

DRAFT

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES  
AND  
MV TRANSPORTATION, INC.  
FOR THE  
OPERATION OF THE  
CITYRIDE PROGRAM DIAL-A-RIDE SERVICES

**THIS AGREEMENT** is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred as the "City"), and MV Transportation, Inc. (hereinafter referred as the "Contractor").

### **WITNESSETH**

**WHEREAS**, the City is desirous of obtaining services for the management and operation of the CITYRIDE Program's Dial-A-Ride services known herein as Cityride Area 1, 2, and 3;

**WHEREAS**, the City issued a Request for Proposals (RFP) dated July 13, 2015, locally and nationally for companies interested in providing such services, which RFP, along with its Exhibits, Forms, Appendices, Attachments and Addenda, is on file in the City's Department of Transportation and is incorporated herein by reference;

**WHEREAS**, the Contractor has the management and technical expertise and other assets necessary for the operation of the Cityride Program's Dial-a-Ride services;

**WHEREAS**, the Contractor submitted a proposal in response to the RFP, which proposal is dated September 1, 2015 and is incorporated herein by reference (collectively herein referred to as the "Proposal");

**WHEREAS**, the City has requested that the Contractor operate the Cityride Program's Dial-a-Ride Services in Area 1, 2 and 3 in the time and manner set forth in the RFP and Proposal.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, the parties hereto agree as follows:

### **SECTION I. INTRODUCTION AND CONDITIONS PRECEDENT**

#### **A. Parties to this Agreement**

The Parties to this Agreement are:

1. The City of Los Angeles, a municipal corporation, having its principal offices at 100 North Main Street, 10<sup>th</sup> Floor, Los Angeles, CA 90012
2. MV Transportation, Inc., a corporation, having its principal offices at 5910 N. Central Expy., Suite 1145, Dallas, TX 75206

#### **B. Representatives of the Parties and Service of Notices**

1. The representatives of the respective Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

a. The representative of the City shall be, unless otherwise stated in the Agreement:

Kari Derderian, Supervising Transportation Planner II  
City of Los Angeles  
Department of Transportation  
100 S. Main Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90012

b. The representative of the contractor shall be:

Amy Barry  
Senior Vice President  
MV Transportation, Inc.  
5910 N. Central Expy., Suite 1145,  
Dallas, TX 75206

2. Notices. Formal notices, demands and communications to be given by either party shall be made in writing (hardcopy, e-mail or fax) and when required be effected by personal delivery or by mail. A notice of breach of agreement or liquidated damages, if any, will be sent via certified mail.

3. Changes. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accordance with this section, within five (5) working days of said change.

#### C. Contract Modifications

The Agreement fully expresses all understanding of the parties concerning all matters covered and shall constitute the total agreement. Except as may otherwise be provided herein, no addition to or alteration hereto shall be valid unless made in the form of a written amendment, which must be formally approved by Mayor and/or Council and executed by the parties. No modification or addition to this Agreement shall have any effect whatsoever unless set forth in writing, approved by Mayor and/or Council, and signed by both parties.

#### D. Conditions Precedent

1. **Required Facilities.** The Contractor shall, prior to the commencement of service, have all facilities required for all necessary functions in place for the operation, administration and maintenance of service.
2. **Position and Task Report.** The Contractor shall, prior to the commencement of service, and thereafter as per the RFP and addendum, provide the required Position and Task Report each month to the City. The report shall include the following current information:
  - a. Name and position/title of all employees under the Agreement
  - b. Percentage of involvement of all the employees under this Agreement
  - c. The starting salary to be paid to the employee
3. **Insurance Requirements.** The Contractor shall comply at all times with all of the insurance requirements set forth in the City of Los Angeles, Standard Provisions for City Contracts (Rev. 03/09) ("Standard Provisions for City Contracts"), see Attachment A. Exhibit 1 of the Standard Provisions for City Contracts describes in detail the insurance coverage and amount required by this Agreement.
4. **Changes to Documentation.** Changes to the foregoing documents affecting the performance of the Contractor under this Agreement shall receive City approval in writing before the Contractor may effect the change.
5. **Contract Assignment.** This agreement is not to be assigned to a substitute contractor, a successor in interest, or a purchaser of the contract without the express permission of the City. This agreement will be terminated if the City does not approve or grant permission to a subsequent contractor to assume the services.

## **SECTION II. TERMS OF CONTRACT**

### **A. Contract Period**

1. This Agreement shall be in effect for up to three (3) years with the option to renew annually for an additional two (2) years starting from the execution date of this Agreement as set forth on page 14 of this Agreement. The actual start and end dates for the respective services are specified in Section III (B) (1) below.

2. City obligations under this contract are contingent upon the City's ability to obtain the funds from the funding agencies and the availability of City funds in this and subsequent fiscal year budgets to finance the cost of this Agreement. Either party may terminate this Agreement if the City is unable after using its bonafide best efforts, to obtain funding for this Agreement.
3. The Contractor shall perform service hereinafter indicated in accordance with the terms and conditions of this Agreement.
4. The Contractor shall refrain from any action that would create or tend to create obligations, express or implied, on behalf of the City, it being understood that the Contractor is not and shall not be the legal representative or agent of the City and that the Contractor shall not be authorized to make any promise, warranty or representation except as specifically provided for in this Agreement or as otherwise agreed to in writing between the parties.
5. The City shall have no liability to any subcontractor(s) for payment for service under this Agreement or other work performed for the Contractor and any subcontract entered into by the Contractor pursuant to the conduct of service under this Agreement. It shall be duly noted that the responsibility for payment for technical services or any other work performed shall be the sole responsibility of the Contractor.

### **SECTION III. CONTRACTOR DUTIES AND SCOPE OF WORK**

#### **A. Independent Contractor/Status of the Contractor**

1. In rendering service hereunder, the Contractor shall be and remain an independent Contractor. It is expressly understood and acknowledged by the parties hereto that any amounts payable hereunder shall be paid in gross amount, without reduction for any federal or state withholding or other payroll taxes, or any other governmental taxes or charges. The Contractor is responsible for assuming and remitting any applicable federal or state withholding taxes, estimated tax payments, social security payments, unemployment compensation payments, or any other fees or expenses whatsoever.
2. The Contractor shall refrain from any action that would create or tend to create obligations, expressed or implied, on behalf of the City, it being understood that the Contractor is not and shall not be the legal representative or agent of the

City and that the Contractor shall not be authorized to make any promise, warranty or representation except as specifically provided for in this Agreement or as otherwise agreed to in writing between the parties.

3. The City shall have no liability to any subcontractor(s) for payment for service under this Agreement or other work performed for the Contractor and any subcontractor entered into by the Contractor pursuant to the conduct of service under this Agreement. It shall be duly noted that the responsibility for payment for technical services or any other work performed shall be the sole responsibility of the Contractor.
4. All real property, purchased directly by the City or through the Contractor for this contract shall become the property of the City and shall be returned to the City upon termination of this Agreement, except as provided otherwise.

#### B. Service Delivery

1. The Contractor shall commence February 1, 2016 through January 31, 2019:
2. The Contractor shall operate the dial-a-ride services and related tasks in accordance with the City's operating policies, standards and procedures and the terms and conditions specified and indicated in this Agreement and the RFP. The Contractor shall also be responsible for operating in compliance with the governmental codes, regulations, ordinances, and directives applicable to such operations and as defined in this Agreement.
3. The Contractor shall be responsible to ensure that all services to be operated as part of this Agreement shall be in compliance with the Americans with Disabilities Act (ADA) of 1990. The City is responsible for the establishment of policy concerning ADA and the Contractor is responsible for the implementation of said policy.
4. The City shall monitor the service in order to assess the performance of the Contractor in delivering the service. The City shall maintain the right to assess performance penalties against the Contractor, as set forth in the RFP, based on the Contractor's failure to meet the established service performance standards. The standard and performance penalties described in this RFP are applicable and thereto shall be charged as described in the RFP.

5. The routes and schedules for services are specified by the City and are subject to change and modification within the scope of work.
6. The Contractor shall ensure that all City-owned vehicles and any non-City owned vehicles dedicated to this program are used as specified by the City for the purpose of this Agreement at all times. Any changes to the fleet shall be approved by the City and the Contractor in writing. Use of City-owned vehicles for any other purposes shall be approved in advance by the City.
7. The City reserves the right to increase revenue service hours to accommodate service demands with a 30-day notice to the Contractor. The service may be modified during the term of the contract. For the purpose of cost effectiveness, the City may increase the service hours by less than 20% with no resulting increase in the proposed hourly rates. Any additional service hours requested by the City over and above the requirement of this Agreement will be compensated at the Additional Service Adjustment Hourly Rate indicated in the Proposal.

#### **SECTION IV. COMPENSATION**

- A. The City shall pay the Contractor for the satisfactory performance of the terms and conditions of this Agreement.
  1. The City shall pay the Contractor monthly amount equal to the number of revenue service hours of operation times the hourly rate as indicated in **Exhibit A**. Additional funds are also available for service performance bonuses and additional service hours.
  2. The Contractor shall submit monthly claims for payment for revenue service hours provided less farebox revenue generated along with documentations thereof in the form and number required by the City within the time specified by the City under the RFP. In the event that the City assumes the responsibility of counting the collected farebox revenues and directly depositing such revenues in a City account then the Contractor shall submit claims for payment only for the revenue vehicle hours provided.
  3. In an emergency, the City may ask the Contractor to provide bus service according to routes and schedules developed by the City. The hourly rate for the services shall be the Additional Service Adjustment Hourly Rate as indicated in Exhibit A of this document.

4. Payments to the Contractor may be withheld by the City, if the Contractor fails to comply with the provisions of this Agreement.
5. Contractor must submit supporting documentation (receipts, work orders, and billing statements) with any invoice that is submitted to the City for processing. The City has the right to deny payment of any expenses that might be deemed unwarranted.

#### B. Fare Revenue Collection

The following is a supplement to the Fare Collection and Accountability provisions in the RFP and the Proposal.

1. *The Contractor's bus operators or other authorized personnel shall collect from all passengers on each vehicle the amount of fare (including collection of cash or by swiping Cityride card) determined in accordance with the RFP specifications.*

The Contractor shall maintain the security of fareboxes and associated revenue collection devices. The Contractor shall provide a revenue counting room equipped with a vault and security devices that will prevent theft or expose pilferage.

2. The Contractor shall ensure that all collected revenue is accurately counted. The Contractor shall provide LADOT's Accounting Division with a monthly bank statements as verification of revenues collected and all ridership figures shall be reported in accordance with the RFP.

### **SECTION V. DOCUMENTS, RECORDS AND AUDITS**

- A. The Contractor shall comply with the provisions for Audits and Inspections indicated in the RFP and as described below:
  1. Any time during normal business hours and as often as the City may deem necessary, the Contractor shall make available to the City for examination, all of its records with respect to all matters covered by this Agreement. The City shall have the authority to audit, examine and make excerpts or transcripts from records, including all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other statistical data relating to all matters covered by this Agreement.
  2. The City shall have the authority to make physical inspections and to require physical safeguarding devices as locks, alarms, safes, etc., to safeguard property and/or equipment authorized

by this agreement. In the event the City requires equipment to be purchased beyond what was originally proposed, the Contractor has the right to renegotiate the hourly rate to reflect the cost of the equipment.

3. When a fiscal or special audit determines that the Contractor has expended funds that are questionable under the criteria established in the Agreement, the Contractor shall be notified and given the opportunity to justify questioned expenditures prior to the City's final determination of disallowed costs. The City shall determine any amount to be paid to the Contractor during the period of audit. If the Contractor fails to respond within fifteen (15) days from the notice date, the City shall make the final determination of disallowed costs and the non-compliance findings will be incorporated in the final audit report.

## **SECTION VI. STANDARD CONTRACT PROVISIONS**

Hereby incorporated by reference into this Contract are the Standard Provisions for City Personal Services Contracts, revised March 2009, which are attached hereto as Attachment A and included herein by reference.

### **A. Termination of Contract:**

The City may terminate this contract without cause, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its reasonable costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim for payment to the City. If the Contractor has any property in its possession belonging to the City, the Contractor shall account for the same, and dispose of it in the manner the City directs.

### **B. Waiver:**

In addition to the waiver provision under Standard Contract Provision of the RFP (Refer to the Standard Provisions for City Personal Services Contract, Attachment A, Section PSC-9 of the Agreement), the failure of the City to insist upon strict performance by Contractor of any provision hereunder in every one or more instances shall not constitute a waiver of such provision by the City, nor shall, as a result, the City relinquish any rights that it may have under this Contract.

### **C. First Source Hiring**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time.

1. CONTRACTOR/CONSULTANT shall, prior to the execution of the contract, provide to the DAA a list of anticipated employment opportunities that CONTRACTOR/CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
2. CONTRACTOR/CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONTRACTOR/CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR/CONSULTANT interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONTRACTOR/CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONTRACTOR/CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONTRACTOR/CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONTRACTOR/CONSULTANT has violated provisions of the FSHO.

D. Equal Benefits Ordinance

Contracts awarded pursuant to this procurement process shall be subject to the applicable provisions of Los Angeles Administrative Code Section 10.8.2.1, Equal Benefits Ordinance (EBO).

Contractors shall complete and submit to the contracting department the Equal Benefits Ordinance Affidavit (two (2) pages) for a City contract valued at \$5,000. The Equal Benefits Ordinance Affidavit shall be effective for a period of twelve months for the date submitted to the City. Contractors do not need to submit supporting documentation. However, the City may request supporting documentation to verify that the benefits are provided equally as specified on the Equal Benefits Ordinance Affidavit.

Contractors seeking a waiver from the requirements of the EBO shall visit the Bureau of Contract Administration's web site at [www.bca.lacity.org](http://www.bca.lacity.org) and download the form. The EBO Waiver Request Form hardcopy must be returned to the contracting department.

E. Nondiscrimination, Equal Employment Practice and Affirmative Action Program (Non-Construction)

Contracts awarded pursuant to this procurement process shall be subject to the applicable provisions of Los Angeles Administrative Code Section 10.8.2., Non-discrimination Clause.

Non-construction services to or for the City for which the consideration is \$1,000 or more shall comply with the provisions of Los Angeles Administrative Code Section 10.8.3., Equal Employment Practices Provisions. Contractor shall complete the Non-Discrimination/Equal Employment Practices Affidavit (two (2) pages) and submit the completed form to the contracting department.

Non-construction services to or for the City for which the consideration is \$100,000 or more shall comply with the provisions of Los Angeles Administrative Code Section 10.8.4., Affirmative Action Program Provisions. Contractor must complete and submit to the contracting department the Affirmative Action Plan (four (4) pages).

F. Slavery Disclosure Ordinance

Unless otherwise exempt, in accordance with the provisions of the Slavery Disclosure Ordinance, any contract awarded pursuant to this RFB/RFP/RFQ will be subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code.

Contractor shall complete and submit to the contracting department the Slavery Disclosure Ordinance Affidavit (one (1) page).

Contractor seeking a waiver from the requirements of the SDO shall visit the Bureau of Contract Administration's web site at [www.bca.lacity.org](http://www.bca.lacity.org) and download the form. Hardcopy of the SDO Exemption Form (OCC/SDO-2) must be returned submitted to the contracting department.

## **SECTION VII. MISCELLANEOUS**

- A. Neither party assumes any liability for failure to fulfill the terms and conditions of this Agreement caused by events beyond the reasonable control of such party. Such events may include, but are not restricted to the following: natural disaster, acts of government in either its sovereign or contracted capacity, a failure or shortage of fuel, water, fuel oil or other utility or services, strikes, riots, fires, floods, epidemics, war, insurrection or other national or local emergency, freight embargo, impassibility of routes due to construction, and unusually severe weather but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor or its subcontractor.
- B. This Agreement, the RFP, Proposal, all Exhibits, Attachments and Addenda contain the entire understanding between the Contractor and City. No modification or addition to this Agreement shall have any affect whatsoever unless set forth in writing and signed by both parties hereto.
- C. Any item of work contained in either the RFP or the Proposal shall be performed by Contractor as though it appeared in this Agreement. In the event of any conflict, the terms of this Agreement, the RFP, all exhibits, attachments and addenda govern over the Proposal unless specifically stated otherwise.
- D. Disputes regarding the interpretation or application of any provisions shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. The City shall make every effort to limit the negotiating period for a time not to exceed 30 days. Failure to come to a negotiated settlement will allow the aggrieved party to seek recourse in the courts of law (Refer to the Standard Provisions for City Personal Services Contract, Attachment A, Section PSC-8 of the Agreement).
- E. This Agreement shall be binding on and insures to the benefit of the heirs, executors, administrators and assigns of the parties hereto.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the City of Los Angeles and the Contractor have caused this Agreement to be executed by their duly authorized representatives.

Executed for:

Executed for:

The City of Los Angeles

MV Transportation, Inc.

\_\_\_\_\_  
Seleta J. Reynolds  
General Manager  
Department of Transportation

\_\_\_\_\_  
Amy Barry  
Senior Vice President  
MV Transportation, Inc.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and Legality:

ATTEST:

Mike Feuer, City Attorney

Holly L. Wolcott, City Clerk

\_\_\_\_\_  
Michael Nagle  
Deputy City Attorney

\_\_\_\_\_  
City Clerk  
City of Los Angeles

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Council File Number: \_\_\_\_\_

Contract Number: \_\_\_\_\_