheduled pick up time. Wait time shall be no more than 15 minutes. Hourly ridership goal shall be 4 passengers/hour.
 - 2.3.4 Dial A Ride. CONTRACTOR provides the Dial-A-Ride service in ADA accessible 15-passenger shuttle buses. Dial A Ride trip mileages are approximately, 80% up to 4 miles, 15% between 4.01-10 miles and 5% are up to 15 miles in length.
 - 2.3.5 Special Services and Charter Trips. CITY may request special services or charter trips. CITY shall give CONTRACTOR at least 48 hours advance notice.
 - 2.3.6 Beverly Hills Trolley. CONTRACTOR shall train and provide narrators for CITY tours. All trolleys depart on the hour 11 a.m. to 4 p.m. from the corner of Rodeo Drive and Dayton Way. Tickets purchased from trolley docent on a first-come, first-served basis. CITY-owned vehicles will be provided to CONTRACTOR.

3. VEHICLES, CONDITION AND MAINTENANCE

All vehicles and vehicle equipment required by this Contract shall be maintained by CONTRACTOR in good repair and condition satisfactory to CITY. CONTRACTOR is responsible for the provision, maintenance and condition of vehicles.

- 3.1 CITY will provide two 20-passenger and three 15-passenger ADA approved lift equipped vehicles. CONTRACTOR shall provide five dedicated ADA compliant lift or ramp equipped vehicles to operate the Dial A Ride services during the first year of service. CITY will purchase Dial-A-Ride vehicles during 2nd year of service.
- 3.2 All vehicles must meet the permit requirements of the City of Los Angeles.
- 3.3 **CHP Certification.** CONTRACTOR shall maintain a satisfactory California Highway Patrol (CHP) terminal inspection throughout the life of the contract period (proof of CHP certification is required). If CONTRACTOR receives an unsatisfactory rating from the CHP, CONTRACTOR shall notify CITY immediately and state what is being done to correct the deficiency. If the vehicle operating authority falls under the California Public Utilities Commission (PUC) and if the PUC revokes the permits to operate the vehicles in this service as a result of unsatisfactory inspection ratings by the CHP, the vehicle shall not operate and a \$500, per vehicle per day fine shall be assessed until a satisfactory inspection report is obtained.
- 3.4 **Applicable Codes And Regulations.** All vehicles required to be used for the services shall be safe for operation on public streets and freeways and meet all requirements in the California Vehicle Code for all types of buses. All parts of the vehicle and all equipment mounted on or in the vehicle shall conform to the Federal Vehicle Safety Standard and the California Code of Regulation, Title 13. Particular attention shall be directed to the California Highway Patrol Motor Carrier Safety Regulations. CONTRACTOR will comply with DMV Pull Notice Program. Each vehicle must be inspected annually by the CHP. CITY shall be notified of inspections performed by a governmental agency. The results of those inspections shall be transmitted to CITY and any applicable signed certification shall be displayed or carried on the vehicles.
- 3.5 **Operating, Storage and Maintenance Facilities.** CONTRACTOR shall provide and maintain appropriate vehicle fixed storage and maintenance facilities for the garaging and servicing of the vehicles and vehicle equipment. The location of such facilities shall be subject to pre-implementation inspection. If the maintenance or storage facilities are to be acquired, CONTRACTOR shall indicate what actions will be taken to acquire those sites prior to the start of service. Maintenance and storage locations shall be located within 10 miles of CITY limits and approved by CITY.
 - 3.5.1 CONTRACTOR Operating, Storage and Maintenance Facility shall be located at 5420 West Jefferson Blvd, Los Angeles. Facility shall provide office space for dispatch, and operations personnel for the combined Transit services. All operating vehicles shall be parked at the secured facility.

- 3.5.2 CONTRACTOR shall provided a covered facility to house the Beverly Hills Trolley vehicles.
- 3.6 **Maintenance.** At all times, CONTRACTOR shall maintain all components of each vehicle (bus and trolley) including its body, frame, furnishing, mechanical, electrical, hydraulic or other operating systems in proper working condition free from damage and malfunction. CONTRACTOR shall replace and repair immediately any vehicle damaged in any accident or other damage which impairs the proper and safe mechanical operation of the vehicle.
- 3.6.1 CONTRACTOR at its sole cost and expense, shall maintain inventory of and provide fuel, lubricants, repairs, parts and supplies required for the maintenance and operation of all vehicles utilized in providing services.
- 3.6.2 Vehicles must be kept clean including exterior washing at least weekly, with the vehicle interiors swept or vacuumed daily to remove all dirt and debris.
- 3.6.3 CITY requires servicing of all vehicles at successive 6,000 mile intervals or the recommended vehicle manufacturer's specifications, whichever is lower. A more extensive inspection and servicing shall take place at 12,000 mile intervals or as specified by the recommended vehicle manufacturer, whichever is lower.
- 3.6.4 CONTRACTOR shall follow the manufacturer's specification for the Trolley maintenance schedule.
- 3.6.5 Towing. In the event that towing of any vehicle is required due to mechanical failure or damage, CONTRACTOR shall be responsible to provide such towing at CONTRACTOR's sole expense.
- 3.7 **Preventive Maintenance.** CONTRACTOR shall comply with the Preventative Maintenance and monitoring program outlined in their proposal. CITY may desire to inspect vehicles currently operated by CONTRACTOR.
- 3.8 **Fuel Adjustment Rates.** The base price of fuel will be \$3.75 per gallon for the period July 1, 2008 through June 30, 2009. On a monthly basis, CONTRACTOR shall submit supporting documentation identifying gallons used and the average price paid per gallon. If the average price is higher than the agreed upon base price CITY will reimburse CONTRACTOR the difference times the number of gallons used. If the average price is less, CITY will deduct the difference from CONTRACTOR's invoice. The annual fuel rate may be negotiated during the term of the contract.
- 3.9 **Spare Vehicles.** CONTRACTOR shall dispatch a spare vehicle in the event of a vehicle breakdown. The maximum response time from the moment a trouble call is received until a substitute vehicle arrives is 30 minutes. CITY also reserves the right to establish additional criteria regarding reliability of response in the event of breakdowns.
- 3.10 **Communications.** CONTRACTOR shall install a communication system that will allow for the timely and efficient dispatching, coordinating and responding to necessary service calls. The system may be of CONTRACTOR's choice. Each

revenue service vehicle, as well as each administrative vehicle shall have a communication system installed and operational.

- 3.11 **Automated Vehicle Location (AVL) System.** CONTRACTOR shall provide an AVL system using Global Positioning System (GPS) technology for the fixed route and dial a ride services.
- 3.12 **Mobile Data Terminals (MDT).** Every vehicle must be equipped with a MDT. The device will be utilized to process trip requests between CONTRACTOR's dispatch center and the individual vehicle. The functionality of the MDT must be able to meet all operating and reporting requirements of this project. CONTRACTOR will provide training on the operation of the MDT's. CONTRACTOR shall be responsible for the installation and maintenance of all MDT's.
- 3.13 **Automated Scheduling and Routing Program.** CONTRACTOR shall provide an Automated Scheduling and Routing software program for scheduling and recording trip requests and routing and dispatching functions for demand response services as submitted in the Proposal. CONTRACTOR shall provide and maintain computer terminals and monitors.
- 3.14 **DriveCam Video System.** Every service vehicle in operations shall be installed with a DriveCam Video System.

**REVENUE SERVICE HOURS
BEVERLY HILLS TRANSPORTATION SERVICES
JULY 2008 THROUGH JUNE 30, 2015**

	ANNUAL REVENUE HOURS
Dial-A-Ride and Shuttles	8,000
Trolley Service	700
Special and Misc. Shuttles	On Demand
Total	8,700

ATTACHMENT B

CITY OF BEVERLY HILLS
TRANSIT PROGRAM

TOTAL ANNUAL CONTRACT COSTS

	FY08-09 YR 1	FY10 YR 2	FY11 YR 3	FY12 YR 4	FY13 YR 5	FY14 YR 6	FY15 YR 7	TOTAL
SHUTTLE	576,532	583,939	594,604	610,848	629,829	637,997	665,515	4,299,264
TROLLEY	50,098	52,367	54,164	55,721	57,527	57,629	60,497	388,001
TOTAL	626,630	636,306	648,768	666,569	687,355	695,625	726,012	\$ 4,687,265

ANNUAL FIXED COSTS

	FY08-09 YR 1	FY10 YR 2	FY11 YR 3	FY12 YR 4	FY13 YR 5	FY14 YR 6	FY15 YR 7	TOTAL
SHUTTLE	342,915	346,186	350,112	359,729	371,779	370,646	385,029	2,526,396
TROLLEY	27,474	28,367	29,395	30,187	31,190	31,232	32,483	210,329
TOTAL	370,389	374,553	379,507	389,916	402,969	401,878	417,512	\$ 2,736,724

58%

HOURLY RATES

	FY08-09 YR 1	FY10 YR 2	FY11 YR 3	FY12 YR 4	FY13 YR 5	FY14 YR 6	FY15 YR 7	TOTAL
SHUTTLE	29.20	29.72	30.56	31.39	32.26	33.42	35.06	31.66
TROLLEY	32.32	34.29	35.38	36.48	37.62	37.71	39.59	36.20
AVERAGE	30.76	32.01	32.97	33.94	34.94	35.57	37.33	\$ 33.93