

**RESOLUTION NO. 2004-235**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING AN AGREEMENT WITH MV TRANSPORTATION, INC. TO OPERATE  
THE CITY'S FIXED ROUTE PUBLIC TRANSIT SERVICES UNTIL JUNE 30, 2009**

**WHEREAS**, on November 19, 2003, the City conducted a request-for-proposal (RFP) requesting a transit operator for the City's fixed route public transit services; and

**WHEREAS**, of five (5) RFP's that were submitted, MV Transportation, Inc. (MV) was determined to be the most qualified and responsive responsible proposer; and

**WHEREAS**, On May 19, 2004, the City Council authorized the City Manager to enter into negotiations with MV to operate the City's fixed-route public transit services; and

**WHEREAS**, MV Transportation will operate the City's transit fleet based on the desire of the City to provide quality and responsive transit service to Elk Grove residents.

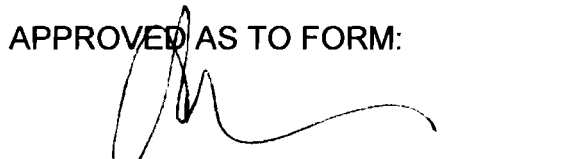
**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager or his designee to execute an agreement with MV Transportation, Inc. to operate the City's Fixed Route Public Transit Services until June 30, 2009.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 15<sup>th</sup> day of September 2004.

  
\_\_\_\_\_  
SOPHIA SCHERMAN MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**AN AGREEMENT BETWEEN THE CITY OF ELK GROVE  
AND CONTRACTOR FOR THE PROVISION OF FIXED ROUTE  
TRANSIT SERVICES**

This Agreement, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the City of Elk Grove (hereinafter "CITY"), a municipal corporation, and MV Transportation, Inc. (hereinafter "CONTRACTOR"), a corporation.

**AGREEMENT**

**1. SCOPE OF WORK, FARES AND PAYMENT**

**a. Scope of Work.** Except as otherwise specified, the CONTRACTOR shall provide all labor, equipment, tools and materials necessary to provide fixed route services as more specifically set forth in Exhibit A Scope of Work for Elk Grove Transit Services which is incorporated by reference herein.

**b. Price for Elk Grove Public Transit Services.**

**(1) Initial Agreement Period.** CITY hereby promises and agrees with the CONTRACTOR to contract with, and does hereby contract with CONTRACTOR to operate the Elk Grove fixed route transit services, according to the terms and conditions herein contained and for the prices set forth in the Payment Schedule, as more specially set forth in Exhibit B Payment Schedule, which is incorporated herein. CITY hereby contracts to pay the same at the time, in the manner and upon the conditions herein set forth; and the parties hereto for themselves, their heirs, shareholders, directors, partners, executors, administrators, and successors, and do hereby agree to the full performance of the covenants herein contained. CONTRACTOR agrees to receive and accept the prices set forth in Exhibit B Payment Schedule as full compensation to operate the Elk Grove fixed route services in the manner specified in this Agreement, including Exhibit A.

**(2) Renewal Period.** If CONTRACTOR gives notice to the CITY no later than October 15th of the year preceding an upcoming optional contract year, the parties agree to meet and negotiate changes to the contract price for services then rendered under this Agreement. The negotiation period shall be the thirty (30) days between October 15th and the November 15th non-renewal notice date specified in Section 4. In connection with consideration of such price changes, the CONTRACTOR shall provide to the CITY such financial information the CITY in its sole discretion determines relevant in considering the price proposal. Any information provided by the CONTRACTOR and identified on the information as Confidential shall be maintained confidential by the CITY, to the fullest extent permissible by law. At its option, the CITY reserves the right to also competitively solicit proposals to provide the public transit services provided under this Agreement. In such an event, the CITY will give notice of its intent to non-renew for the next year by November 15th as provided in Section 4. The CONTRACTOR, at its option, may participate in the competitive solicitation of the CITY.

c. **Right of City to Own Vehicles.** During the term of this Agreement, the CITY shall have the right to have the CONTRACTOR provide all or a portion of the vehicles to render the service. The compensation for CONTRACTOR set forth in Exhibit B contemplates that the CITY shall own and provide the vehicles as specified in the attached Exhibit A Scope of Work. Exhibit B does not contain the cost of CONTRACTOR provided vehicles . However, if CITY desires that CONTRACTOR provide vehicles subsequent to the execution of this Agreement, the CITY and CONTRACTOR shall negotiate the cost and terms relating to the CONTRACTOR's provision of said vehicles in a separate agreement . In either case, the CONTRACTOR shall operate and maintain the vehicles to provide the service.

For CITY owned and provided vehicles, the following applies:

(1) **Warranties.** CONTRACTOR shall be responsible for maintaining warranties on any and all vehicles provided to the CONTRACTOR by the CITY. CITY shall purchase the vehicles with a 5 year limited warranty covering specific portions of the vehicle's repairs as set forth in Exhibit C.

(2) **Return of Equipment.** CONTRACTOR shall return all CITY owned or provided equipment including vehicles to CITY at the termination of Agreement or upon earlier termination in the same condition as accepted less any ordinary wear and tear. Ordinary wear and tear shall be interpreted according to the equipment's/vehicles use. In any event, CONTRACTOR shall be liable for the cost of repairing or replacing any physical or mechanical damage not caused by CITY, excepting those repairs which are the responsibility of the vehicle manufacturer, or any firm providing the rehabilitation or modification of the vehicles or repairs covered by the vehicle warranty.

(3) **Inventory.** CONTRACTOR shall be responsible for returning any CITY supplied vehicles with the same or replacement items, equipment and supplies (all less ordinary wear and tear) as originally delivered.

(4) **Alterations.** CONTRACTOR shall not have the right to install equipment, or make any minor or major alterations to any CITY-owned equipment or vehicles without prior written consent of the City Manager (hereinafter approvals by CITY shall mean advance written approval by the City Manager).

(5) **Use.** CONTRACTOR shall not operate CITY-provided vehicles beyond the limits established in the applicable policies of insurance as hereinafter set forth. CONTRACTOR may only use CITY-provided vehicles for the transportation of passengers as provided in this Agreement or other transit-type services pre-approved in writing by CITY. CONTRACTOR agrees to use equipment including vehicles in a careful and proper manner and to comply with all Federal, State, local, or other governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of the equipment, including vehicles subject to Agreement. CITY shall warrant that vehicles provided by the CITY meet all Federal, State, local, or other governmental laws, regulations, requirements and rules when vehicles are initially delivered to CONTRACTOR, including air quality regulations. CONTRACTOR shall

not use equipment in any unlawful trade, or for any unlawful purpose whatsoever, or in violation of this Agreement.

(6) **Liens.** CITY shall not suffer, create or permit to be imposed upon the vehicles any lien or encumbrance which may interfere with CONTRACTOR's intended utilization of the vehicles. CONTRACTOR nor any of his/her agents shall suffer, create or permit to be imposed upon the vehicles any lien or encumbrance whatsoever. CONTRACTOR shall return equipment to CITY free of any liens, claims or encumbrances, other than those approved in writing by the CITY. CONTRACTOR agrees to notify any third party furnishing services, supplies, or other necessities to CONTRACTOR that neither CONTRACTOR nor any of his/her agents have the right to incur, create or permit to be imposed on the vehicles any lien whatsoever.

(7) **Repossession.** At all times during the performance legal possession of CITY-provided equipment including vehicles shall be in the CITY, and no provision in this Agreement shall be understood or interpreted to give CONTRACTOR any claim to legal possession for any purpose. In the event of termination of this Agreement, CITY shall have the right to take immediate physical possession of all CITY-provided equipment including vehicles and CONTRACTOR shall reimburse CITY all expenses, including attorney's fees, incurred by CITY in effecting such repossession. In the event that a suit or an action is instituted by CITY, or those claiming by, through, or under it, to recover possession of the equipment, including vehicles, to collect damages or to enforce any right possessed by CITY under the terms of Agreement, CONTRACTOR agrees and promises to pay such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

d. **Payment Procedure.** During the term of Agreement, CITY shall obtain and pay, or cause to be paid, to CONTRACTOR, a monthly Payment. CONTRACTOR shall be paid monthly in arrears based upon the fixed monthly expense, plus the expense for all revenue service hours provided, unless otherwise mutually agreed upon in writing. Each monthly payment shall be based upon the actual number of in-service vehicle revenue hours in the month that CONTRACTOR is billing the CITY plus any fixed monthly payment. If Agreement is terminated before the expiration of the term, CONTRACTOR'S total payment shall be computed pro-rata based on the number of vehicle hours and days operated.

Amount of payment during each year shall be as set forth in the Exhibit B Payment Schedule. In the event CITY fails to obtain any payment in full, or fails to make any payment in full, as provided herein above, in addition to whatever rights CONTRACTOR may have at law or in equity, CONTRACTOR has the right to terminate the Agreement as provided in Section 27 concerning Termination, however, in no event may CONTRACTOR refuse to deliver to the CITY physical possession of any CITY-provided equipment including vehicles on the written demand of the CITY. CONTRACTOR agrees to cooperate fully with CITY'S efforts to obtain and maintain a payment. CITY agrees to pay the payment to CONTRACTOR subject to the terms of Agreement. CONTRACTOR'S cooperation shall include, but is not limited to, the provision of applicable service revenue and cost information, passenger counts, and other information needed to meet any regional, State, and Federal requirement, or herein required for planning and reporting purposes.

**e. Revenues/Fares.** All fare and related transportation revenues are property of the CITY. CONTRACTOR shall collect all farebox receipts in sealed fare boxes, provided by CITY, and deposit into a CONTRACTOR bank account all receipts collected from monthly passes, prepaid tickets, etc. sold and/or collected by CONTRACTOR. CONTRACTOR shall maintain all account records and reports as required in Exhibit A Scope of Work. CONTRACTOR shall provide evidence satisfactory to CITY that the fare and related transportation revenues collected by CONTRACTOR, and reported to CITY are the amounts actually collected. The total of fares collected and deposited to the CONTRACTOR'S account monthly will be deducted from the monthly invoice to the CITY.

**f. Fares Structure.** CONTRACTOR shall operate this service during the initial term of Agreement pursuant to the fare structure as determined by the City Council from time to time as set forth in the resolution of the CITY setting the fare structure. Fares and transfers shall be determined by CITY. CONTRACTOR will be required to honor special passes, collect, cancel and/or validate passes and tickets, issue and collect transfers as determined by CITY. CONTRACTOR shall assure that each patron pays the appropriate fare prior to being provided transportation service. All fares collected shall be the property of the CITY. All fares and transfer slips shall be emptied from the farebox daily by the operator and recorded daily, and reported to the CITY monthly. The total amount of the fares collected is to be retained by the CONTRACTOR and deducted from CONTRACTOR'S, monthly service charges.

**g. Submission of Invoices.** CONTRACTOR invoices are to be submitted to CITY on a monthly basis, and in the format specified by CITY with the Monthly Management Report for the period of the invoice attached. Upon verification of the accuracy and completeness of the invoice by CITY, the claim shall be forwarded for payment to CITY Finance Department.

**h. Payment.** All CONTRACTOR invoices shall be submitted to CITY by the 10th day of the relevant month after the month that service is provided, and shall be paid by CITY within forty-five (45) working days after the date of submission. In the event the CITY disputes any portion of a CONTRACTOR invoice it may withhold such disputed amount and shall provide written notice to CONTRACTOR of such dispute, but it shall not withhold any undisputed amounts which shall be paid timely.

## **2. ADMINISTRATION OF AGREEMENT**

CONTRACTOR'S compliance with Agreement shall be supervised and administered by the City Manager, or the City Manager's delegate.

## **3. ON-SITE MANAGEMENT**

**a. Full-time On-Site Manager.** CONTRACTOR shall at all times provide a qualified full-time Manager for this Agreement. The CONTRACTOR'S Manager shall possess a minimum of five (5) years of experience as a Project Manager or an Operations Manager in a location similar in size and scope to that of this Agreement. CONTRACTOR's on-site Manager shall perform under the direct supervision of CONTRACTOR.

**b. Liquidated Damages For Lack of Management.**

The parties hereby acknowledge that management is material to the success of this project and that the damages flowing from the loss of management are difficult to ascertain. Therefore, the parties agree that if for any reason the CONTRACTOR's Manager position is left open or not permanently filled, with a qualified full-time Manager, for more than 30 days, an amount equal to the Project Manager's monthly salary may be immediately assessed by the CITY as liquidated damages for CONTRACTOR's failure to have management in place. These agreed liquidated damages shall be collected through a reduction in payment owed the CONTRACTOR in the next invoice cycle, or as otherwise agreed to at the CITY'S discretion. Such liquidated damages shall continue to be collected for each subsequent month in which no permanent Manager is provided by the CONTRACTOR.

**c. Management Representative.** CONTRACTOR shall designate Management Representative authorized to bind the CONTRACTOR in all aspects of CONTRACTOR'S performance of this Agreement, who shall be available at all times, either by phone or in person, to make decisions or provide coordination as necessary, in the temporary absence of the assigned CONTRACTOR's Manager.

**d. Project Oversight.** The CONTRACTOR's Manager and the Management Representative shall be responsible for monitoring and insuring the highest quality of all aspects of the service provided under this Agreement, including, but not limited to, ridership, quality of service, fare collection, operations, maintenance and repairs, attitudes, motivation, and performance of all personnel.

**4. COMMENCEMENT, DURATION, AND OPTIONS TO RENEW**

The base term of this Agreement will be from January 2, 2005 and ending on June 30, 2009. The Agreement may be extended for up to five additional one (1) year periods (July 1, 2009 to June 30, 2014) at the written advance agreement to exercise such option by the CITY. Should the CITY chose not to exercise any subsequent optional year of this Agreement, that the CITY must give the CONTRACTOR notice of its intent not to exercise the option no later than November 15th prior to the July 1st start date of the next optional year.

**5. CHANGES IN LEVEL OF SERVICE**

**a. Basic Level of Service.** The "basic level of service" is 28,161 revenue hours that includes both commute and local services. CITY may increase, decrease, or otherwise change the service to be provided.

**b. Emergency Adjustments.** Temporary emergency adjustments in service may be initiated either by CITY or CONTRACTOR only in the event of an emergency or circumstance which requires a detour or an adjustment in routing or scheduling under circumstances where efforts at advance consultation have been attempted and there was no reasonable opportunity for the parties to confer in advance; provided, however, that such adjustments do not constitute a "Substantial Change" as defined below.

The party initiating the emergency adjustment shall notify the other party immediately of such occurrence. CITY shall specify steps to be taken by CONTRACTOR to notify patrons of the change in routing and/or scheduling necessitated by such emergency adjustments, and/or modifications to the emergency adjustments made by CONTRACTOR. In making temporary emergency adjustments, should CONTRACTOR incur added expenses beyond those compensated under the primary terms of Agreement, CITY and CONTRACTOR shall negotiate a fair and equitable adjustment in compensation for service.

**c. Non-Substantial Non-Emergency Changes in Service Level.** CITY may order non-substantial non-emergency changes to the service upon written notice to CONTRACTOR, as long as the ordered changes do not constitute a "Substantial Change" as defined below. Said notice shall specify the change(s) requested and the effective date(s). CONTRACTOR shall be allowed thirty (30) days to implement non-substantial changes; however, CITY shall endeavor to provide CONTRACTOR with earlier notice whenever possible. CITY may also, from time-to-time, request very minor miscellaneous transit service (i.e. tour of city for new CITY employees, group of senior citizens wishing to go on a field trip, school field trips, etc.) and provide one (1) week notice, whenever possible.

**d. Substantial Changes in Service Level.** Definition: Any proposed change in the service level shall be deemed a "Substantial Change" if such change results in one or more of the following conditions:

- (1) An increase of 15% or more in total annual vehicle revenue hours, as computed from the Beginning Service Level;
- (2) A decrease of 15% or more in total annual vehicle revenue hours, as computed from the Beginning Service Level;
- (3) The cumulative total of non-substantial service changes measured over a period of one (1) year that results in a service level either more than 15% above, or 15% below the established Beginning Service Level.

CONTRACTOR shall be given no less than thirty (30) days written notice of the intent to order "Substantial Changes," and shall have an opportunity to be heard prior to adoption of such order. Such order shall not be effective sooner than thirty (30) days from the date of adoption, unless mutually agreed otherwise in writing by both parties.

Compensation: CONTRACTOR shall be compensated following any Substantial Change to the service level according to the vehicle revenue hour rate in the Payment Schedule. If a Substantial Change to the service level (defined as a service increase or decrease of at least 15% in vehicle revenue hours or a change in the number of hours per day or days per week the service is operating) causes an increase or decrease in CONTRACTOR's fixed costs, then CONTRACTOR shall be entitled to an equitable adjustment (increase or decrease) to its fixed monthly rate in the Payment Schedule to reflect the increase or decrease in

CONTRACTOR's fixed monthly costs. CONTRACTOR must demonstrate to the satisfaction of the CITY its cost increases, including any modification to its staffing plans.

**e. Changes in Subsidiary Duties.** CITY may request changes in CONTRACTOR's reporting requirements, training and safety programs, inventory requirements, testing procedures, personnel practices, the number or type of CITY or CONTRACTOR provided vehicles and/or other operating details that do not result in changes to the service level. If CONTRACTOR declines such requests, or such request would result in a material increase in CONTRACTOR's costs or in the time required for performance, CONTRACTOR shall notify CITY within seven (7) days after receipt of such request and shall submit a claim detailing such objections and/or increases. The parties shall negotiate an equitable settlement of CONTRACTOR's claim, which reflects actual increases or decreases in CONTRACTOR's total costs to perform Agreement caused by the change in question.

## **6. PERMITS TO OPERATE**

At its sole cost and expense, CONTRACTOR shall obtain any and all permits, licenses, certifications, or entitlements to operate as are now or hereafter required by any federal, state and/or local agency to enable CONTRACTOR to perform Agreement, and shall provide copies of all such documents or entitlements to CITY when received by CONTRACTOR. CITY shall provide for the licensing and registration of any CITY owned or provided vehicles and for any building permits or other permits required for the CITY provided facility. CONTRACTOR shall provide the storm water permit.

## **7. NOTICE OF DEFICIENCIES**

The CITY may issue a Notice of Deficiencies to CONTRACTOR, specifying areas of unsatisfactory performance, and specifying what improvements are necessary to correct the deficiency or deficiencies. Such notice shall specify the provision(s) of Agreement which address the issue. CONTRACTOR shall correct deficiency within reasonable time limits specified by CITY not to exceed 30 days unless agreed to in advance by CITY in writing.

## **8. FORCE MAJEURE**

CONTRACTOR shall not be charged, nor shall CITY demand from CONTRACTOR, damages because of failure in providing the services indicated in Agreement due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. CITY shall not be charged, nor shall CONTRACTOR demand from CITY, damages because of failure in complying with the Agreement due to unforeseeable causes beyond the control and without the fault or negligence of CITY. Such causes of excusable delay shall include only acts of design defects, modification defects or fleet defects in CITY owned or provided vehicles (except those caused by CONTRACTOR's negligence), public enemies, military actions, fires, floods, snow storms, earthquakes, epidemic, quarantine, restrictions, strikes by parties other than the CITY or CONTRACTOR, freight embargoes, public road closures, unavailability of fuel, unavailability of replacement parts for CITY owned or provided vehicles (provided such unavailability of parts was beyond the reasonable control of CONTRACTOR), changes in government regulation not in



the control of the CITY, legal disability, in whole or in part, on the part of the CITY or CONTRACTOR, but in every case the delay is excusable only for so long as, and to the extent that, the excusable delay continues. Changes in government regulation not in the control of the CITY, legal disability, in whole or in part, on the part of the CITY or CONTRACTOR may be cause for termination of the Agreement without damage or continued obligation to either party.

CONTRACTOR shall be entitled to no compensation for any service, the performance of which is excused pursuant to this paragraph, except, if operating during a declared disaster, CONTRACTOR incurs costs above the usual cost to operate the service, CONTRACTOR may submit a request to CITY to recover such additional costs.

In the event that CONTRACTOR is unable to provide the services indicated due to any cause, CONTRACTOR shall make a reasonable attempt to so notify the public including notification to local newspapers, and, if appropriate, local radio and television stations.

Whenever either party has knowledge that any actual or potential force majeure may delay or prevent performance of Agreement, that party shall immediately notify the other party of the facts and, shall report all relevant information then known and shall continue to so report additional information as it becomes available.

**9. NO CONFLICTING USES**

CONTRACTOR shall not use, operate, lease or charter CITY-provided equipment used for Agreement for any purpose other than as specified in this Agreement, unless specifically authorized in advance in writing by CITY.

**10. NOTICE**

All notices shall be made by certified US mail, postage prepaid, return receipt requested, or hand-delivered, to the persons and addresses as follows:

CITY: City Manager  
City of Elk Grove  
8380 Laguna Palms Way  
Elk Grove, CA 95758

and: Public Works Director/Transit Manager  
City of Elk Grove  
10250 Iron Rock Way  
Elk Grove, CA 95624

CONTRACTOR: Todd M. Foster  
Contract Administrator  
MV Transportation, Inc,

360 Campus Drive, #201  
Fairfield, CA 94534

Service of such notices shall be deemed complete three (3) days after deposit in the US Mail or on the date hand-delivered, if delivered before Noon, otherwise service shall be deemed complete on the next business day of the CITY.

#### **11. NOT AGREEMENT OF EMPLOYMENT**

It is understood and acknowledged that Agreement is not a contract of employment between CITY and CONTRACTOR, or any agents, officers, or employees of CONTRACTOR. CONTRACTOR is, and shall at all times be, deemed to be an independent CONTRACTOR. CONTRACTOR is not authorized to bind the CITY to any contracts or other obligations. CONTRACTOR is not an agent or employee of the CITY, and shall at no time represent itself to be such agent or employee. Neither CONTRACTOR nor any of its employees or subcontractors shall be entitled to any benefits accorded to CITY employees including but not limited to Workers Compensation, disability insurance, unemployment compensation, life insurance, retirement benefits, vacation, or sick leave.

CONTRACTOR and CITY agree that during the term of this Agreement, and for a period of one year following the termination thereof, neither party shall hire an employee or former employee of the other party without the prior written approval of the other party. The term "former employee" used in this provision shall mean employees who have separated their employment within the prior twelve months.

#### **12. PERFORMANCE BOND**

CONTRACTOR shall perform no services pursuant to Agreement, nor be entitled to compensation therefore, unless and until CONTRACTOR submits a bond, letter of credit, or other acceptable security to CITY, such bond executed by CONTRACTOR and a surety company licensed to do business as such in the State of California, shall be in the amount of \$750,000, and which shall at all times during the performance under this Agreement be kept in full force and effect. The condition of such bond shall be that CONTRACTOR shall fully and faithfully perform all conditions and covenants of Agreement.

The bond may be a renewable one-year bond, and shall be renewed annually before its expiration date, provided, however, that such bond must remain in full force and effect from and after the date CITY makes any demands for payment on the bond until the CITY releases such claim. Provision of such bond or its equivalent, approved by CITY, is a material covenant of Agreement. If said bond is not renewed by surety, CONTRACTOR will replace said bond with a letter of credit drawn on a United States chartered bank reasonably approved by CITY, to secure its performance pursuant to the terms of the contract upon request by and to the satisfaction of the CITY. The nonrenewal of the bond does not constitute loss recoverable under the performance bond.

If CITY determines that the Contractor has substantially failed to keep and perform the covenants, conditions, and agreements in this Contract, then CITY may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, CITY shall notify the Surety and give the Surety, subject to CITY approval, an opportunity to perform within a reasonable time certain. If the Surety fails to perform, CITY shall perform and assess the Surety on its bond for the cost of such performance. The cost of such performance includes the costs of all labor and equipment reasonably necessary to perform the work in the CONTRACTOR's absence.

CONTRACTOR shall be permitted to substitute CITY designated securities for any moneys withheld by CITY to insure performance under the contract. This right of substitution shall be exercised in the manner, and subject to the conditions specified herein.

### **13. CONTINUITY**

Agreement is binding upon each of the parties and their respective heirs, shareholders, directors, partners, executors, and successors. Should the CONTRACTOR entity be purchased by another entity or should a majority of the outstanding common share of the corporation be sold (excluding transfers of stock to a trust for estate planning purposed) during the term of this Agreement, the CITY reserves the right to terminate this Agreement without cause, cost, penalty or damage and to solicit new vendors for this service.

### **14. ASSIGNMENT (CONTRACTOR)**

The performance of Agreement may not be assigned, or in any way subcontracted on a continuing basis, except upon the prior written approval of CITY. CITY shall not consent to any proposed assignment or subcontracting, novation, other writing, or agreement that would have the effect of relieving CONTRACTOR or CONTRACTOR'S surety of their responsibility and/or liability under Agreement.

### **15. ASSIGNMENT (CITY)**

The CITY reserves the right to assign its responsibilities under Agreement to any existing or future governmental entity for the provision of public transportation services. Such assignment shall constitute a complete novation between CITY and CONTRACTOR; and receipt by CONTRACTOR from CITY of sums then due and payable for services rendered pursuant to Agreement prior to assignment shall constitute a complete accord and satisfaction as between CITY and CONTRACTOR.

Assignment of vehicle and equipment lease(s), if any, from CITY to CONTRACTOR shall be activated by a separate written agreement jointly signed by CITY and a principal from CONTRACTOR.

### **16. TRANSITION TO FUTURE CONTRACTOR**

Up to forty-five (45) days following the effective date of the termination or expiration of Agreement, CONTRACTOR shall provide to either CITY, or to any future contractor(s) selected by CITY, CONTRACTOR'S full and good faith cooperation in the transition to the successor contractor(s). This shall include, as a minimum, but is not limited to consultation regarding labor and management issues (including a delineation of wage and benefits by employee category), and access to non-confidential personnel and maintenance files.

CONTRACTOR shall release the telephone number(s) used for public information inquiries and any sequential roll-over numbers to the new contractor(s). CONTRACTOR shall provide its best professional effort to assure smooth transition from CONTRACTOR'S services to new contractor(s) services, and shall cooperate fully with CITY and the new contractor(s) to this end.

## **17. INDEMNIFICATION**

a. CONTRACTOR shall be responsible for performing the work under this Agreement in a manner which is consistent with the generally accepted standards of CONTRACTOR's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The CITY shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to CONTRACTOR or its employees, agents, contractors or subcontractors.

b. CONTRACTOR represents it is skilled in the services necessary to perform the duties agreed to hereunder by CONTRACTOR, and in entering into this Agreement the City is relying upon the skills and knowledge of CONTRACTOR. CONTRACTOR shall perform such duties consistent with the standards generally recognized as being employed by agencies or contractors performing similar service in the State of California.

c. CONTRACTOR is an independent contractor and shall have no authority to bind CITY nor to create or incur any obligation on behalf of or liability against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by CITY. CITY and their elected and appointed officials, officers, agents, employees, and volunteers (individually and collectively, "Indemnities") shall have no liability to CONTRACTOR or to any other person for, and CONTRACTOR shall indemnify, defend, protect, and hold harmless the Indemnities 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 disbursement, including without limitation costs and fees of attorneys and/or expert consultants and/or witness and disbursements (collectively "Claims"), which the Indemnities may suffer or incur or to which the Indemnities may become subject by reason of or arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, occurring as a result of or allegedly caused by the performance or failure to perform by CONTRACTOR or CONTRACTOR's service under this Agreement or the negligent or willful acts or omissions of CONTRACTOR, its agents, officers, directors, or

employees, performing any of the services under this Agreement, except such loss, claim or damage which results from the active negligence or willful misconduct of the CITY. CONTRACTOR shall indemnify, defend and hold CITY harmless from and against any claims, loss, damage, liability, costs or expenses arising from any noncompliance with the provisions of any applicable law, statute, ordinance or regulation, including without those referenced in section 20, below. Additionally, CONTRACTOR shall indemnify, defend and hold harmless Indemnities against claims, actions and any all liability that may arise to Indemnities from allegations that one or more of CONTRACTOR's employees are employees, common law or otherwise, of the CITY.

d. If any action or proceeding is brought against the Indemnities by reason of any of the matters against which CONTRACTOR has agreed to indemnify the Indemnities as above provided, CONTRACTOR, upon notice from the CITY, shall defend at CONTRACTOR's expense. The Indemnities need not have first paid any of the matters as to which the Indemnities are entitled in order to be indemnified. The CONTRACTOR should assure that the insurance required to be maintained by CONTRACTOR under this Agreement shall ensure Contractor's obligations under this paragraph, but the limits of such insurance shall not limit the liability of CONTRACTOR hereunder. Acceptance of insurance certificates required under this Agreement does not relieve the CONTRACTOR from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to all damages and claims of every kind suffered, or alleged to have been suffered, by reason of any of the CONTRACTOR's operations regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The provisions of this Section 18 shall survive the expiration or early termination of this Agreement.

## 18. INSURANCE

a. **City Approval Prior to Commencement.** All policies, endorsements, certificates and/or binders described in this Section 19 shall be subject to written approval by CITY's Risk Manager as to form and content. These requirements are subject to amendment or waiver only if so approved by a contract amendment designated as an "amendment" to this Agreement, signed by both parties, and approved by City Council. CONTRACTOR agrees to provide CITY with a copy of said endorsements and certificates before work commences under this AGREEMENT.

b. CONTRACTOR shall supply evidence of general liability coverage for CITY provided operating facility, and collision, comprehensive, liability and property damage for any CONTRACTOR or CITY-owned vehicles used in provision of Agreement and the CITY will be included as Additional Insured and Loss Payee for any CITY-owned vehicles. CONTRACTOR shall be solely responsible for payment of all insurance deductible amounts. CITY shall not require that CONTRACTOR allow any third party, such as vehicle manufacturers or remanufacturers, maintenance providers, or any other person not employed by or contracted by CONTRACTOR that may work in the facility occupied by CONTRACTOR or who may repair, operate or store the CITY owned vehicles to operate the CITY owned vehicles. CITY shall provide written notification to CITY employees and any third party, such as vehicle manufacturers or remanufacturers, maintenance providers, or any other person not employed by or contracted by CONTRACTOR that may work in the facility occupied by CONTRACTOR or who may repair, operate or store the CITY owned vehicles, that the CITY owned vehicles are to

operated solely by employees of CONTRACTOR, unless CONTRACTOR provides written authorization for operation of the CITY owned vehicles by a specific individual who is not an employee of CONTRACTOR

c. CITY shall provide a policy of fire and Broad Form coverage for CITY provided facility provided to CONTRACTOR. Such coverage shall exclude the personal property of CONTRACTOR, which shall be insured or self insured by CONTRACTOR.

d. CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR. The cost of such insurance shall be included in the CONTRACTOR's bid.

e. Before the commencement of the term of Agreement, CONTRACTOR shall furnish CITY with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Section. CITY shall be named as an additional insured and added to CONTRACTOR's additional insured endorsements for all liability coverage, excluding workers' compensation coverage.. Such certificates, which do not limit CONTRACTOR's indemnification, shall also contain substantially the following Statement:

“Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer afforded coverage shall provide thirty (30) days' advance notice to City of Elk Grove by certified mail, Attention: Risk Manager.”

f. It is agreed that CONTRACTOR shall maintain in force at all times during the performance of Agreement all appropriate coverage of insurance required by Agreement with an insurance business in the State of California.

g. No subcontract work (defined as subcontracting the operations of the vehicles) shall commence until similar insurance coverage has been obtained by the subcontractor and verified by CONTRACTOR. CONTRACTOR shall then immediately notify CITY, in writing, of the types and amounts of such insurance.

h. In signing this Agreement, CONTRACTOR certifies that it is aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for Worker's Compensation, or to undertake self-insurance, in accordance with the provisions of that Code, and CONTRACTOR agrees to comply with such provisions before commencing the performance of the work of this Agreement. The CITY will not provide Workers' Compensation for workers, employees or subcontractors.

i. **Deductibles and Coverage.** CONTRACTOR shall be solely responsible for payment of all deductibles for losses covered by CONTRACTOR's insurance. Without prior written approval by CITY, CONTRACTOR shall not have a deductible or self-insured retention greater than Five Thousand Dollars (\$5,000) on any insurance policy. Any deductibles or self-insured retentions greater than Five Thousand Dollars (\$5,000) must be declared to and approved by the

CITY. The CITY will have the option of requesting the decrease or elimination of deductibles or self-insured retentions or the CONTRACTOR shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claims administration and defense expenses. CONTRACTOR shall maintain the following insurance coverage:

- (1) Workers' Compensation and Employer's Liability Insurance. CONTRACTOR shall procure and maintain during the life of Agreement Workers' Compensation Insurance in conformance with the laws of the State of California and with the laws of the United States and Employers' Liability Insurance with a minimum of One Million Dollars (\$1,000,000).
- (2) General Liability, Automobile Liability and Protection & Indemnity Insurance. CONTRACTOR shall procure and maintain during the life of Agreement, Commercial General Liability Insurance and Automobile Liability Insurance on Acord commercial forms, or their equivalent with a minimum of Fifteen Million Dollars (\$15,000,000) Combined Single Limit per occurrence covering all legal liability for personal injury, bodily injury, death and property damage which may arise out of CONTRACTOR'S performance under Agreement. Coverage shall be at least as broad as Insurance Service Office Form CG 0001 (Ed. 10/01) Commercial General Liability Coverage Form and Insurance Services Office Form CA 0001 (Ed. 01/87) Business Auto Coverage Form, Code 1 (any code), including non-Owned and Hired..
- (3) Comprehensive and Collision. With respect to the vehicles to be used under the terms of Agreement, including CONTRACTOR owned or CITY provided vehicles, CONTRACTOR shall maintain in full force and effect Comprehensive insurance and Collision insurance covering the vehicle, in an amount equal to the vehicle's actual cash value.

**j. Subrogation Waiver.** Each of the foregoing policies shall expressly waive the right of subrogation against the CITY, their Councils, Boards and Commissions, officers, employees, and volunteers.

**k. Failure to Secure.** If CONTRACTOR at any time during the term hereof should fail to secure or maintain the foregoing insurance, CITY shall be permitted to obtain such insurance in the CONTRACTOR's name or as an agent of CONTRACTOR and shall be compensated by CONTRACTOR for the costs of the insurance premiums plus interest at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. CONTRACTOR shall indemnify and hold harmless CITY from the failure to place, failure to maintain, or the failure of any of the insurance policies required above.

**l. Additional Insured.** CITY, their Councils, Boards and Commission, officers, employees, and volunteers shall be named as additional insured under all insurance coverage, except Workers' Compensation, required by Agreement. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall

not be required to contribute anything toward any loss or expense covered by the insurance required in this Agreement.

**m. Primary Insurance.** Endorsement(s) shall be provided which state that coverage provided by both the Commercial General Liability insurance policy and the Commercial Automobile Liability insurance policy is Primary Insurance and that no the insurance that may be affected by the CITY will be called upon to contribute to these coverages.

**n. Separation of Interest.** Endorsement(s) shall be provided which state that coverage provided by the Commercial General Liability insurance policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**o. Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds for liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased hired, borrowed or used by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents or volunteers.
- (2) CONTRACTOR shall provide liability and physical damage on all CITY owned vehicles used by CONTRACTOR in the scope of the activities set forth in this Agreement and shall include as insureds the CITY, their Councils, Boards and Commissions, officers, employees, and volunteers and shall name CITY as loss payee.
- (3) For any claims related to this project, CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it.
- (4) Any failure to comply with reporting or other provisions of the policies shall not affect coverage provided to CITY, its officers, officials, employees, agents or volunteers.
- (5) CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or limited in any way by either



party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

- (7) For the Commercial General Liability Policy, Commercial Automobile Liability Policy, Workers' Compensation and Employer's Liability Policy, the CONTRACTOR's insurer(s) shall agree to waive all rights of subrogation against the CITY, their Councils, Boards and Commissions, officers, employees, and volunteers for losses arising from work performed by the CONTRACTOR for the CITY.

**p. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**q. Verification of Coverage.** CONTRACTOR shall furnish CITY with original certificate of insurance and endorsements affecting coverage required by this Agreement. The certificates of insurance and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates of insurance and endorsements are to be received and approved by CITY before work commences. The CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements affecting coverage.

**r. Subcontractors.** CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

**s. Risk Manager.** All insurance documents are to be sent to:

City of Elk Grove  
8380 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: Risk Manager

## 19. COMPLIANCE WITH LAW

**a.** CONTRACTOR shall at all times hold a valid contractor's license if performing any function or activity for which a license is required pursuant to Chapter 20.3 (commencing with section 9880) of Division 3 of the California Business and Professions Code, and CONTRACTOR shall provide a copy of the license(s) upon the request of the City.

**b.** CONTRACTOR assumes full responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder in compliance with the Immigration Reform and Control Act of 1986, and rules and regulations promulgated in connection therewith (hereinafter "IRCA").

**c.** CONTRACTOR shall assume full compliance under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, Older Workers' Benefit Protection Act (OWBPA),

the Public Employees Retirement Law, and federal or state common law or any other federal, state or local statute, law, regulation or ordinance whatsoever arising out of or related to persons employed by CONTRACTOR that may perform any service under this Agreement CONTRACTOR acknowledges that service provided as a result of Agreement may be subject to the Americans with Disabilities Act (ADA). CONTRACTOR agrees to comply with the requirements of the ADA including vehicles and service accessibility to the extent that it is applicable to the CONTRACTOR's scope of work herein.

d. The City, its officials, officers, elected officials, appointed officials and employees shall not be liable at law or in equity as a result of any failure of CONTRACTOR to comply with this section, and the obligations of paragraphs 18 and 19 above shall apply to the requirements of this section.

e. CONTRACTOR shall keep itself informed of applicable local, state, and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Agreement.

f. In addition to the laws, statutes, rules, and regulations specifically set forth herein, CONTRACTOR shall comply with any and all applicable laws, ordinances, statutes, codes and regulations of the federal, state, and local governments.

## **20. SUCCESSORS**

Agreement shall be binding upon, and shall inure to the parties hereto, and their respective shareholders, partners, directors, agents, personal representatives, successors-in-interest, and assigns.

## **21. COUNTERPARTS**

Agreement may be executed simultaneously or in counterparts, and each of the counterparts shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement.

## **22. GOVERNING LAW**

Agreement shall be construed and enforced pursuant to the laws of the State of California. Venue for any suits brought under Agreement shall be exclusively vested in the state courts located in Sacramento County, or exclusively in the United States District Court, Eastern District of California, Sacramento, California.

## **23. DISADVANTAGED BUSINESS ENTERPRISE AND EQUAL EMPLOYMENT OPPORTUNITY**

CONTRACTOR acknowledges that it will affirmatively ensure that in regard to contracts entered into pursuant to Agreement; Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to said contracts, and will not be discriminated against on grounds of race, color, gender, national origin or sexual orientation in consideration of award.

## 24. TERMINATION

**a. Termination by CITY for Material Breach.** CITY may terminate agreement in the event of a Material Breach by CONTRACTOR after notice and an opportunity to cure the breach. However, the CITY reserves the right to immediately terminate this Agreement for a Material Breach as defined in this section. A termination of the contract for CONTRACTOR'S Material Breach entitles the CITY to set off damages from the Material Breach against any final close-out payment to the CONTRACTOR. A "Material Breach" for purpose of this Agreement shall include, but not be limited to the following items:

- (1) Illegal activity, criminal misconduct, or violation of any laws governing the CONTRACTOR'S provision of the public transit service provided in this Agreement. This includes a failure to pay the wages and benefits specified in this Agreement or associated taxes and fees imposed by any government.
- (2) Submission of deliberate and material false or misleading written or verbal information, data, fare collections, or other information to the City under this Agreement.
- (3) Gross safety violations or serious negligence (such as failure to comply with OSHA or other regulatory agency safety standards on more than one occasion) and other less serious safety violations or negligence occurring more than twice after notice by the CITY.
- (4) Performance deficiencies listed in Category A (Service Performance and Liquidated Damages below) not resolved after an opportunity to cure on more than 3 occasions within 6 months. The City will issue a notice to cure and provide no more than thirty (30) days for the CONTRACTOR to submit proof of correction. Failure to cure shall be a Material Breach.

**b. Termination By CITY for Lack of Funding.** CITY, at its sole discretion, may terminate this Agreement at any time if the service, or any part thereof, must be eliminated due to lack of funds. Such termination shall be effective on a thirty (30) day written notice, and the payment of all consideration earned to date by CONTRACTOR. In the event this Agreement is so terminated, CONTRACTOR and CITY shall meet and reach a written agreement which sets forth the final payment to be made by CITY pursuant to the terms of this Agreement. After the termination agreement is reach and CITY has made the final payment, it shall constitute a complete accord and satisfaction between CONTRACTOR and CITY.

**c. Termination By CITY for Convenience.** CITY for its convenience may terminate this Agreement, in whole or in part, at any time by written notice to the CONTRACTOR. After receipt of a Notice of Termination, and except as directed by the CITY, the CONTRACTOR shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice.

**d. Termination Payment To CONTRACTOR.** In the event of any termination of this Agreement, the CONTRACTOR shall be paid its costs, including necessary and reasonable contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination, less any damages to the CITY for one or more Material Breaches. The CONTRACTOR shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the CONTRACTOR has any property in its possession belonging to CITY, the CONTRACTOR will account for the same and dispose of it as the CITY directs. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the Agreement and applicable laws and regulations.

**e. Termination By CONTRACTOR.** CONTRACTOR has the right to terminate Agreement after its effective date upon the occurrence of the following:

- (1) Failure of CITY to comply with any of the material terms of Agreement if the failure continues for thirty (30) days after written notice has been given to CITY; and
- (2) Failure of CITY to obtain all or any portion of the necessary funding to pay for the services rendered under this Agreement
- (3) Failure of CITY and CONTRACTOR to reach agreement to implement the provisions of SB2 pursuant to Section 31 of this Agreement.

## **25. CITY'S REMEDIES ON BREACH AND WAIVER**

**a. Right of City to Substitute Performance.** It is understood and agreed that in the event of failure by CONTRACTOR to perform services required by Agreement, in addition to all other remedies, penalties and damages provided by law, CITY may provide such services, and deduct the cost of doing so from the amounts due, or to become due to CONTRACTOR. The costs to be deducted shall be the actual costs to CITY to provide such services including without limitation administration costs, or the costs shown on the Payment Schedule, whichever is greater.

**b. Waiver.** CITY and CONTRACTOR agree that any waiver, or any breach or violation of any term or condition of Agreement, or any failure to enforce any term or condition of Agreement, shall not be deemed to be a waiver of any other term or condition contained herein, or a waiver of any subsequent breach or violation of the same, or any other term or condition. The acceptance by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this Agreement. The acceptance by CONTRACTOR of partial compensation for services by CITY shall not be deemed to be a waiver of any rights otherwise afforded CONTRACTOR pursuant to the Agreement, unless so specified by CONTRACTOR in writing.

**c. Service Performance and Liquidated Damages.** The parties expressly agree that determining the exact amount of actual daily damage for certain service performance failures would be difficult to fix in advance and that after reasonable negotiation, the amount that is

reasonable under the circumstances existing at the time this Agreement is made are shown in the chart below. The CITY may assess liquidated damages in the event that the CONTRACTOR fails to perform except when it is prevented to by conditions described in Section 8, Force Majeure, of this Agreement. The liquidated damages are set forth in the following chart and CONTRACTOR shall pay to the CITY as liquidated damages the amount(s) shown below per day for each and every day's delay in finishing the work in excess of the number of days as specified.

CONTRACTOR and CITY shall meet on a regular basis to evaluate service performance and resolve operational issues or policy issues.

If CONTRACTOR'S performance does not meet CITY standards, CONTRACTOR shall take all reasonable actions requested by CITY to correct deficiencies. CITY shall require status reports in writing and stipulate the expected date for response and final resolution for all corrective action. CONTRACTOR shall be given reasonable time, not to exceed 15 calendar days, to respond in writing with a corrective action plan and to make the appropriate corrections. CITY reserves the right to determine if CONTRACTOR'S response and/or corrective plan is acceptable and if the actions taken are fully corrective. At the same time, the following schedule of liquidated damages may be assessed at the CITY'S discretion until such deficiencies are rectified. CITY shall not impose liquidated damages for the initial 90 days of service under this Agreement and shall notify CONTRACTOR within 24 hours of any situation for which CITY may impose liquidated damages:

Category A	Liquidated Damages per Occurrence
Suspended Driver in Service	\$ 1000.00
Preventable Accidents above 2 per 100k miles per month as measured over a six month period.	\$ 1000.00
Unauthorized Use of Fleet Vehicles	\$ 1000.00
More than 1 complaint per 1,000 passengers in a one month period.	\$ 1000.00
Category B	
Late trips: (down time > ½ headway – local)	\$ 100.00
Late trips: (down time > ¼ headway – commuter)	\$ 250.00
Late to First Time Point on an Route:	\$ 250.00
Missed Trips (down time equal to headway)	\$ 500.00
Driver Out of Uniform or Without License/Medical Card While In Service	\$ 100.00
Vehicle Maintenance Records Incomplete	\$ 100.00
Equipment Deficiencies (Heating, Air Conditioning, and Other Vehicle Equipment)	\$ 500.00
Unclean, Damaged, or Vandalized Vehicle in Service	\$ 100.00

Unanswered Dispatch Calls by Drivers, Dispatch, Management	\$ 100.00
ADA or Other Regulatory Violations per day	\$ 300.00
Lack of Trained Personnel – Management, Drivers, Dispatchers: If there are 3 or more drivers out without replacements for each with backup personnel, then there shall be a fine. If Dispatch is understaffed without an immediate replacement, then there will be a fine.	\$ 300.00
Complaint Response/Resolution Not Within Guidelines	\$ 100.00
CONTRACTOR shall report any vehicle damage to the CITY within 24 hours.	\$500 for failure to report to the CITY within 24 hours the occurrence of damage.
CONTRACTOR shall report any vehicle accident or passenger/ injuries within 4 hours of occurrence.	\$500 for failure to report within 24 hours the occurrence of any injury to a passenger or employee.
CONTRACTOR shall remove all farebox receipts from revenue vehicles daily, count receipts, and deposit to CITY account on the next business day.	\$250 for every occurrence of farebox receipts not being deposited per agreement.
CITY requires full time on-site management of the transit operation.	One year's salary for the Manager if Manager leaves within one year for reasons other than termination as defined in Section 3b.

**26. ADDITIONAL TERMS**

a. The validity, legality, or enforceability, in whole, or in part of any provision of Agreement, shall not affect or impair the validity, legality, or enforceability, of other provisions.

b. This Agreement constitutes the entire Agreement and understanding between the parties relative to the services specified herein and there are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in this Agreement and this Agreement supersedes all prior understandings, agreements, courses of conduct, prior dealings among the parties and documentation of any kind, including without limitation the Request for Proposal documents for Operation of Elk Grove Transit's fixed route transit services including any addendum and the CONTRACTOR's Proposal to Operate Elk Grove Transit's fixed route transit services and all attachments and additional submittals including CONTRACTOR's best and final offer.

The Agreement may only be modified by a written instrument signed by both parties hereto.

c. All reports, documents or other materials developed by CONTRACTOR or any other person engaged directly or indirectly by CONTRACTOR to perform the services required

hereunder shall be and remain the property of CITY without restriction or limitation upon their use by CITY.

d. The Lease agreement entered into by the parties shall in no way modify or alter the terms of this Agreement, and the Lease between the parties shall be subordinate and subject to this Agreement,

## 27. RECORDS

a. **Financial Records Maintained.** In addition to all other records required to be produced or maintained pursuant to this Agreement, CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to Agreement.

b. **Performance Records Maintained.** CONTRACTOR shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. **Inspection.** Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY's Attorney, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

d. **City Right to Custody.** Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of CONTRACTOR'S business, CITY may, by written request by any of the above-named officers, require that custody of such records and documents shall be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest during regular business hours.

## 28. SB2

The State of California has adopted legislation (SB2) mandating the provision of medical insurance for all employees in the State of California starting January 1, 2006. This legislation is currently under court challenge and furthermore, the State of California has not published the mandated costs for this medical coverage. Due to the uncertainty involving this new law, CONTRACTOR has not included in the proposal the potential fiscal impacts, if any, of this legislation on the cost of transportation beyond December 31, 2005. It is likely that the true costs, if any, will not be known until the year 2005. Should SB2 be implemented,

CONTRACTOR may either: i) increase payment rates to recover the additional cost imposed by SB2, or ii) terminate the Agreement if the additional costs cannot be recovered. The CITY acknowledges that CONTRACTOR'S termination due to inability to recover additional costs imposed by SB2 is reasonable.

In the event CONTRACTOR requests a rate increase to cover its additional costs, CONTRACTOR shall first present to CITY all of the available options to comply with this legislation. CITY and CONTRACTOR shall then make an agreement on how to best implement the required changes at the least possible cost to CITY.

**IN WITNESS WHEREOF**, the parties hereto have executed Agreement the day and year herein above written.

**CITY OF ELK GROVE,**  
Municipal Corporation

(CONTRACTOR)

By: \_\_\_\_\_  
John Danielson, City Manager

By: \_\_\_\_\_

Approved as to content:

By: \_\_\_\_\_  
Phil McGuire

Approved as to form:

By: \_\_\_\_\_  
Anthony Manzanetti, City Attorney



**EXHIBIT A**  
**SCOPE OF WORK FOR ELK GROVE PUBLIC TRANSIT SERVICES**

A. General

1. Service Provided. CONTRACTOR shall provide an annual total of approximately 28,161 fixed route vehicle revenue hours. CONTRACTOR shall provide sufficient supervisory and dispatching personnel to adequately handle both commute and local services as described herein.
2. DBE/EEO: CONTRACTOR shall submit a signed affidavit certifying compliance with the Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunity (EEO) requirements as specified in Agreement.
3. Fuel: Any applicable fuel tax reimbursement on fuel purchased by the CITY will be returned to the CITY. Tax reimbursement on fuel purchased by the CONTRACTOR shall be retained by the CONTRACTOR and not be included in the fuel cost reimbursed to the CONTRACTOR by the CITY. The CITY shall either directly provide fuel to CONTRACTOR for the services provided herein or the CITY may instruct CONTRACTOR to purchase the fuel, in which case the CITY shall reimburse CONTRACTOR for the total cost, less tax credits, of all fuel purchase by CONTRACTOR in addition to the rates contained in the Payment Schedule.
4. Training and Retraining. CONTRACTOR shall provide ongoing training, retraining, and safety education for all vehicle operators, maintenance personnel and supervisory personnel which conform to applicable regulatory requirements, e.g., Federal and State Departments of Transportation, California Highway Patrol and other applicable agencies.
5. Drug and Alcohol Testing. CONTRACTOR shall provide pre-employment, post-accident, just-cause, and random drug and alcohol testing of its employees in "safety-sensitive" positions, pursuant to the requirements of the Federal Transit Administration (FTA) and/or the California Highway Patrol.
6. Tickets, Passes and Transfers. CONTRACTOR shall administer the fare structure developed by the CITY and RT including a pass, ticket and transfer program, and will accept transfers and other fare instruments from other systems as directed by CITY.
7. Telephone Information. CITY shall work with RT to develop procedures for providing telephone information whenever a vehicle is in service. Telephone equipment and service necessary shall be the responsibility of CONTRACTOR. CONTRACTOR shall develop, implement and maintain a daily schedule of labor resources to handle passenger information telephone calls. This schedule shall identify work assignments, specify non-telephone work assigned concurrently, and work shift times. The City may choose to consolidate information services and complaint resolution functions with Regional Transit. Under these circumstances, CONTRACTOR shall be required to respond in

accordance with CITY policy to customer inquiries through the designated contact at Regional Transit as directed by CITY.

8. Control and Distribution of Fixed Route Transfers. CONTRACTOR shall maintain strict control of all transfers. The number and type of transfers issued to drivers shall be documented and drivers shall return transfers at the end of each shift. All transfers not being used in revenue service, or issued to drivers, shall be kept in a secure place. It is the responsibility of the CONTRACTOR to secure transfers and farebox receipts in a secured area at all times.
9. Contact of CITY/CONTRACTOR Personnel. CITY personnel shall have the right to make contact with CONTRACTOR personnel, other than the management and dispatch functions, as needed when CONTRACTOR personnel are in revenue service.

#### B. Vehicles and Non-Revenue Vehicles

1. Vehicles. Initially, the CITY will provide all revenue vehicles for this service. To accommodate future needs, CITY may choose to provide subsequent vehicles or require CONTRACTOR to do so in accordance with the following spare ratio requirements: A total of 15 buses will be required for commute service. A total of 4 buses will be required for local service. A minimum of 2 spare buses will be required for commute service. A minimum of 2 spare buses will be required for local service. If service is expanded in the future requiring additional vehicles, the newly required vehicles may not be taken from the existing spare ratio. Should the CITY reach a commute service fleet requirement of 21 buses, one (1) additional spare vehicle will be required. Should the CITY reach a commute service fleet requirement of 26 buses, an additional spare bus would be required (for a total of 4 spare buses at 26 peak vehicles). Should the CITY reach a local service fleet requirement of 10 buses, one (1) additional spare vehicle will be required. If a change in the fleet composition (i.e., an increase in the spare ratio) results in additional costs to CONTRACTOR, CITY and CONTRACTOR shall negotiate these costs.

CITY will ensure that the fleet of revenue vehicles will meet all federal, state and local requirements including ADA and emissions. At the time of delivery, these vehicles will include all safety equipment, radios, fare boxes and all other ancillary equipment. CONTRACTOR will subsequently be responsible for ancillary equipment including fire extinguishers, hazard kits, safety reflectors, or other removable items. The hybrid buses purchased by CITY shall have a 5 year extended warranty available to CONTRACTOR as detailed in Exhibit X.

2. Driver Shuttling: The CONTRACTOR will be responsible to provide vehicle transportation for drivers to and from any shift changes. The CONTRACTOR will not be allowed to use any CITY owned vehicle for transporting employees for shift changes, trips for office supplies, or trips to make the daily farebox deposits. All expenses,

insurance, maintenance and registration related to the operation of the CONTRACTOR's supplied non-revenue vehicles will be the responsibility of the CONTRACTOR.

The CONTRACTOR supplied vehicles will be kept in safe, clean operating condition at all times. The CONTRACTOR will be responsible for all maintenance on all non-revenue vehicles supplied by the CONTRACTOR for use with this contract. All CONTRACTOR supplied non-revenue vehicles will be maintained on a regular maintenance Preventive Maintenance Inspection (PMI) schedule that meets or exceeds the Original Equipment Manufacturer's (OEM's) recommendation. The CITY will approve all vehicles supplied by the CONTRACTOR, and non-revenue vehicles older than TEN YEARS will not be approved.

C. Maintenance and Maintenance Facilities

1. CITY Provided Facility. The CITY shall provide CONTRACTOR access and use of a portion of its Corporation Yard to enable CONTRACTOR to effectively manage and operate CITY services. CITY and CONTRACTOR will agree on appropriate space allocation and will ensure that the building structure is in good condition. CONTRACTOR shall be responsible for providing all equipment needed to operate CITY service that is not part of the building structure. Accordingly, CITY will provide:

- Sufficient space for dispatch and administrative offices
- An enclosed workspace sufficient to allow maintenance personnel to service at least three (3) vehicles and be protected from the weather
- A paved and sealed shop floor capable of withstanding the weight of vehicles and which avoids the absorbing spilled fluids
- Doors sufficiently located to allow bus ingress and egress into the shop area with the minimum of maneuver
- Exhaust ventilation system in the shop which meets OSHA standards
- Heating and air conditioning systems (no air conditioning in shop area)
- Adequate storage area for tools, equipment, and parts
- A fenced and lighted area for overnight parking for the entire fleet
- Adequate space for administrative personnel, dispatching and information staff (if required), driver lounge or ready room, and safety/training meetings.
- An area with an approved oil water separator that will allow CONTRACTOR to wash and clean the buses.
- Secured area for storage of farebox revenue, transfers and other fare media.
- An enclosed secure parts and tool storage area.
- An electronic security system.
- Monthly utility (including electricity, natural gas, water, waste disposal, sewer but excluding telephone) costs plus utilities connections including an electrical supply connected to any tools, computers or equipment

provided by CITY or CONTRACTOR, water including connections near the bus washing area and in the shop area, a drain for shop floor (located in the vehicle wash area), and natural gas connections for bus washer.

CITY to provide telephone equipment but not service

- One men's and one woman's restroom sufficient to meet OSHA and DOL standards.
- A break area for CONTRACTOR employees.
- The facility will comply with the requirements of the ADA. Any tenant improvements undertaken by CONTRACTOR must meet ADA requirements.
- Repair and maintenance of the facility excluding normal wear and tear.
- Broad Form insurance on facility and CITY owned property (excluding the CITY provided vehicles which are insured by CONTRACTOR). CONTRACTOR to provide routine janitorial on its portion of facility.

In the event the CITY provided facility does not contain all of the improvements required herein, the CITY directs CONTRACTOR to complete the required improvements. CONTRACTOR will provide these items on a pass-through basis without a mark-up for profit. Prior to starting work, CONTRACTOR will provide CITY an estimate(s) of the total costs and CITY shall pay CONTRACTOR the amount of this estimate as a deposit. When all of the improvements are completed, CONTRACTOR will present CITY with a statement of expenses for facility improvements. In the event the costs are less than the deposit paid by CITY to CONTRACTOR, the CONTRACTOR will immediately refund the difference. In the event the costs are greater than the deposit paid by CITY to CONTRACTOR, then CITY will pay the CONTRACTOR the difference.

CONTRACTOR will provide in its rates:

- A compressed air supply
- At least one vehicle lift capable of lifting the entire vehicle from the ground for servicing. Said lift shall be of sufficient capability to service CITY vehicles.
- Tire changing equipment or a proposed tire changing subcontractor
- Battery maintenance equipment
- Lubrication equipment and tanks including reels and lines attached to the facility
- All tools and equipment necessary to perform the maintenance activities required in this RFP.
- Equipment necessary to clean the buses in accordance with the RFP.
- Any furniture that is not provided by CITY for use by CONTRACTOR employees.

CONTRACTOR should identify which, if any, maintenance activities are to be provided off-site or by subcontractors. In such cases, the off-site or subcontractor facilities must be identified and described.

2. Right of Inspection by CITY. CITY shall have the right to inspect, at any time, all areas of Corporation Yard occupied by CONTRACTOR, as well as all equipment and vehicles to determine compliance with contract requirements.
3. Corrections. After the provision of written notice and reasonable time to perform, if CONTRACTOR fails to correct any problem set forth immediately above, CITY may make, at its discretion, corrections and shall charge the actual cost to CONTRACTOR for the corrections. CITY may deduct these charges from any amount due, or that may become due to CONTRACTOR under Agreement.

CONTRACTOR will use due diligence to maintain CITY's vehicles in a clean, orderly, and safe manner and in accordance with industry standards. CITY shall have the right to inspect, at any and all times, all equipment and vehicles, to verify CONTRACTOR's compliance with the foregoing. This provision shall also apply to any equipment, and/or vehicles including leased equipment and/or vehicles, used by CONTRACTOR for backup service.

4. Safety Inspections. CITY may request that the Motor Carrier Unit of the California Highway Patrol (CHP) annually prepare and submit to CITY a Safety Compliance Report (CHP-343). CONTRACTOR must attain satisfactory rating in the driver records category of the Safety Compliance Report. CONTRACTOR must expeditiously correct any deficiencies noted on drivers report.
5. Interior & Exterior Cleaning and Maintenance. CONTRACTOR shall maintain the exterior and interior cleanliness of all vehicles to the highest standards at all times. CONTRACTOR shall supply all materials and supplies for this purpose. All gum, litter, newspapers, graffiti, or other foreign materials shall be removed by CONTRACTOR in a professional manner and immediately upon their discovery. Physical damage to the exterior or interior not correctable with diligent cleaning methods, such as tears in the seats, interior body panel cracks or cracked lamp lenses, shall be reported by CONTRACTOR to CITY at time of observance. CONTRACTOR shall maintain Material Data Safety Sheets on all materials at the facility as required by law.
  - a. Daily Servicing. All vehicles that have been in revenue service shall have the following items performed on a nightly basis:
    1. Interior Cleaning
      - a. Interior Sweeping. Using brooms, sweep the complete interior of each vehicle starting in the rear and working to the front. Sweep trash from step wells into an appropriate trash can.
      - b. Trash Bag. Empty the trash receptacle located near the front of each vehicle.

c. Accident Kit. CONTRACTOR shall provide accident kits to be carried on all revenue vehicles at all times. The kit shall consist of forms for use in reporting accidents or incidents, disposable camera for photographing damage in the event of an accident, body fluid cleanup kit, and any other materials prescribed by the CITY. CONTRACTOR is responsible for ensuring that an Accidents Kit is on each bus and is properly stocked and stored as it enters service.

d. Dusting. Using a clean damp rag, wipe clean the dashboard, farebox and all operator controls.

e. Vandalism/Graffiti Inspection. Inspect the vehicle interior to assure that no seat damage or graffiti exists. Seats that are found damaged should be reported to CITY at time of observance. CONTRACTOR shall remove graffiti at time of observance.

f. Seat Securement. Inspect individual seat inserts to assure each is secured to the seat frame. If seat is not secure, report to CITY at time of observance.

g. Lights. All lights including the high beams will be checked daily upon the morning startup.

h. Wheelchair Lift. The wheelchair lift on each vehicle shall be cycled one complete cycle prior to departure from CONTRACTOR's site each day. If the wheelchair lift fails while in-service, the failure must be reported to CITY and the vehicle repaired prior to commencing service the next day or another vehicle assigned.

i. Vehicle Storage. All vehicles shall be stored at the CITY's corporation yard when not in service. All doors, windows and safety hatches of vehicle shall be closed and secured.

6. Weekly/Daily Servicing. CONTRACTOR shall maintain a list of all vehicles. This list shall be used to assure that all vehicles have had the action items listed below completed at the frequency described, or that a particular vehicle was not available for revenue servicing during any given week. A Vehicle Cleaning Report signed by the Project Manager that details all vehicles cleaned during a one-week period will be submitted to the CITY each Monday following the end of the reporting week.

<u>Action</u>	<u>Frequency</u>
Mop Floors	Once Weekly
Wash exterior of the vehicle	Twice Weekly
Wash Wheels	Twice Weekly
Clean Operator's Compartment	Once Weekly
Clean Inside Windows	Once Weekly

Clean Side Panels/Ceilings	Once Weekly
Clean Seat Frames/Backs	Once Weekly
Remove Graffiti	As Needed

- a. Mop Floors. Floors shall be wet-mopped starting at the rear of the vehicle working forward, assuring to also mop wheel-well inner extension areas and step well. **Use of excessive amounts of water or other fluids shall not be allowed on the floors or other interior parts of the vehicle.**
  - b. Wash Wheels. Wheels shall be degreased and rinsed clean.
  - c. Operators Compartment. Operator's compartments shall be thoroughly cleaned, including vacuuming of trash from around foot controls; wiping clean dashboard, operator's seat and all operator's controls. Upon completion, the dashboard shall be treated with anti-static spray.
  - d. Remove Graffiti. Any graffiti on interior or exterior of any vehicle shall be removed immediately upon discovery. CONTRACTOR shall obtain approval of all graffiti removal materials prior to their use.
  - e. Windows. Using the cleaner approved for use only on windows, the interiors of all windows shall be sprayed, cleaned and wiped dry with a rag. Windows include windshields, door windows and interior mirrors.
7. Detailing. Each vehicle shall receive a thorough detailing every six months. The detailing of these vehicles will be scheduled and completed by the CONTRACTOR and a report verifying the detailing of every CITY provided vehicle will be delivered to the CITY by the 15<sup>th</sup> of November and the 15<sup>th</sup> of May of each year. CONTRACTOR shall obtain the monthly preventative maintenance schedule used by CITY to develop detailing schedule. Each detailing shall include at a minimum the following:
- a. Wash exterior of the vehicle, including wheels
  - b. Sweep and vacuum interior thoroughly. Remove gum and other substances that may be stuck to the floor, sidewalls, ceiling or seats.
  - c. Remove any and all graffiti from interior and/or exterior of vehicle using CITY-approved graffiti remover.
  - d. Remove any and all foreign materials from the seats and other interior areas of the vehicle and clean the vehicle thoroughly, using industrial cleaner, aerosol all-purpose cleaner, aerosol or mixed concentrated window cleaners. Rinse all washed areas and wipe dry. Clean and dry all windows. Do not use a water hose in the interior of the vehicle.

- e. Remove all side and rear double and triple seat cushions, not requiring tools, for cleaning underneath. Replace seats.
  - f. Clean interior dome lights as necessary
  - g. Polish and clean aluminum wheels with CITY approved method.
  - h. Apply protective coating to bumpers, dashboard, rubber fender walls and tires to improve appearance of vehicle. Do not apply to steering wheel, seats or floors.
8. Bodily Fluids. All bodily fluids will be cleaned up immediately. If a vehicle is in service at the time of the discovery of any bodily fluids, that vehicle will be replaced and removed from service and cleaned immediately
9. Records. CONTRACTOR shall submit proposed Daily Vehicle Reports, Checklists and Inspection Report, Vehicle Cleaning Report and any other applicable reports to the CITY for approval prior to the service start-up date.
10. Bus Stop Maintenance. CONTRACTOR shall be responsible for bus stop cleaning (removal of trash). CONTRACTOR shall provide to CITY a weekly schedule of stop cleaning. Regional Transit or another entity contracted by the CITY shall clean and maintain bus shelters. This will include both regular and special "as needed" cleaning. CITY will be responsible for installing bus stop signs, replacing damaged or missing signs. The CITY shall be solely responsible for the design, placement, repair and replacement of all passenger bus stops, benches and shelters and all other CITY-owned passenger facilities and amenities. This does not apply to equipment located at CONTRACTOR'S project facility or under CONTRACTOR'S control pursuant to provisions of this agreement.
- D. Marketing and Public Relations Program
1. Marketing Program. During the term of Agreement, CONTRACTOR will cooperate in marketing and advertising efforts with CITY and other parties as determined by CITY. CONTRACTOR may from time to time be required to provide a bus and driver to participate in CITY sponsored marketing activities such as school presentations. Such required availability may be up to 6 times per year for up to 4 hours each time. CITY shall pay the cost of the marketing program.
2. Marketing Identity. The marketing identity and all marketing material will be subject to CITY approval. CONTRACTOR shall not distribute any materials that can be directly or indirectly associated with CITY or the fixed route services identified in Agreement, without written approval of CITY.



All printed, audio, or visual materials dealing with fares, promotional activities, public relations or other marketing communications materials distributed on board any vehicle must be approved by CITY. From time to time, CITY will supply CONTRACTOR with marketing materials for distribution on the vehicles. CONTRACTOR shall distribute such materials on the vehicles when asked to do so by CITY.

3. Media Referrals. CONTRACTOR will refer all requests from print, broadcast or other media for information on the fixed route transit services identified in Agreement, to CITY. Under no circumstances shall CONTRACTOR make any contact with the media or offer comment regarding the services identified in Agreement.
4. Telephone Information. During the term of Agreement, CONTRACTOR shall provide live telephone information during all hours of operation. If CONTRACTOR elects to use an automated answering system for after service hours said system shall have the capability for callers to leave a message for information requests, reporting complaints, etc. CONTRACTOR provided business lines will be answered to identify it as a non-CITY line.
5. On-Board Notices. CONTRACTOR shall post CITY provided and approved notices as directed by CITY.
6. Schedules, Brochures, Maps. Etc. CITY may provide CONTRACTOR with any printed material (e.g. time schedules, brochures, maps, flyers, and similar printed material), for use or distribution to the public and CONTRACTOR shall be responsible for distributing them to passengers, on the vehicles, mail or other means as directed by CITY. Any expenses associated with the CONTRACTOR'S distribution of any printed materials will be the responsibility of the CONTRACTOR.
7. Passenger Surveys. CONTRACTOR shall, when requested by CITY, distribute surveys to passengers, and/or otherwise provide reasonable assistance in CITY's monitoring and marketing activities.
8. On-Vehicle Advertising and Postings. CONTRACTOR shall not post or otherwise distribute any materials on the vehicles, unless specifically requested by CITY, and CITY shall approve in writing all materials prior to their distribution. Any revenue from posting or other distribution shall be CITY's.

E. Administration, Reports, Accounting, Audits and Liquidated Damages

1. Administration. CONTRACTOR shall provide adequate executive, administrative, supervisory, operational, maintenance, and bus cleaning service to the City to insure City satisfaction.
2. Reports. CONTRACTOR shall provide CITY the following reports, based upon the identified schedule and in a form and format prescribed by CITY:

- a. Daily Driver Log Summary. Daily summary of all fixed route activity by program based upon daily driver passenger count logs. CONTRACTOR shall provide reports no more than three working weekdays following the date of service.
- b. Daily Status Report. Daily status report which describes anything out of the ordinary for that particular operating day. CONTRACTOR shall provide report daily by electronic facsimile (FAX) or e-mail at the end of the operating day being reported on.
- c. Monthly Summary Report. CONTRACTOR shall provide reports by the tenth (10th) day of the month following the reporting period. The cover sheet for the report shall be on CONTRACTOR letterhead and be signed by the Project Manager. This report shall be developed using the latest version of "Excel" and shall be provided in a "printed-on-paper" and electronic format. The electronic copy may be sent via modem if approved by CITY.
- d. Inventory of Schedules/Transfers. CONTRACTOR shall provide a monthly inventory of all schedules, brochures, transfers and marketing materials by the third (3rd) working day of the month.
- e. Fare Revenue. CONTRACTOR shall document all fares received and deposited. CONTRACTOR shall deposit fares, and provide reports by electronic facsimile (FAX) or e-mail. CONTRACTOR shall generate a Farebox Reconciliation Report for each day of service to be consolidated into a monthly submittal to the CITY. CONTRACTOR shall collect fare and other operational data in a format that is conducive for submittal to FTA under NTD reporting requirements. CONTRACTOR shall assist CITY with such data collection and reporting as necessary.
- f. Monthly Maintenance Reports: CONTRACTOR shall provide monthly maintenance report demonstrating adherence to stated Preventive Maintenance Program and also make all vehicle history records available for audit at any time.
- g. Monthly Safety Reports: CONTRACTOR shall provide monthly safety reports summarizing preventable and non-preventable accidents and injuries detailing corrective actions or supplemental safety training provided.
- h. Other Reports. CONTRACTOR shall provide other reports (i.e. daily departure logs, unusual incident summaries, etc.) as defined by CITY. CONTRACTOR shall provide reports as often as daily as directed by CITY.
- i. Dissemination of Data. CONTRACTOR shall not disseminate ridership, farebox, or other data or information to any party without first receiving approval for such from CITY or as required by law.

3. Accounting Practices. During the period of Agreement, CONTRACTOR shall maintain its books of account as they relate to the programs identified in Agreement consistent with Generally Accepted Accounting Principles, and in CITY-approved format.
4. Compliance with Regulatory Agency Requirements. All services provided under Agreement shall conform to all requirements of all Federal, State, and/or local regulatory agencies, including but not limited to the California Highway Patrol, California Public Utilities Commission and US Department of Transportation, if applicable.
5. CONTRACTOR/CITY Meetings. CITY shall meet with CONTRACTOR as needed.

F. Changes to Level of Service

INTENTIONALLY OMITTED. See Agreement, Section 5.

G. **Employee Qualifications & Training Program**

1. Employee Qualifications. The following minimum qualifications will be required of those persons employed in the fixed route service:
  - a. Driver Instructors:
    1. Valid Commercial Drivers License; and
    2. Valid Medical Certificate and passage of pre-employment drug test; and
    3. One year recent experience in public transit or school bus driving, or one year recent experience as public transit or school bus training instructor; Valid instructor training certificate consistent with "Train-the-Trainer," or other formal training program recognized by the State of California as having met State requirements and
    4. A commercially available criminal records check subject to CITY approval.
  - b. Behind The Wheel Trainers
    1. Valid Commercial Drivers License; and
    2. Valid Medical Certificate and passage of pre-employment drug test; and
    3. One year recent experience in public transit or school bus driving, or one year recent experience as public transit or school bus training instructor. Employee will also have completed a CONTRACTOR developed BTW Training program approved by the CITY that meets all industry standards and practices; and

4. A commercially available criminal records check subject to CITY approval.

c. Vehicle Drivers:

1. A valid Commercial Drivers License; and
2. A safe driving record; and
3. A valid Medical Certificate and passage of pre-employment drug test; and
4. A minimum of three year's recent experience safely driving a motor vehicle with a valid license; and
5. Completion of CONTRACTOR'S driver training program and
6. A commercially available criminal records check subject to CITY approval.

d. Dispatchers:

1. One year of recent experience as a fixed route driver; and
2. Completion of the driver training program (compliance with Section "b" above)

2. Driver Training. CONTRACTOR shall provide training for all personnel working under this AGREEMENT. It is the sole responsibility of CONTRACTOR to insure that each individual is fully knowledgeable of their duties and responsibilities, and can operate a fixed route vehicle in a safe manner. It is also the CONTRACTOR'S responsibility to provide additional training if the training requirements specified by CITY are insufficient. At a minimum, training shall comply with the following requirements:

- a. Class "C" drivers, first-time Class "B" drivers and Class "B"/school bus drivers who have not had prior public transit/school bus training, *and at least nine (9) months* of actual transit/school bus driving experience over the previous two (2) years:

1. Acquisition of a valid Class "B" (or school bus driver's) license and Medical Certificate; and
2. Minimum sixteen (16) hours classroom instruction on CONTRACTOR'S policies, procedures, defensive driving, vehicle code, driver notices, vehicle components, bike rack use, radio procedures, vehicle inspection, pick-up lists and schedules, transfer policies, fare collection, accident procedures, State rules and regulations, accident report writing, passenger handling and passenger empathy; and
3. Minimum eight (8) hours classroom and supervised "hands-on" training regarding wheelchair lift components, handicapped passenger handling, operation of lift with/without power, loading/tying down procedures, and emergency procedures; and
4. Minimum sixteen (16) hours individual behind-the-wheel instruction from a qualified driving instructor while out of service; and

5. Minimum sixteen (16) hours individual behind-the-wheel instruction from a qualified driving instructor while in service; and
6. Completion of driving at least two days before being allowed to drive in service unsupervised; and
7. Class "B"/school bus drivers (with a medical certificate) who have had at least nine (9) month's public transit or school bus driving experience over the previous two years, as well as proof of training and good references:

- b. Minimum sixteen (16) hours classroom instruction on CONTRACTOR'S policies, procedures, defensive driving, vehicle code, driver notices, vehicle components, bike rack use, radio procedures, vehicle inspection, schedules, routes, transfer policies, fare collection, accident procedures, State rules and regulations, accident report writing, passenger handling and passenger empathy; and

- c. Minimum eight (8) hours classroom and supervised "hands-on" training regarding wheelchair lift components, handicapped passenger handling, operation of lift with/without power, loading/tying down procedures, and emergency procedures; and

- d. Minimum eight (8) hours individual behind-the-wheel instruction from a qualified driving instructor while out of service; and

- e. Minimum eight (8) hours individual behind-the-wheel instruction from a qualified driving instructor while in service; and

- f. Completion of driving all routes at least twice each direction before being allowed to drive unsupervised.

3. Additional Training required for all drivers regardless of experience:

- a. Vehicle-type Training. No driver shall be allowed to operate equipment under this Agreement, until he/she has been trained and signed off by a qualified instructor as to his successful attainment of the skills necessary to properly operate the vehicle type to which he has been assigned; and
- b. Minimum one (1) hour safety/ongoing training every month for every driver employed. CONTRACTOR will deliver meeting agendas and minutes to the CITY and the CONTRACTOR will add items to the next meeting's agenda upon the request of the CITY; and
- c. Driver Evaluations: Each driver employed shall be evaluated by a qualified instructor at least once every six (6) months, including in-service evaluation and license and medical certificate checks; and

- d. Accidents: Whenever a driver is involved in a preventable accident, and whenever a driver is involved in two or more non-preventable accidents in any twelve month period, CONTRACTOR'S qualified instructor shall ride with that driver and perform an evaluation. The driver will also receive a minimum of 4 hours of retraining documented to the CITY in writing; and
  - e. Driver Safety Award: CONTRACTOR shall institute an ongoing driver safety award program (to be approved by CITY)
  - f. CONTRACTOR shall comply with State of California training requirements, including Verification of Transit Training and other required certifications.
4. Driver Uniforms, Dress Code, Appearance & Courtesy. CONTRACTOR shall provide and maintain clean, identical uniforms, to be approved by CITY for all drivers and shall enforce an appearance code, also subject to approval by CITY. CONTRACTOR'S proposal shall include a detailed description of the proposed uniform.
- a. At a minimum, uniform requirements shall include the following for all drivers:
    - 1. Clean, identical, solid color permanent press, button-down shirts.
    - 2. Clean, identical, solid color jackets for all drivers for use during cold or inclement weather.
    - 3. Clean, identical professionally made clip-on company/employee identification tags.
  - b. CONTRACTOR shall also strictly enforce the following dress and appearance requirements:
    - 1. Clean dark, solid color full-length pants/trousers, clean dark matching socks and clean dark, solid-color shoes for all male drivers. Male drivers may not wear shorts.
    - 2. Clean dark, solid color full-length pants/trousers (or clean dark, solid color skirts), and clean dark solid-color shoes for all female drivers. Female drivers may not wear shorts.
    - 3. All drivers operating in revenue service shall comply with uniform and dress requirements, and shall be clean and well-groomed.
  - c. CONTRACTOR shall supervise all drivers to ensure that they are courteous *to all patrons at all times*, and accurately respond to patrons' questions regarding use of the transit system or connecting systems.
5. EMPLOYEE WORK RULES. The following employee rules, subject to modification by CITY, shall be enforced by CONTRACTOR:
- a. Uniforms:

1. Must be complete and worn at all times when on duty.
  2. Shall be clean and presentable at all times.
  3. Uniform designs, colors and ID tags subject to CITY approval.
- b. Gratuities/Fares:
1. Gratuities shall not be accepted.
  2. All cash shall go into farebox without being handled by the driver. Driver shall collect fares consistent with the most recent fare structure adopted by CITY.
- c. Knowledge of Services/Fare Structure:
1. Drivers shall have a thorough knowledge of the service and fare structure prior to driving for that service unsupervised.
  2. Drivers shall also have a basic knowledge of transfer locations with connecting systems, and knowledge of connecting systems.
- d. Standards For Performance:
1. No contractor provided service worker shall be permitted to smoke, eat, drink, or employ any device that plays music or amplifies sound aboard buses at any time.
  2. Boisterous language, profanity, or incivility to anyone shall not be permitted while in uniform, on or off duty.
  3. While in uniform, no contractor provided service worker shall purchase, consume, or be under the influence of any narcotic, intoxicant, or harmful drug.
  4. Contractor shall be responsible for keeping all vehicles clean and sanitary during their shift.
  5. Contractor shall be responsible for reporting any defects a vehicle may have immediately. Contractor shall conduct a "walk-a-round" inspection of their vehicle, and fill out a "Daily Vehicle Inspection Report (DVIR)" sheet. Drivers shall have CONTRACTOR supervisor personnel resolve any doubt about the safety of a vehicle prior to operating the vehicle in service.
  6. Contractor provided service worker shall use vehicles only in accordance with their assigned duties.
  7. Contractor provided service worker shall conduct themselves and operate vehicles in a safe and courteous manner at all times.
  8. No contractor provided service worker shall be permitted to solicit on the vehicle with the exception of personnel specifically authorized to do so by CITY.
  9. No item longer than five (5) feet shall be allowed on the vehicle.
  10. No animals, except guide animals, shall be permitted on the vehicle, unless otherwise authorized in writing by CITY.

11. All information regarding accidents shall be confidential. Contractor provided service worker shall refrain from speaking to anyone concerning any accident unless it is to Police, supervisory personnel, or other person(s) involved in the accident, as required by law.
12. Anyone under the influence of any intoxicant, narcotic, or harmful drug, who endangers the safety of the driver, other passengers, himself/herself, or vehicle equipment, shall not be permitted on the vehicle.
13. No vehicle shall stop at an unsafe location. Whenever practical, stops shall be made at a curb.
14. Backing of a vehicle is prohibited unless specifically authorized by Dispatch. Drivers must request the option to back a vehicle from dispatch prior to beginning the backing movement.
15. No vehicle shall be operated when its condition is unsafe or uncertain.
16. No driver shall operate the wheelchair lift:
  - a. until he has received the mandated training; and
  - b. if there is any doubt whatsoever about the mechanical condition of the lift, or safety of the passenger, as a result of using the lift. Wheelchair lift operation shall be in compliance with the methodology recommended by the OEMs.
17. Drivers shall utilize the farebox system properly, recording ridership data in the format required by CITY.
18. Drivers shall not leave a vehicle unattended unless:
  - a. The transmission is placed in park;
  - b. The parking brake is set and
  - c. The engine is turned off.
  - d. Doors on unattended vehicles shall be kept locked at all times.
19. Drivers shall provide "hands-on" assistance to disabled riders for boarding and unloading purposes.
20. No vehicle shall be fueled while passengers are on-board.

## 6. WAGE SCALE

CONTRACTOR shall implement its wage scale with the driver's starting wage for training and the driver's starting wage when the driver has completed the CONTRACTOR'S training program as detailed in CONTRACTOR's proposal.

7. CONTRACTOR shall provide the following:

- a. \$200 Annual Safety Bonus available each year to full time employees for performing their duties in a safe manner and maintaining a good attendance record.
- b. \$1,000 Annual ASE Master Mechanic Certification Bonus
- c. FleetFocus maintenance management software from Maximus Corp.
- d. Safety Incentive Programs including "Safe Miles Club" with driver incentives of a pin and \$50 gift certificate for accident free service; subsequent pins at 5,000 mile increments; special pin and \$100 gift certificate at 25,000 miles.



e. Staffing level: The following minimum staffing levels are required:

Manager 1 FTE

Road Supervisor 1 FTE

Lead Dispatcher 1 FTE

Dispatchers 2 FTE

Maintenance Manager 1 FTE

“A” Level Mechanic 1 FTE



Date: 6\_9\_04

Quote # 060904-007

**Customer**

Cust. P/O #  
Customer # 2004-133  
Contact: Mr. Macy Neshati  
Phone: (909) 684-9585  
Fax: (909) 684-2088  
  
Company: Complete Coach Works  
  
Address: 1863 Service Court  
Riverside, CA 92507

ISE Contact: D. Mazaika  
(619) 287-8785  
Phone No. 8785  
Ship Via: Ground  
F.O.B. San Diego  
Tax Status: Not Included  
Quote Valid For: 60 Days  
Yearly  
Escalation 2.90%  
Estimated  
Delivery TBD  
Payment Terms Net 30  
Currency U.S. Dollars

ITEM	DESCRIPTION	QTY	PRICE EA.	TOTAL PRICE
001	Extended warranty for 5 years (Extends standard warranty for 3 additional years to a total of 5 years. All terms and conditions remain the same.)	1	\$20,050	
002	Ultracapacitor pack warranty extension to 6 years	1	\$4,250	

Authorized Signature

## **ISE Standard Warranty**

ISE Corporation provides the following warranty for drive systems integrated by ISE against defects in material and workmanship. This warranty applies to the first user only during the warranty period and is not transferable.

### **Coverage**

ISE warrants that any part of the drivetrain and any part or system manufactured by ISE that is properly installed, commissioned by an ISE representative, operated in accordance with the specifications provided by ISE, and found by ISE under normal use and service to malfunction during the warranty period solely as a result of defects in materials or workmanship, will be replaced or repaired, at ISE's option. This coverage includes replacement parts and reasonable labor, as defined by ISE, for component removal, repair or replacement, and reinstallation.

### **Malfunctions**

Malfunctions do not include normal wear and tear, effects of corrosive and/or erosive environments or fuels, replacement of consumables, or performance changes caused by these conditions.

### **Warranty Period**

The applicable warranty period is twenty four (24) months from the date of receipt to the purchaser of any item of the goods, or any other warranty period otherwise stipulated in writing by ISE. For components not supplied by ISE, the original manufacturer's warranty shall apply to the extent assignable by ISE.

### ***Repairs Under Warranty***

All repairs under warranty must be conducted by an ISE representative, using only new, remanufactured, or rebuilt components or parts, supplied or approved by ISE. During the warranty period, any use of substitution of ISE approved parts will void the warranty. All claims under this warranty must be made to ISE within 30 days of malfunction of the drive system.

### **Exclusions to Warranty**

ISE is not responsible for failures or damage resulting from what ISE determines to be abuse or neglect, including but not limited to:

- Parts and labor for repairs that are due to shipping damage, vandalism, accidents, misuse, lack of maintenance, operation without adequate coolants or lubricants, overfueling, overspeeding, contaminants in the fuel or oil, incorrect fuel or oil, misapplication, storage damage, acts of nature, negligence, or modification to products that are not authorized in writing by ISE.
- Parts and labor for repairs to parts that are not manufactured by ISE and not installed on ISE products by an ISE representative.
- Parts and labor for routine maintenance.
- Parts and labor and any costs to investigate problems and/or repair products that are caused by any operation of the product outside the operating specifications defined by ISE.
- Any incidental or consequential damages or expenses that the owner or user may incur as a result of a malfunction or failure covered by this warranty

### **Other Exclusions**

ISE does not authorize any person or party to assume or create for it any other obligation or liability in connection with the products or any part of the products

### **Technical Assistance**

The ISE warranty shall not be enlarged by, nor shall any obligation or liability of ISE arise due to ISE providing technical advice, facilities or service, in connection with any product or contract.

ISE shall not be liable to the buyer, or to any other person, for the loss or damage directly or indirectly, arising from the use of the equipment or goods, from breach of any warranty, or from any other cause.

ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE HEREBY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, EXPRESS AND IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Limitations of Remedy**

The sole and exclusive remedy for breach of warranty shall be limited to repair or replacement, at ISE's option. In no case, regardless of the form of the cause of action, shall ISE's liability exceed the price to Buyer of the specific goods manufactured by ISE giving rise to the cause of action. Buyer agrees that in no event shall ISE's liability extend to include special, incidental or consequential damages. Consequential damages may include, but not limited to, loss of anticipated profits, loss of use, loss of revenue, cost of capital and damage or loss of other property or equipment. In no event shall ISE be obligated to indemnify Buyer in any manner nor shall ISE be liable for property damage and/or third party claims covered by insurance and/or indemnity coverage provided to Buyer, its assigns, and each successor interest to the goods provided hereunder.

**Force Majeure**

ISE shall not be liable for failure to perform due to labor strikes, acts of God, or any acts beyond ISE's immediate and direct control.

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-235**

**STATE OF CALIFORNIA            )**  
**COUNTY OF SACRAMENTO    )**     **ss**  
**CITY OF ELK GROVE            )**

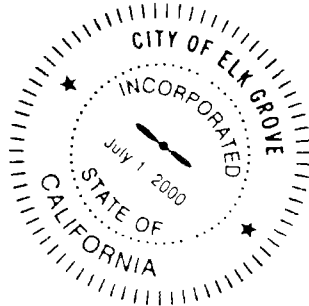
***I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 15<sup>th</sup> day of September 2004 by the following vote:***

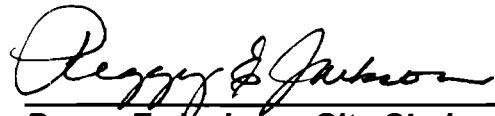
**AYES 5:     COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary**

**NOES 0:     COUNCILMEMBERS:**

**ABSTAIN 0: COUNCILMEMBERS:**

**ABSENT 0: COUNCILMEMBERS:**



  
\_\_\_\_\_  
**Peggy E. Jackson, City Clerk  
City of Elk Grove, California**