

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Dave Klotzle, City Engineer/Public Works Director

Prepared By: Shaun Kroes, Senior Management Analyst



DATE: June 6, 2014 (CC Meeting of 06/18/14)

SUBJECT: Consider Approval of Intergovernmental Agreements with the City of Thousand Oaks for Fixed Route Transit Operations, Fixed Route Preventive Maintenance, and Dial-A-Ride Paratransit Services

SUMMARY

On July 30, 2012, the City of Thousand Oaks (Thousand Oaks) began providing Fixed Route Transit Operations, Fixed Route Preventive Maintenance, and Dial-A-Ride Paratransit services for the City of Moorpark (Moorpark). Thousand Oaks provides Fixed Route Preventive Maintenance services for Moorpark with its own staff. Thousand Oaks provides Fixed Route Transit Operations and Dial-A-Ride Paratransit services utilizing its contracted transit operator, MV Transportation, Inc. (MV Transit).

Thousand Oaks' Agreements with MV Transit end on June 30, 2014. On February 21, 2014, Thousand Oaks released a Request for Proposals (RFP) for Transit Operational services for Fixed Route Transit Operations and Dial-A-Ride Paratransit services. Moorpark's transit services were included in Thousand Oaks' RFP. Thousand Oaks also included transit services for the City of Westlake Village and Ventura County for their respective transit services as well. Proposals were due March 26, 2014. Thousand Oaks received three conforming proposals (two others were non-conforming). The conforming proposals were from Corinthian Parking and Transportation Services (Corinthian), MV Transit and Airport Connections Inc., dba Roadrunner (Roadrunner). Moorpark participated in the selection committee which heard proposals from all three companies on April 3, 2014. Based upon pricing and overall experience the committee selected MV Transit and Thousand Oaks awarded its Agreements to MV Transit on May 27, 2014. The term of the MV Transit Agreements is from July 1, 2014 through June 30, 2019.

Based upon pricing from MV Transit, and Thousand Oaks' own costs associated with oversight of the Agreements and providing direct maintenance services for Moorpark,

Thousand Oaks has provided pricing for continued transit services for Moorpark. Staff is recommending that the City Council consider awarding Agreements to Thousand Oaks for Fixed Route Transit Operations (Attachment 1), Fixed Route Preventive Maintenance (Attachment 2), and Dial-A-Ride Paratransit services (Attachment 3) and authorize the Mayor to sign the Agreements.

BACKGROUND

Moorpark contracts for Fixed Route Transit Operations, Fixed Route Preventive Maintenance, and Dial-A-Ride Paratransit services. Beginning August 12, 2013, Moorpark's Fixed Route transit system expanded its service from two routes (Route 1 and Route 2) providing eleven trips each between the hours of 6:00 am to 6:00 pm Monday through Friday to two routes that operate between the hours of 5:00 am and 8:00 pm Monday through Friday. Beginning August 10, 2013, Moorpark also began operating one bus on Saturdays, from 8:00 am to 5:00 pm. Moorpark received a three year Federal demonstration grant to provide extended hours of service on weekdays and on the weekend. The Federal demonstration grant reimburses the City for 88.53% of expenses associated with the extended service hours. The remaining 11.47% is funded with local funds.

Moorpark's Dial-A-Ride Paratransit services Agreement includes services for Senior Dial-A-Ride (DAR) and ADA Paratransit services. The Senior DAR program is an origin-to-destination service for Moorpark residents aged 62 and older. The rider pays \$1.50 per one way trip (per trip) for travel within Moorpark. The ADA Paratransit service provides origin to destination transportation within Moorpark for \$1.50 per trip for any Moorpark resident with a valid American with Disabilities Act (ADA) card, issued by the Ventura County Transportation Commission (VCTC). The ADA Paratransit service also provides trips to and from Thousand Oaks and the Los Angeles County transfer point for \$3.00 per trip. Beginning December 9, 2013, Moorpark also began providing direct service into and out of Simi Valley for \$3.00 per trip. Travel to and from Camarillo and Oak Park is \$4.50 per trip.

Moorpark's Dial-A-Ride Paratransit services also expanded its service hours at the same time as the Fixed Route transit system. Travel within Moorpark for Senior DAR and ADA Paratransit expanded to 5:00 am to 8:00 pm Monday through Friday and weekend service operates 8:00 am to 5:00 pm. Travel to other jurisdictions remains 6:00 am to 6:00 pm. Travel to other jurisdictions for ADA Paratransit service on the weekends is currently limited to Thousand Oaks, Oak Park and Westlake Village.

In June 2012, the City's transit contractor at the time, CUSA CC, LLC (CUSA), announced that because of its bankruptcy proceedings, CUSA would not be providing transit services

to Moorpark after July 31, 2012. Moorpark staff released a RFP for DAR Paratransit services and a RFP for Fixed Route Transit services on June 25, 2012 with a proposal due date of July 9, 2012.

Roadrunner Shuttle was the only contractor to submit proposals in response to the RFP. After reviewing the proposals, staff recommended that City Council consider rejecting the proposals received by Roadrunner Shuttle and instead authorize the City Manager to negotiate Intergovernmental Agreements with Thousand Oaks for Fixed Route Transit Operations, Fixed Route Preventive Maintenance, and Dial-A-Ride Paratransit services for a two-year period. The Agreements became effective on July 26, 2012.

Since awarding the Agreements Thousand Oaks and MV Transit have provided satisfactory transit services for Moorpark and Moorpark's staff time devoted to administration of Moorpark's transit services has been reduced, saving an estimated \$12,000 to \$15,000 in staff time per year. Additionally, contracting with Thousand Oaks aligns Moorpark with the recent VCTC Regional Transit Study, which recommends a more cooperative effort between the east county cities to coordinate transit services. The use of Thousand Oaks for fueling also means that Moorpark is able to fuel at Thousand Oaks without the need for traveling to Simi Valley to fuel Moorpark's compressed natural gas (CNG) buses. This allows Moorpark to utilize two vehicles per day instead of three (the third was a relief vehicle used while other buses were sent to Simi Valley for fueling).

As previously mentioned, Thousand Oaks considered proposals from Corinthian, MV Transit, and Roadrunner to provide transit services to Thousand Oaks beginning July 1, 2014. After selection of MV Transit, Thousand Oaks was able to provide its pricing for Moorpark's transit services. Table 1 below provides the rate comparison between the proposals and Thousand Oaks Transit.

Table 1: Thousand Oaks' Proposed Rates Compared to Rates Received from Proposers

	MV Transit	Roadrunner	Corinthian	Thousand Oaks
Fixed Route Operations	\$44.35/hour	\$48.28/hour	\$44.00/hour	\$51.00/hour
Maintenance	n/a	n/a	n/a	\$33.00*
Dial-A-Ride	\$43.04/hour	\$48.28/hour	\$44.00/hour	\$28.38/trip
	\$712.05/vehicle /month	\$1,939.23/vehicle /month	\$1,045.45/vehicle /month	n/a

* Thousand Oaks is proposing billing at cost, not per hour for maintenance/fueling beginning in FY 2014/15. The \$33.00 currently shown is based on Thousand Oaks' current costs divided by the number of revenue hours. This number could fluctuate based on what type of maintenance issues occur throughout the year.

As Table 1 details on the previous page, Thousand Oaks' rate for operations is higher than the other proposed vendors. Thousand Oaks' rate includes a 15.00% administrative fee to cover costs associated with overseeing Moorpark's transit services. Thousand Oaks provides their own maintenance services and consequently, the proposers for Thousand Oaks' transit services did not provide pricing for maintenance. The tables and descriptions below provide cost comparisons between Thousand Oaks' rates and other potential rates.

Table 2: Fixed Route Operations Cost Comparisons (based on 5,632 hours of service)

Provider	Base Cost	Fuel*	Subtotal	Fueling Costs**	Total
Thousand Oaks	\$287,232	\$50,000	\$337,232	n/a	\$337,232
MV Transit	\$249,779	\$50,000	\$299,779	\$34,061	\$333,840
Roadrunner	\$271,913	\$50,000	\$321,913	\$37,079	\$358,992
Corinthian	\$247,800	\$50,000	\$297,800	\$33,792	\$331,592

*Thousand Oaks' fuel costs come out of the maintenance agreement and are added to operations expenses. Contractor pricing assumes the City would pay directly for fuel costs.

**Thousand Oaks fuels at its site. Other contractors (if providing the service directly) would require fueling at another site, likely Simi Valley or Thousand Oaks' public fueling station. "Fueling Costs" are based on an hour of contractor's rate, times 3 buses per day times 256 operating days a year.

Table 2 above provides a cost comparison of Thousand Oaks' Fixed Route Operations costs compared to the three companies' proposed rates. The number of service hours (5,632) is based on the City's standard operating hours of service (6:00 am to 6:00 pm). Thousand Oaks appears to be 1.70% higher than the lowest cost from Corinthian. Not factored into the costs above, though, is Moorpark's administrative cost in staff time that would be required for direct oversight of Corinthian, as well as additional wear and tear on additional vehicles that would likely be necessary in order to accommodate CNG fueling.

Table 3: Fixed Route Maintenance Cost Comparisons (based on 5,632 hours)

Provider	Cost
Thousand Oaks	\$135,856
MV Transit	\$140,800
Roadrunner	\$140,800
Corinthian	\$140,800

Table 3 above provides a cost comparison of maintenance services between Thousand Oaks and other potential transit operators. In 2012, Roadrunner provided preventive maintenance rates for 2012 and 2013 as part of its RFP. Moorpark staff used Roadrunner's 2013 rate of \$25.00 per hour to show what preventive maintenance costs to Moorpark could be compared to Thousand Oaks' 2014 rate. Moorpark staff did not have similar rate information for MV Transit or Corinthian. Rather than project an estimated

number for MV Transit and Corinthian, Moorpark staff used Roadrunner's rate for all companies. It should be noted that Thousand Oaks' rate assumes an hourly rate of \$33.00 per hour, minus fuel costs of \$50,000. Thousand Oaks' new proposal actually includes a time and materials cost instead of an hourly rate. The time and material costs include an hourly labor rate of \$95.00 that is charged when Thousand Oaks staff is actively working on a Moorpark bus. Parts that are purchased for the bus will be charged to Moorpark at cost plus a 35.00% administrative fee intended to cover separate Thousand Oaks Parts Division staff that is dedicated to procurement of vehicle parts, as well as general overhead costs. Costs for third-party outsourced work (such as if a Moorpark bus must go to a body shop for work) will be charged to Moorpark at cost plus a 15.00% administrative fee. Fuel will also be billed at cost plus a \$0.20 per gallon or gasoline gallon equivalent (for CNG). The calculated annual maintenance cost for Thousand Oaks of \$135,856 is in line with the past two years of actual expenditures.

Table 4: Dial-A-Ride Cost Comparisons (based on 3,500 trips and 29,000 miles)

Provider	Cost
Thousand Oaks	\$99,330
Roadrunner	\$130,750
MV Transit	\$136,982

Table 4 above provides a cost comparison for DAR services between Thousand Oaks and other potential transit operators. Proposers for Thousand Oaks' RFP did not have pricing that could be converted to pricing for Moorpark; however, Roadrunner and MV Transit had both submitted proposals to Moorpark in the past, which included rates that went into 2013. In 2010, MV Transit provided a proposed 2013 rate of \$4.752 per trip and \$4.15 per mile. Roadrunner's 2012 proposal included a 2013 rate of \$12.90 per trip and \$3.10 per mile. As previously mentioned, Thousand Oaks' rate is a flat \$28.38 per trip. Based upon a scenario of 3,500 trips and 29,000 miles, Thousand Oaks is projected to be 24.03% less than Roadrunner, which was the lower of the two companies listed. Moorpark staff has no cost data from Corinthian, so they were not included in Table 4.

Table 5: Overall Cost Comparison for Fixed Route and Dial-a-Ride

Provider	Fixed Route Operations	Fixed Route Maintenance	Dial-A-Ride	Total
Thousand Oaks	\$337,232	\$135,856	\$99,330	\$572,418
Roadrunner	\$358,992	\$140,800	\$130,750	\$630,542
MV Transit	\$333,840	\$140,800	\$136,982	\$611,622

Table 5 above provides a comparison of estimated costs between Thousand Oaks, Roadrunner, and MV Transit. Corinthian has not been included because Moorpark staff

does not have enough direct cost comparisons to attribute to the company. Thousand Oaks' costs appear to be 6.84% lower than the next projected lowest cost of MV Transit. It should be noted that these costs are based upon the assumptions that Thousand Oaks' maintenance costs will continue to be comparable to past years. Not included in the above calculation is the estimated savings in Moorpark staff time devoted to administration of Moorpark's transit services, which is currently administered through Thousand Oaks. The savings from reduced staff time dedicated to Moorpark's transit services is estimated at \$12,000 to \$15,000 per year.

DISCUSSION

The proposed Agreements between Moorpark and Thousand Oaks are five-year Agreements. The City would continue to receive the same level of service that it has received from Thousand Oaks and its contracted transit operator (MV Transit) as it has since July 2012. Moorpark residents would continue to benefit from having a call center where they can reach a transit operator during the hours that the buses are in service. Additionally, the City has benefited from Thousand Oaks' requirement that MV Transit pay for any repairs to the vehicles that are damaged regardless of whether the damage is the fault of MV Transit's drivers or a third party. This has expedited repairs to the City vehicles and reduced staff time devoted to paying for repairs and receiving reimbursement from third parties.

Moorpark staff has noticed an improvement in the overall condition of Moorpark's bus fleet since contracting with Thousand Oaks for maintenance. The buses are kept in a cleaner condition and there have been significantly fewer cases of vehicles leaking oil while in service. In addition, vehicle repairs have been made in an expedited fashion, compared to when CUSA was the maintenance provider. Vehicles that experience a mechanical failure in the field are quickly responded to by Thousand Oaks staff and in some instances the vehicle is even returned to service the same day. In instances where a backup vehicle is needed because an in-service vehicle has failed, MV Transit has been able to respond in 25 to 30 minutes on average from the time the primary vehicle failed. This is much faster than the typical response time of 60 minutes or more from CUSA, largely due to the vehicles previously being stored and maintained in Oxnard.

In addition to the service that Moorpark has received from Thousand Oaks and MV Transit in the past two years, Moorpark will benefit from a few additional services that MV Transit is providing through its contract with Thousand Oaks. MV Transit will install new TimePoint software on Moorpark City Transit's fixed route buses. The TimePoint software enables the City and passengers to track bus arrival times. Although the City currently has a similar service provided through VCTC (called Nextbus) the TimePoint software provides a secondary option for passengers in the event Nextbus temporarily fails and will allow

passengers to select which tracking system they prefer. TimePoint also tracks the buses more frequently than Nextbus (Nextbus only monitors the buses about every 20 to 30 seconds). TimePoint will track bus dwell times by stop and can measure the efficiency of the drivers. MV Transit is also required to provide complete exterior detailing of all Moorpark buses once every 90 days. MV Transit will also be required to provide a new full-time safety manager and new full-time finance manager.

All DAR vehicles (from MV Transit and Thousand Oaks) will be model year 2013 or newer. Six more CNG DAR vehicles will replace existing gasoline/diesel vehicles. All DAR vans will be equipped with cameras and backup sensors. MV Transit will also provide new bus driver uniforms specific to Moorpark drivers. Thousand Oaks is also updating its phone system to record all phone conversations which will help with customer service.

Over the past two years, Moorpark and Thousand Oaks have also worked to align their transit service procedures, including Title VI inquiry responses (concerns with claims of discrimination based upon existing or proposed bus routes) and no-show policies. The proposed five year Agreements would enable Moorpark and Thousand Oaks staff continue to work together to provide similar transit services in the East County. As was previously mentioned, Thousand Oaks is also providing DAR transit services for the City of Westlake Village and the County of Ventura (for Oak Park and unincorporated areas surrounding Thousand Oaks).

Table 6 below provides a cost comparison of a few other transit services near Moorpark. Although each Fixed Route Transit service has differences when compared to Moorpark, the rates help to determine if Moorpark's costs are comparable with other transit agencies.

Table 6: Cost Comparison of Combined Operating and Capital Maintenance Services (per-hour)

Service	Heritage Valley FY 2013/14	Kanan Shuttle FY 2013/14	Moorpark FY 2014/15	VISTA FY 2014/15
Operating/Maintenance	\$83.93	\$87.83	\$84.00	\$134.62

Each transit service has its own features which means that the cost comparisons above are not specifically "apples-to-apples". For example, Heritage Valley operates a General DAR program and uses smaller cut-a-way type vehicles. The Kanan Shuttle is a fixed route service, but, also operates smaller cut-a-way type vehicles. VISTA operates both 40 foot transit buses as well as 45-foot charter buses. In all three examples, the contracted transit provider owns the vehicles. Moorpark's service includes maintenance of Moorpark-owned 28-foot diesel buses and 32-foot CNG buses. Despite the differences in transit services, it appears that the City's hourly rates for services are reasonable compared with other transit agencies in Ventura County.

For DAR Paratransit services, the cost comparison becomes easier. The proposed Agreement is designed so that all contracted jurisdictions (Moorpark, Westlake Village, and County of Ventura) all pay the same per-trip rate. The FY 2014/15 rate is \$28.38 per trip which is in line with local transit services. Based upon the equal per cost trip, Moorpark's rate appears to be fair with other local transit agencies' DAR costs.

Based upon the above cost comparisons, it appears that Thousand Oaks' proposed hourly rates for Fixed Route service and per-trip rates for DAR Paratransit service are reasonable as compared with other local transit agencies.

FISCAL IMPACT

Tables 7 and 8 below provide estimated expenditures for FY 2014/15, compared to the City's FY 2014/15 Budget.

Table 7: FY 2014/15 Transit Rates for Standard Service (5,632 hours)

Service	FY 2014/15 Proposed Rates	Estimated Annual Expenditure	FY 2014/15 Budget
Fixed Route Operation	\$51.00 per hour	\$287,232	\$301,000
Preventive Maintenance	\$33.00 per hour*	\$135,856	\$170,371
Fixed Route Fuel**	Cost+\$0.20 per gallon	\$50,000	\$66,900
DAR Paratransit	\$28.38 per trip***	\$99,300	\$98,000
Estimated Total Annual Expenditure		\$572,388	\$636,271

* The \$33.00 per hour is an estimated rate. Thousand Oaks will actually charge for time and materials, not a standard revenue hour rate.

** Fixed Route Fuel is subtracted from the Thousand Oaks preventive maintenance costs.

*** The per-trip rate increases if the number of trips exceed 550 in one month (Moorpark's average trips per month is 380).

Table 8: FY 2014/15 Transit Rates for Demo Service (2,274 hours)

Service	FY 2014/15 Proposed Rates	Estimated Annual Expenditure	FY 2014/15 Budget
Fixed Route Operation	\$51.00 per hour	\$115,974	\$119,000
Preventive Maintenance	\$33.00 per hour*	\$48,990	\$67,800
Fixed Route Fuel**	Cost+\$0.20 per gallon	\$26,052	Part of Fixed Route Operation Cost
DAR Paratransit	\$28.38 per trip***	\$8,500	\$48,800
Estimated Total Annual Expenditure		\$199,516	\$235,600

* The \$33.00 per hour is an estimated rate. Thousand Oaks will actually charge for time and materials.

** Fixed Route Fuel is subtracted from the Thousand Oaks preventive maintenance costs and becomes part of the Fixed Route Operation expense for the demonstration service.

*** The per-trip rate increases if the number of trips exceed 550 in one month (Moorpark's average trips per month is 380).

The FY 2014/15 Budget includes a total of \$871,871 for transit services from the following sources:

- \$251,000 in Traffic Systems Management (TSM) Fund (2001) for operating the City buses during standard service hours.
- \$60,000 in TSM Fund (2001) for CNG fueling.
- \$6,900 in Local Transit Programs 8C Fund (5000) for diesel fuel
- \$50,000 in Local Transit Programs 8C Fund (5000) for operating the buses during standard service hours.
- \$170,371 in Local Transit Programs 8C Fund (5000) for maintaining the City's fleet of buses for standard service hours.
- \$49,000 in Local Transit Programs 8C Fund (5000) for operating the DAR Paratransit Service.
- \$49,000 in Local Transit Programs 8C Fund (5000) for vehicle leasing/maintenance of DAR Paratransit vehicles.
- \$105,000 in Other Federal Revenue/Grants Fund (2604) for operating the City buses during transit demonstration hours.
- \$60,000 in Other Federal Revenue/Grants Fund (2604) for maintenance of the City buses during transit demonstration hours, including fuel.
- \$43,200 in Other Federal Revenue/Grants Fund (2604) for maintenance of the City buses during transit demonstration hours.
- 27,400 in TSM Fund (2001) for local match requirements related to Fund 2604 expenditures.

Based upon the estimated service hours, maintenance expenses, and DAR Paratransit ridership demand, the City's FY 2014/15 budget is \$99,980 more than the estimated FY

2014/15 expenditure for transit services. Although as can be seen in Tables 7 and 8 above, some of the City's current expense lines do not have enough funding to cover the estimated FY 2014/15 expenses. Staff intends to perform the necessary budget line item transfers once the City's FY 2014/15 budget becomes effective.

Each Agreement includes the potential for an annual rate increase. The Moorpark Fixed Route Operations Agreement includes a possible annual Consumer Price Index (CPI) adjustment for years two through five. The CPI adjustment shall not exceed 3.00% for each year. The Moorpark Fixed Route Maintenance Agreement is fixed for the first year of service. After the first year, Thousand Oaks can adjust the rates but, they must give Moorpark at least 30-days-notice before implementing the rate increase. The Moorpark Dial-A-Ride Agreement cost will be adjusted for years two through five based on the sum of costs of all DAR and ADA trips provided by MV Transit for the period of July 1 through June 30 of the prior fiscal year divided by the total number of trips provided in the same time period plus MV Transit's earned CPI adjustment (as defined in their Agreement with Thousand Oaks) plus a 15.00% administrative charge. Costs exclude one-time capital expenditures associated with vehicle purchases and capital improvements projects specific to DAR service.

STAFF RECOMMENDATION

Authorize the Mayor to sign Intergovernmental Agreements with the City of Thousand Oaks for a five-year period for Fixed Route Transit Operations, Fixed Route Transit Preventive Maintenance, and Dial-A-Ride Paratransit Services, in amounts based on pricing described in the staff report above, subject to final language approval of the City Manager.

Attachments:

1. Fixed Route Transit Operations Agreement
2. Fixed Route Preventive Maintenance Agreement
3. Dial-A-Ride Paratransit Agreement

Project Name: Moorpark Fixed Route Operations

**AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
CITY OF MOORPARK**

THIS AGREEMENT, made and entered into this _____ by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereinafter referred to as "City"), and **CITY OF MOORPARK**, a municipal corporation (hereinafter referred to as "Moorpark"). The City and Moorpark agree as follows:

1. RETENTION OF CITY

Moorpark hereby retains City, and City hereby accepts such engagement, to perform the services described in Section 2. City warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by City are as follows:

Operation and management of Fixed Route Bus service in conjunction with Moorpark's local transportation programs, through City's contracted transit operator as set forth in the Scope of Work, attached as Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) Compensation. Fees to City for those services and expenses set forth in the Schedule of Fees, attached as Exhibit "B", shall be calculated as set forth therein. The fees set forth in the exhibit shall be binding upon Moorpark for the term of this Agreement.

(b) Invoice and Payment. All payments shall be made within thirty (30) days after receipt of written verification from the City of the actual compensation earned, in a form satisfactory to Moorpark. City shall address invoices as follows:

Moorpark Public Transit Division
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

4. EXTRA SERVICES

Moorpark shall pay City for Moorpark authorized extra services, not provided pursuant to the services described in Section 2, at fees mutually agreed to in writing in advance by the parties. Unless Moorpark and City have agreed in writing before the performance of extra services, no liability and no right to claim compensation for extra services or expenses shall exist.

5. THOUSAND OAKS PROJECT MANAGER

City shall perform the services required under this Agreement under the general direction of, and coordinated by, City's "Project Manager," who presently is Mike Houser, Transit Manager.

6. TERM

The term of this Agreement shall run concurrently with Transit Operations Contract No. 10470-2014, July 1, 2014 to June 30, 2019.

7. ASSIGNMENT OF SUBCONTRACTOR

City shall not assign this Agreement without Moorpark's prior written consent.

8. HOLD HARMLESS AND INDEMNITY

To the fullest extent permitted by law, City shall defend, indemnify and hold harmless Moorpark and its elected officials, officers, employees, servants, designated volunteers (collectively, "Indemnitees") from and against all claims, demands, lawsuits, judgments, damages, losses, injuries or liability, including, without limitation monetary or property damage, personal injury or wrongful death, and costs or expenses, including legal counsels' fees and costs of defense (collectively, "Claims") whether actual, alleged or threatened, which arise out of, pertain to, or relate to, in whole or in part, the negligent acts or omissions, or willful misconduct, of City, its elected officials, officers, agents, employees, contractors or consultants, including, without limitation, City's contracted transit operator, in the performance of this Agreement, except for such Claims arising from the sole negligence or willful misconduct of Moorpark. City shall require its contracted transit operator to similarly agree to defend and indemnify Moorpark for the acts or omissions of the contracted transit operator or its officers, agents, employees, contractors or consultants.

9. INSURANCE

City shall at all times during the term of this Agreement require City's contracted transit operator to carry the insurance specified in Section 10 ("Insurance") of the Agreement for Professional Services Between the City and Contract Operator, Contract No. 10470-2014, dated May 27, 2014. City shall require City's contracted transit operator to name Moorpark and its elected officials, officers and employees as

additional insured on all liability insurance as specified in said Section 10 of Agreement for Professional Services between the City and Contract Operator, Contract No. 10740-2014, dated May 27, 2014.

10. RELATION OF THE PARTIES

City is and shall at all times remain as to Moorpark a wholly independent contractor. The personnel performing the services under this Agreement on behalf of City shall at all times be under City's exclusive direction and control. Neither Moorpark nor any of its officers, employees, or agents shall have control over the conduct of City or any of City's officers, employees, or agents, except as set forth in this Agreement. City shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of Moorpark. City shall not incur or have the power to incur any debt, obligation, or liability against Moorpark, or bind Moorpark in any manner.

No employee benefits shall be available to City in connection with the performance of this Agreement. Except for the fees paid to City as provided in the Agreement, Moorpark shall not pay salaries, wages, or other compensation to City for performing services hereunder for Moorpark. Moorpark shall not be liable for compensation or indemnification to City for injury or sickness arising out of performing services hereunder.

11. TERMINATION BY CITY

Either party, through written notification, may upon sixty (60) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, City shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by Moorpark to City within thirty (30) days following submission of a final statement by City, unless termination is for cause. In such event, City shall be compensated only to the extent required by law. City or Moorpark, by notifying the other in writing may, upon seven (7) calendar days notice, terminate with cause, any portion or all of the services agreed to be performed under this Agreement. In the event a notice of termination is provided by one party to this Agreement for causable action, the other party to the Agreement will be given seven (7) calendar days to correct the causable action before termination of the Agreement takes place.

12. CORRECTIONS

The City shall correct, at its expense, all errors in the work which may be disclosed during the Moorpark's review of the City's work.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by City of the final payment made under this Agreement shall operate as and be a release of Moorpark from all claims and liabilities for compensation to City for anything done, furnished or relating to City's work or services. Acceptance of payment shall be any negotiation of Moorpark's check or the failure to make a written extra compensation claim within five (5) calendar days of the receipt of that check, whichever occurs first.

14. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

14.1 PERFORMANCE STANDARDS

Moorpark reserves the right to assess Performance Standards specified in Exhibit "C".

15. NON-APPROPRIATION OF FUNDS

Payments due and payable to City for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of Moorpark's funds. In the event Moorpark has not appropriated sufficient funds for payment of City's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

16. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Any action filed in

any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement. Except for City's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering or services, and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

17. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

18. MODIFICATION OF AGREEMENT

The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of Moorpark and City.

19. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

20. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Mike Houser, Transit Manager
City of Thousand Oaks
Municipal Service Center
1993 Rancho Conejo Boulevard
Thousand Oaks, CA 91320

TO MOORPARK: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

22. PERMITS AND LICENSES

City, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

23. LEGAL RESPONSIBILITIES

City shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. City shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act, Federal Transit Administration (FTA) Requirements as specified in Exhibit "D", and Occupational Health and Safety Administration laws and regulations. Moorpark, and its officers and employees, shall not be liable at law or in equity occasioned by failure of City to comply with this Section.

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

CITY OF MOORPARK

CITY OF THOUSAND OAKS

Janice S. Parvin, Mayor

Andrew P. Fox, Mayor

ATTEST:

Maureen Benson, City Clerk

Linda D. Lawrence, City Clerk

APPROVED AS TO ADMINISTRATION:

Steven Kueny, City Manager

Scott Mitnick, City Manager

SCOPE OF WORK

City Duties and Responsibilities - Operations

City accepts responsibility for and shall perform, through the use of City's contracted transit operator the services set forth below in connection with the operation and management of Moorpark Fixed Route Bus services.

Except as specifically noted below or where not applicable in the scope of work as described above, the terms of the City's contract with transit operator, shall describe and set forth the standards by which City shall provide services under this Agreement. To the extent of any conflict between the terms of the City's contract with transit operator and the terms of this Agreement, the terms of this Agreement shall control unless the City's Agreement with transit operator provides for a higher standard of service.

1. Operations:

City shall provide operations management at a level sufficient to oversee the performance of the services required under this Agreement.

2. Personnel:

All employees providing services under this Agreement with the exception of City's Project Manager and Fleet Maintenance Staff (City employees responsible for maintaining City and Moorpark vehicles) will be employees of City's contracted transit operator, and subject to the transit operator's rules or requirements of City's Transit Operator Agreement, Contract No. 10470-2014.

3. Service Area, and Days and Hours of Operation:

Moorpark Fixed Route Bus service operates Monday through Friday from 5:00 a.m. to 8:00 p.m. and Saturday from 8:00 a.m. to 5:00 p.m. There is no service outside these hours, or on the following six (6) national holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Service is provided on other federal, state and local holidays. The service days and hours of the Dial-A-Ride service may be adjusted to match any future changes in the Moorpark Fixed Route Bus service days and hours. Moorpark agrees to match any City modified service hours on December 24 and December 31.

Moorpark reserves the right to make adjustments to the service area, days, and hours. For major adjustments, City shall be notified in writing not less than seven (7) calendar days prior to the effective date; for minor adjustments, City shall be given at least twenty-four (24) hours notice.

4. Route:

City shall maintain two routes within the limits of Moorpark Monday through Friday and one route on Saturday. Routes shall conform to those published in the most recent map and schedule available in print and electronic form.

Moorpark reserves the right to make adjustments to the routes. For major adjustments, City will be notified not less than seven (7) calendar days prior to the effective date; for minor adjustments, City will be given at least twenty-four (24) hours notice.

5. Vehicles:

Moorpark has three (3) 2010 thirty-two (32) foot El Dorado EZ Rider II compressed natural gas (CNG) buses and two (2) 2005 twenty-eight (28) foot El Dorado MST II diesel buses. The two (2) MST II buses are also equipped with particulate matter traps that require electrical infrastructure at City's maintenance facility for routine recharging (burn-off cycle) of the particulate matter trap. Electrical requirements are:

Voltage:	208 +/-5 volts at the plug under load
Power:	2800 W at 208 VAC
Cycle:	60 Hz
Ground fault interrupt:	In accordance with local laws and regulations

In addition to the five (5) Moorpark-owned vehicles provided by Moorpark, City shall be able to provide a Dial-A-Ride van subject to Moorpark's written approval or Thousand Oaks Transit bus on an emergency basis if more than three (3) Moorpark buses are out of service.

Except for normal wear and tear, Moorpark vehicles shall be returned to Moorpark in the same condition as they were received by City at the end of the term this Agreement or when the Agreement is terminated.

6. Operations:

City shall be responsible for operation of the Moorpark Fixed Route Bus services. City shall ensure at all times that vehicles used for passenger conveyance shall be operated with due regard for the safety, comfort, and convenience of the general public. City shall be responsible for complying with all applicable federal, state, and local laws and requirements.

City shall be responsible for ensuring compliance with ADA 49 Code of Federal Regulations (CFR) Parts 27, 37, and 38: Transportation for individuals with disabilities, Final Rule, dated September 6, 1991, or as it may be amended.

Moorpark may, from time to time, issue directives concerning matters related to Moorpark Fixed Route Bus services. City shall assist Moorpark in implementing and/or enforcing these directives.

7. Customer Service Representation:

City shall make available to Moorpark riders its current customer service phone line, staffed by City's contractor, during the same hours and same requirements as City's service.

8. Vehicle Fueling:

City shall fuel Moorpark's vehicles at the Thousand Oaks Municipal Services Center fueling facility and Moorpark shall be responsible for the cost of all fuel. Moorpark shall not be billed for driver time to fuel vehicles.

9. Drivers:

City shall provide drivers, as required, utilizing its contracted transit operator.

10. Uniforms:

City shall require its contracted transit operator to follow the same uniform criteria required in City's Agreement for Professional Services between the City and Contract Operator, Contract No. 10470-2014, dated May 27, 2014, subject to Moorpark's written approval. In addition, City shall require the drivers to wear a name badge that includes the employee's name, Contractor Operator's name, and "Independent Contractor for City of Moorpark". The name badge shall be approved by Moorpark's City Manager or the City Manager's designee. The name badge shall be worn at all times while the driver provides service for Moorpark pursuant to this Agreement.

11. Operation Records and Reports:

City shall be required to maintain ridership and operations records for this service as described below.

City shall be responsible for submission of monthly service summary reports to Moorpark. These reports, to be submitted by City within fifteen (15) business days of the end of each calendar month, shall include, but not be limited to, the following:

- A. Listing of all vehicle breakdowns/road calls occurring while in service with a description of the cause and corrective actions taken for services conducted on behalf of Moorpark.
- B. Date, time, and length of time for any service disruptions.
- C. A monthly summary of vehicle miles, vehicle miles since last preventive maintenance inspection, a list of any vehicle repairs made, number and length of time a backup vehicle was used, and vehicle road calls.
- D. Total passenger counts by category and fare (student, adult, senior citizen, disabled, and etcetera) and date.

- E. Participant counts by payment method (cash, one-way ticket, monthly passes) by date.
- F. Missed or abbreviated route trips, delays or unusual incidents while on duty.
- G. From time to time, at Moorpark's request, City shall record passenger activity per stop.
- H. Monthly fuel consumption, by fuel type.

Additionally, City shall collect, record, and report annually other statistical data required under Section 15 of the Federal Transit Act which includes, but is not limited to, passenger count by fare, vehicle hours, vehicle miles, vehicle revenue hours, vehicle revenue miles, passengers per hour and wheelchair boardings.

12. Fares:

City shall require drivers to collect fares in accordance with fare policies as set by Moorpark and shall turn over the fareboxes to Moorpark at a designated time of day on weekdays when Moorpark City Hall is open. City shall require drivers to remove the farebox from the bus at Moorpark's City Hall bus stop and deliver the farebox to Moorpark's staff inside Moorpark City Hall. Fare collected between farebox submittals and on weekends shall be stored securely in the farebox inside the bus until the next weekday that Moorpark City Hall is open.

City shall accommodate Moorpark's future option to participate in a county-wide fare collection system that involves a computerized card-reading equipment that will be installed and maintained by Moorpark.

13. Meetings and Contact Information:

City shall make administrative staff available to attend two (2) meetings per year of Moorpark's Transportation and Public Works Committee. Moorpark shall notify City, in advance, of any meeting City is required to attend. City shall provide Moorpark with emergency and after hours contact telephone numbers and pagers that Moorpark may use, as necessary, to communicate with City after normal working hours.

14. Expanded Services:

From time to time Moorpark may wish to expand the hours or the days of services to the community. With twenty-one (21) days written notice, City shall provide the expanded service.

15. Notification of Service Disruptions:

City shall notify Moorpark, at the first available opportunity, but no later than one (1) hour after City is made aware, of any vehicle breakdowns or other problems that may cause service disruptions.

16. Operating During an Emergency:

In the event of a major emergency such as a natural disaster or other catastrophic event, City shall make transportation and communication resources available to Moorpark to the highest degree possible. If the normal line of direct authority from Moorpark is intact, City shall follow instruction of Moorpark. If normal line of direct authority is broken, and for the period while it is broken, City shall make best use of transportation resources following the direction of the organization which appears to have assumed responsibility.

Emergency transportation may include evacuation, transportation of injured and movement of people to food and shelter. City shall be reimbursed in accordance with the current Agreement rate, or, if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable and prompt reimbursement of City's actual costs. Reimbursements for such major emergency services shall be over and above the maximum obligation of this Agreement. Immediately after the emergency condition ceases, City shall reinstate normal transportation services. Payment shall be based on a written report showing services and cost breakdown related to emergency.

While operating during an emergency, City shall keep records of all emergency transportation in accordance with Federal Emergency Management Agency (FEMA) requirements in order for Moorpark to receive FEMA reimbursement for emergency transportation expenses. In the event that FEMA rejects Moorpark's reimbursement request due to City's reports not meeting FEMA's standards, City shall be required to re-write the reports for resubmittal. In the event FEMA rejects Moorpark's reimbursement request due to City's failure to keep proper records of emergency transportation services, City shall be required to reimburse Moorpark's emergency transportation services expenses within thirty (30) days or the expenses can be deducted from Moorpark's next invoice for Fixed Route Bus services.

While operating during an emergency, City shall not be assessed liquidated damages as specified in Exhibit "C" of this Agreement.

SCHEDULE OF FEES

Billing shall be on a revenue hour basis.

Year One (July 1, 2014 – June 30, 2015):

\$51.00 per revenue hour

An annual Consumer Price Index (CPI) adjustment in Agreement years two (2) through five (5) shall apply, not to exceed 3.00% in any one year. CPI will be calculated as the difference in the CPI between June of the current Agreement year and July of the previous Agreement year, all items, not seasonally adjusted, Los Angeles region, and using non-alternative method. In the event the CPI calculation results in a negative number, previous year's rate shall apply.

EXHIBIT C

Performance Standards

The performance standards described in Exhibit D, Transit Operations, Contract 10470-2014, dated May 27, 2014, shall apply to this Agreement. In the event Liquidated Damages are levied that apply solely to Moorpark Fixed Route Bus services, Moorpark shall be entitled to a credit on their next monthly invoice equal to the Liquidated Damages.

Force Majeure:

City shall be excused from performance as described above during the time and to the extent that it is prevented from performing in the customary manner by force majeure, fire, flood, war, riot, civil disturbance, vandalism, terrorism, epidemic, quarantine, strike, lockout, labor dispute, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities of government, or any other occurrences or circumstances which are beyond the control of City.

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS
(EXCERPT AS OF MAY 2010)

1. Medical/Drug/Alcohol Testing

City shall require pre-employment medical examinations, including drug testing, for all prospective drivers and other safety sensitive employees of City. In addition, for any prospective employee who held prior safety-sensitive positions for another United States Department of Transportation (USDOT)-funded employer, City shall, after obtaining the required permission, check with those previous employers for any prior positive test results. Additionally, City must have an anti-drug program established for employees under the Congressionally Mandated Drug-Free Workplace Act.

City shall comply with the Congressionally Mandated Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991, and 49 Code of Federal Regulations (CFR) Parts 653 and 654, superseded by Part 655 in 2002, regarding Drug and Alcohol Testing, and the FTA Drug and Alcohol testing requirements. The required testing includes pre-employment testing, testing after an accident, testing when there is reasonable suspicion, random testing, and testing before returning to duty to perform sensitive safety functions after a positive drug test.

2. Audit and Inspection

City shall permit the authorized representatives of Moorpark, the Ventura County Transportation Commission (VCTC), the USDOT and the Controller General of the United States to inspect and audit all data and records of City relating to its performance under this Agreement.

City also shall maintain all required records relating to this project for at least three (3) years after Moorpark makes final payment and all other pending matters are closed.

3. Clean Water

City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 United States Code (USC) Sections 1251 et seq. City agrees to report each violation to Moorpark and understands and agrees that Moorpark shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. City also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA if the subcontract includes services for Moorpark.

4. Equal Employment Opportunity

In connection with the execution of this Agreement, City shall not discriminate against any employee or applicant for employment because of age, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. City shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. Such actions shall include, but not be limited to the following: Employment, up-grading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. Such shall be in compliance with Executive Order 11246 amended by Executive Order 11375 and amended by Executive Order 11478 and as supplemented in United States Department of Labor (USDOL) regulations 41 CFR Part 60.

In connection with the execution of this Agreement, City shall comply with all aspects of the Federal Immigration and Naturalization Act of 1986.

5. Conservation

City shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act 42 USC, Sections 6321 et seq.

6. Clean Air

City agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC Sections 7401 et seq. City agrees to report each violation to Moorpark and understands and agrees that Moorpark shall, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. City also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA if the subcontract includes services for Moorpark.

7. Title VI of the Civil Rights Act of 1964

During the performance of this Agreement, City, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations:** City shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the USDOT 49 CFR, Part 21, as they may be amended from time to time, (Regulations), which are herein incorporated by reference and made a part of this Agreement.

- B. **Nondiscrimination**: City, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. City shall not participate either directly or indirectly in the discrimination prohibited by Part 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations. The proposal should include a statement by City certifying its compliance with the Regulations.
- C. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment**: In all solicitations either by competitive bidding or negotiation made by City for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by City of City's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- D. **Information and Reports**: City shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Moorpark or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, City shall so certify to Moorpark or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance**: In the event of City's noncompliance with nondiscrimination provisions of this Agreement, Moorpark shall impose sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to City under the Agreement until City complies; and/or
 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. **Incorporation of Provisions**: City shall include the provisions of paragraphs "A" through "E" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

8. **Contract Work Hours and Safety Standards Act (CWHSSA)**

The CWHSSA, 40 USC Sections 327-333 applies to all agreements over \$100,000 that may require or involve laborers or mechanics. The CWHSSA requires that laborers or mechanics cannot be required, or permitted, to work more than forty (40) hours in any workweek unless paid overtime at not less than one and one-half (1.5) times the basic rate of pay.

9. No Obligation by the Federal Government

Moorpark and City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Moorpark, City, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

City agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. Program Fraud and False or Fraudulent Statements or Related Acts

City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC Sections 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on City to the extent the Federal Government deems appropriate.

City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC Section 5307, the Federal Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 5307(n)(1) on City, to the extent the Federal Government deems appropriate.

City agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. Incorporation of FTA Terms

The provisions in Attachment 3 include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as it may be amended from time to time, are hereby

incorporated in this Agreement reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. City shall not perform any act, fail to perform any act or refuse to comply with any requests of Moorpark which would cause Moorpark to be in violation of the FTA terms and conditions.

12. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to City and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (A) City agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC Section 552(a). Among other things, City agrees to obtain the express consent of the Federal Government before THOUSAND OAKS or its employees operate a system of records on behalf of the Federal Government. City understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
- (B) City also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- (C) City agrees to comply with applicable transit employee protective requirements as follows:
 - (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, City agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 USC Section 5333(b), and USDOL guidelines at 29 CFR Part 215, and any agreements thereto. These terms and conditions are identified in the letter of certification from the USDOL to FTA applicable to the FTA recipient's project from which Federal assistance is provided to support work on the underlying contract. City agrees to carry out that work in compliance with the conditions stated in that USDOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 USC Section 5310(a)(2), or for projects for non-urbanized areas authorized by 49 USC Section 5311.

- (D) City also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

13. FEDERAL CHANGES

City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the VCTC and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Failure by City to so comply shall constitute a material breach of this Agreement. In the event any such changes significantly affect the cost or the schedule to perform the work, City shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this Agreement.

Project Name: Moorpark Fixed Route Maintenance

**AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
CITY OF MOORPARK**

THIS AGREEMENT, made and entered into this _____ by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereinafter referred to as "City"), and **CITY OF MOORPARK**, a municipal corporation (hereinafter referred to as "Moorpark"). The City and Moorpark agree as follows:

1. RETENTION OF CITY

Moorpark hereby retains City, and City hereby accepts such engagement, to perform the services described in Section 2. City warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by City are as follows:

Preventive maintenance, general maintenance, and fueling of Moorpark Fixed Route Transit buses, as set forth in the Scope of Work, attached as Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) Compensation. Fees to City for those services and expenses set forth in the Schedule of Fees, attached as Exhibit "B", shall be calculated as set forth therein. The fees set forth in the exhibit shall be binding upon Moorpark for the term of this Agreement.

(b) Invoice and Payment. All payments shall be made within thirty (30) days after receipt of written verification from the City of the actual compensation earned, in a form satisfactory to Moorpark. City shall address invoices as follows:

Moorpark Public Transit Division
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

4. EXTRA SERVICES

Moorpark shall pay City for Moorpark authorized extra services, not provided pursuant to the services described in Section 2, at fees mutually agreed to in writing in advance by the parties. Unless Moorpark and City have agreed in writing before the performance of extra services, no liability and no right to claim compensation for extra services or expenses shall exist.

5. THOUSAND OAKS PROJECT MANAGER

City shall perform the services required under this Agreement under the general direction of, and coordinated by, City's "Project Manager," who presently is Mike Houser, Transit Manager.

6. TERM

The term of this Agreement shall run concurrently with Transit Operations Contract No. 10470-2014, July 1, 2014 to June 30, 2019.

7. ASSIGNMENT OF SUBCONTRACTOR

City shall not assign this Agreement without Moorpark's prior written consent.

8. HOLD HARMLESS AND INDEMNITY

To the fullest extent permitted by law, City shall defend, indemnify and hold harmless Moorpark and its elected officials, officers, employees, servants, designated volunteers (collectively, "Indemnitees") from and against all claims, demands, lawsuits, judgments, damages, losses, injuries or liability, including, without limitation monetary or property damage, personal injury or wrongful death, and costs or expenses, including legal counsels' fees and costs of defense (collectively, "Claims") whether actual, alleged or threatened, which arise out of, pertain to, or relate to, in whole or in part, the negligent acts or omissions, or willful misconduct, of City, its elected officials, officers, agents, employees, contractors or consultants, including, without limitation, City's contracted transit operator, in the performance of this Agreement, except for such Claims arising from the sole negligence or willful misconduct of Moorpark.

9. INSURANCE

City shall maintain prior to the beginning of, and for the duration of this Agreement, insurance coverage as specified in Attachment 1.

10. RELATION OF THE PARTIES

City is and shall at all times remain as to Moorpark a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of City shall at all times be under City's exclusive direction and control. Neither Moorpark nor any of its officers, employees, or agents shall have control over the conduct of City or any of City's officers, employees, or agents, except as set forth in this Agreement. City shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of Moorpark. City shall not incur or have the power to incur any debt, obligation, or liability against Moorpark, or bind Moorpark in any manner.

No employee benefits shall be available to City in connection with the performance of this Agreement. Except for the fees paid to City as provided in the Agreement, Moorpark shall not pay salaries, wages, or other compensation to City for performing services hereunder for Moorpark. Moorpark shall not be liable for compensation or indemnification to City for injury or sickness arising out of performing services hereunder.

11. TERMINATION BY CITY

Either party, through written notification, may upon sixty (60) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, City shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by Moorpark to City within thirty (30) days following submission of a final statement by City, unless termination is for cause. In such event, City shall be compensated only to the extent required by law. City or Moorpark, by notifying the other in writing may, upon seven (7) calendar days notice, terminate with cause any portion or all of the services agreed to be performed under this Agreement. In the event a notice of termination is provided by one party to this Agreement for causable action, the other party to the Agreement will be given seven (7) calendar days to correct the causable action before termination of the Agreement takes place.

12. CORRECTIONS

The City shall correct, at its expense, all errors in the work which may be disclosed during the Moorpark's review of the City's work.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by City of the final payment made under this Agreement shall operate as and be a release of Moorpark from all claims and liabilities for compensation to City for anything done, furnished or relating to City's work or services. Acceptance of payment shall be any negotiation of Moorpark's check or the failure to make a written

extra compensation claim within five (5) calendar days of the receipt of that check, whichever occurs first.

14. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

14.1 PERFORMANCE STANDARDS

Moorpark reserves the right to assess Performance Standards specified in Exhibit "C".

15. NON-APPROPRIATION OF FUNDS

Payments due and payable to City for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of Moorpark's funds. In the event Moorpark has not appropriated sufficient funds for payment of City's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

16. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement. Except for City's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering or services, and contains all of the covenants and agreements between the

parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

17. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

18. MODIFICATION OF AGREEMENT

The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of Moorpark and City.

19. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

20. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

Mike Houser, Transit Manager
City of Thousand Oaks
Municipal Service Center
1993 Rancho Conejo Boulevard
Thousand Oaks, CA 91320

TO MOORPARK:

City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

22. PERMITS AND LICENSES

City, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

23. LEGAL RESPONSIBILITIES

City shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. City shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act, Federal Transit Administration (FTA) Requirements as specified in Exhibit "D", and Occupational Health and Safety Administration laws and regulations. Moorpark, and its officers and employees, shall not be liable at law or in equity occasioned by failure of City to comply with this Section.

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

CITY OF MOORPARK

CITY OF THOUSAND OAKS

Janice S. Parvin, Mayor

Andrew P. Fox, Mayor

ATTEST:

Maureen Benson, City Clerk

Linda D. Lawrence, City Clerk

APPROVED AS TO ADMINISTRATION:

Steven Kueny, City Manager

Scott Mitnick, City Manager

SCOPE OF WORK

City accepts responsibility for and shall perform, through the use of City's Fleet Maintenance Staff, shall perform preventive maintenance, general maintenance, and vehicle fueling of Moorpark's Fixed Route transit fleet.

1. Management:

City shall provide management at a level sufficient to oversee the performance of the services required under this Agreement.

2. Vehicles:

Moorpark has three (3) 2010 thirty-two (32) foot El Dorado EZ Rider II compressed natural gas (CNG) buses and two (2) 2005 twenty-eight (28) foot El Dorado MST II diesel buses. The two (2) MST II buses are also equipped with particulate matter traps that require electrical infrastructure at City's maintenance facility for routine recharging (burn-off cycle) of the particulate matter trap. Electrical requirements are:

Voltage:	208 +/-5 volts at the plug under load
Power:	2800 W at 208 VAC
Cycle:	60 Hz
Ground fault interrupt:	In accordance with local laws and regulations

In addition to the five (5) Moorpark-owned vehicles provided by Moorpark, City shall be able to provide a Dial-A-Ride van subject to Moorpark's written approval or Thousand Oaks Transit bus on an emergency basis if more than three (3) Moorpark buses are out of service.

Except for normal wear and tear, Moorpark vehicles shall be returned to Moorpark in the same condition as they were received by City at the end of the term this Agreement or when the Agreement is terminated.

3. Vehicle Maintenance:

City shall perform the duties and accept the responsibilities set forth in connection with the maintenance of Moorpark's vehicles and City's backup vehicle, referred to in this section as "vehicles". The omission of a duty or responsibility herein shall not relieve City of its obligation to perform such duty or accept such responsibility, so long as it is usual, customary and generally accepted within the public transportation industry as being an integral element of operating a fixed route public transportation system of a kind and character such as Moorpark City Transit. City shall be solely responsible for maintaining the vehicles, including tires, in the same operating condition and appearance in which they were received, subject to reasonable wear and tear based on mileage and age. Replacement tires are to be OEM quality or a grade better. During the Agreement period, Moorpark staff may have immediate and

unrestricted access to all vehicles and all maintenance records during planned or unannounced inspections of City's facility.

Failure by City to maintain Moorpark vehicles to maintenance standards as defined by the manufacturer's technical manual may result in the vehicles being repaired by Moorpark at City's expense. City shall perform all routine preventive maintenance, heavy repair, and running repairs necessary to keep Moorpark vehicles in a safe, reliable, and well maintained condition.

4. Maintenance Facility:

City shall provide and maintain an appropriate fixed maintenance facility within a thirty-five (35) mile radius from Moorpark City Hall, 799 Moorpark Avenue, Moorpark, California. Moorpark vehicles shall be stored at the facility when not in service. The facility shall be equipped with all tools and equipment necessary for maintenance of vehicles in accordance with this Agreement. When out-of-service, Moorpark vehicles shall be stored at all times either within an enclosed, paved garage, or within a paved, security-fenced outside storage area.

City shall be permitted to store one (1) of Moorpark's buses at the Thousand Oaks Transportation Center (Transportation Center), located at 265 S. Rancho Road, Thousand Oaks, California, in order to provide expedited response times when a Moorpark bus is needed in the event of a breakdown of one of Moorpark's in-service vehicles.

5. Daily Maintenance:

City or the City's contracted transit operator shall perform daily vehicle inspection and servicing on all vehicles under this Agreement. For purposes of this Agreement, daily inspection and servicing will include, but not be limited to, fueling; engine oil, coolant, water, and transmission fluid check/add; farebox vault pulling and replacement; wheelchair ramp/lift check; brake check; light and flasher check; and check all vehicle performance defects reported by drivers to identify potential safety and reliability items requiring immediate attention. City or the City's contracted transit operator shall develop, implement and maintain a written checklist of items included in the daily servicing of the vehicles. The checklist, subject to Moorpark's written approval, shall be utilized and kept on file for Moorpark and CHP review at any time during regular business hours. The checklist requirement may incorporate or supplement CHP required driver's pre-trip safety inspections.

6. Vehicle Cleaning:

City and the City's contracted transit operator shall maintain vehicles in a clean and neat condition at all times.

The interior of the vehicles shall be kept free of litter and debris to the maximum extent practicable throughout the operating day. Vehicles shall be swept and dusted daily. Interior panels, windows, and upholstery shall be cleaned of marks as necessary. The interiors of all vehicles shall be thoroughly washed at

least once per week, including all windows, seats, floor, stanchions, and grabrails. All foreign matter such as gum, grease, dirt, and graffiti shall be removed from interior surfaces during the interior cleaning process. Any damage to seat upholstery shall be repaired as soon as possible. Ceilings and walls shall be thoroughly cleaned at least once per month, or more often as necessary. Destination sign interior glass shall be cleaned as necessary to maintain a clean appearance and maximize visibility.

The exteriors of vehicles shall be washed as required to maintain a clean, inviting appearance and in no event less than once per week. Exterior washing shall include the bus body, all windows, and wheels. Rubber or vinyl exterior components such as tires, bumper fascia, fender skirts, and door edge guards shall be cleaned and treated with a preservative at least once per month, or as necessary to maintain an attractive appearance. At least every ninety (90) days, City's contracted transit operator shall provide a full detail of Moorpark's vehicles as described in Exhibit A, Scope of Work, Contract 10470-2014, dated May 27, 2014.

The vehicles shall be kept free of vermin and insects at all times. City shall exterminate all vermin and insects from the vehicles immediately upon their discovery, utilizing safe and non-hazardous materials.

7. Preventive Maintenance:

City shall develop and implement a preventive maintenance program. All preventive maintenance, and preventive maintenance inspections, shall be performed by City. At a minimum, City's preventive maintenance program shall adhere to the preventive maintenance schedules and standards of the industry, and shall meet the manufacturer's specifications and be sufficient so as not to invalidate or lessen warranty coverage, or operation, of Moorpark's vehicles. Adherence to preventive maintenance schedules shall not be regarded as reasonable cause for deferred maintenance in specific instances where City's employees observe that maintenance is needed in advance of schedule.

City shall not defer maintenance for any reason without the prior written consent of Moorpark's City Manager or the City Manager's designee. City shall adjust the work schedule of its employees as necessary to meet all scheduled services and complete preventive maintenance activities according to the schedule.

All parts used for preventive maintenance shall be new and meet manufacturer's specifications.

Moorpark, at its own expense, may inspect Moorpark's vehicles to ensure that regular preventive maintenance is being performed.

8. Vehicle Repairs:

All repairs to Moorpark vehicles shall be performed by City and shall be included in the final Agreement cost. City shall be permitted to use third-party vendors (Sub-let) when repairs or services to Moorpark vehicles require specialized expertise. Sub-let repairs shall be included in the final Agreement cost. Repairs shall include, but not be limited to, work to correct loss or damage; adjustments due to normal wear and tear; and overhaul, rebuilding or replacement of components. All required parts shall be new and meet manufacturer's specifications.

Repair work shall be conducted as soon as practicable upon learning that such work is required. City shall perform repair work expeditiously in response to identification of problems by drivers or other staff members. City shall assure Moorpark that required repairs shall not be deferred beyond a reasonable time.

City shall be familiar with vehicle and equipment warranties and shall comply with all warranty provisions in the conduct of its maintenance.

City, at no cost to Moorpark, shall provide all Moorpark vehicle body repair work and painting/decals resulting from vehicle accidents. All bodywork and painting/decals shall be performed to industry best standards or Moorpark's specifications.

Any repair work not considered routine, that has an estimated cost in excess of \$2,500 shall be pre-authorized by Moorpark's City Manager or the City Manager's designee before the work is performed.

Whenever repair work involves items under warranty, City's Fleet staff shall perform repairs as to not void the warranty. Whenever possible, City's Fleet staff shall inform Moorpark's City Manager or the City Manager's designee of the work required involving warranted components prior to beginning work.

9. Vehicle Towing:

In the event that towing of a Moorpark vehicle is required due to mechanical failure, Moorpark shall be responsible for paying for towing services. In the event of accident, City's contracted transit operator shall be responsible for paying for towing services.

10. Maintenance Records and Reports:

City shall prepare, maintain, and make available to City records and data relative to vehicle maintenance. Maintenance records shall be maintained on all vehicles indicating all warranty work, preventive maintenance, and repairs performed on each vehicle. All such records and reports shall be prepared and maintained in such a manner so as to fulfill any applicable state or federal requirements, as well as any needs of Moorpark to enable it to accurately evaluate City's maintenance performance and the operating expense associated with Moorpark-owned vehicles.

Records of all maintenance and inspections shall be made available to Moorpark, the CHP and/or such other regulatory agencies with jurisdiction when requested. Moorpark maintains the right to inspect, examine and test, at any reasonable time, any vehicles used in performance of this Agreement and any equipment used in the performance of maintenance work in order to ensure compliance with this Agreement. Such inspection shall not relieve City of the obligation to continually monitor the condition of all vehicles and to identify and correct all substandard or unsafe conditions immediately upon discovery.

City shall prepare and maintain records and reports that shall include, but are not limited to, the following:

- A. Daily vehicle inspection and servicing checklists.
- B. Work orders for all maintenance inspections, warranty repairs and other vehicle repairs including materials, parts and labor consumed.
- C. Road call reports, or work order, for each road call identifying date and time, vehicle number, problem, and mileage of vehicle.
- D. All fuel, fluids, and lubricants used.
- E. Monthly summary of vehicle miles, vehicle miles since last preventive maintenance inspection, a list of any vehicle repairs made, number and length of time a backup vehicle was used, and vehicle road calls.

11. Staffing:

City shall maintain qualified mechanics on duty during the hours of 6:30 am – 5:00 pm, Monday through Friday (except City holidays) and on-call at all other times.

Mechanics are required to possess a valid California driver's license with the proper endorsement for the operation of the type of vehicles to be used. City shall provide thorough training for all personnel for the proper performance of their duties. Mechanics shall also be thoroughly trained on the use of all equipment on Moorpark vehicles.

City's mechanics shall be employed by City and shall be appropriately trained in accordance with City's established Job Safety Program.

12. Vehicle Fueling:

City's Fleet staff or contracted transit operator shall fuel Moorpark's vehicles at the Thousand Oaks Municipal Services Center fueling facility and Moorpark shall be responsible for all fuel. Moorpark shall not be billed for time to fuel vehicles.

13. Monthly Reporting:

City shall be required to maintain maintenance records for this service as deemed necessary by Moorpark.

City shall be responsible for submission of monthly service summary reports to Moorpark. These reports, to be submitted by City within fifteen (15) business days of the end of each calendar month, shall include, but not be limited to, the following:

- A. Listing of all vehicle breakdowns/road calls occurring while in service with a description of the cause and corrective actions taken.
- B. Date, time, and length of time for any service disruptions.
- C. A monthly summary of vehicle miles, vehicle miles since last preventive maintenance inspection, a list of any vehicle repairs made, and number and length of time a backup vehicle was used.
- D. Missed or abbreviated route trips, delays or unusual incidents while on duty.

14. Meetings and Contact Information:

City shall make administrative staff available to attend two (2) meetings per year of Moorpark's Transportation and Public Works Committee. Moorpark shall notify City, in advance, of any meeting City is required to attend. City shall provide Moorpark with emergency and after hours contact telephone numbers and pagers that Moorpark may use, as necessary, to communicate with City after normal working hours.

15. Notification of Service Disruptions:

City shall notify Moorpark, at the first available opportunity, but no later than one (1) hour after City is made aware, of any vehicle breakdowns or other problems that may cause service disruptions.

16. Spare Parts:

City shall maintain an adequate supply of spare parts to minimize down time for routine maintenance and inspections. Specialized parts will be ordered as expeditiously as possible to minimize down time. City will seek pre-approval with Moorpark's City Manager or the City Manager's designee before placing an order for any part with a base cost in excess of \$1,000 and shall not place into inventory spares any part with a base price in excess of \$500 without approval of Moorpark's City Manager or the City Manager's designee. At the conclusion of the Agreement, City shall return any spare parts, keys, and manuals supplied to City by Moorpark. Moorpark shall be responsible to reimburse City for any spare parts in inventory that cannot be returned for credit at the conclusion of the Agreement.

EXHIBIT B

SCHEDULE OF FEES

Billing of all routine and pre-approved maintenance services shall be at the City's usual and customary rates for like services and will be according to the following schedule of fees:

Labor:	\$95.00 per hour
Parts:	Cost plus 35 percent
Sub-let:	Cost plus 15 percent
Fuel:	Cost plus \$0.20 per gallon or gasoline gallon equivalent (CNG)

Costs shall be fixed for year one of the Agreement and City shall notify Moorpark at least 30 days in advance of any changes to the schedule of fees in future years.

Any special repair or maintenance services that fall outside this Agreement, for example the installation of additional equipment on to the buses, will be at a price to be negotiated in writing, agreeable to City and Moorpark.

EXHIBIT C

**PERFORMANCE STANDARDS
FIXED ROUTE TRANSIT PREVENTIVE MAINTENANCE**

City shall maintain vehicles according to the most current maintenance practices in order to ensure Fixed Route Operations continue uninterrupted except where service is interrupted for those reasons stated herein.

City shall strive at all times to provide service in a manner that shall ensure responsive service to participants, while at the same time maximize service reliability and safety. In order to identify key areas of concern to Moorpark, various performance standards are described below for which liquidated damage fines may be assessed when service falls below the standard.

It is agreed any breach of this Agreement by City could result in substantial damages and injury to the public and Moorpark in amounts which are difficult to ascertain with specificity at this time. Therefore, certain dollar amounts are established here for the identified standards. Liquidated damages shall be waived if service disruption was the result of a manufacturer defect.

The performance standards described in Exhibit D, Transit Operator, Contract No. 10470-2014 shall apply to this Agreement. In addition, the following two performance measures shall apply specifically to this Agreement.

Measure	Standard	Liquidated Damage
Vehicle breakdowns and availability of backup vehicles	Breakdown shall not exceed 5% of the total trips scheduled during each quarter.	\$200 if breakdowns exceed 5% of total trips scheduled in a quarter.
	A backup bus shall be available at all times.	\$75 per day if a backup bus is not available.
Preventive Maintenance Inspections	One hundred percent (100%) preventive maintenance inspections to be completed as scheduled.	\$75 per vehicle per missed inspection.

Additional verifiable complaints against City may occur that are not listed above. Moorpark may, at its sole option, notwithstanding other rights and remedies, assess City with liquidated damages at the rate of \$200.00 per day to compensate Moorpark for staff time spent investigating the complaint until time that complaint is remedied. Said assessment shall be deducted from any payments due or to become due to City under the terms of the Agreement. No payment by Moorpark shall be construed as a waiver of Moorpark's right to deduct the assessment and the assessment may be deducted from any subsequent payment.

Force Majeure:

City shall be excused from performance as described above during the time and to the extent that it is prevented from performing in the customary manner by force majeure, fire, flood, war, riot, civil disturbance, vandalism, terrorism, epidemic, quarantine, strike, lockout, labor dispute, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities of government, or any other occurrences or circumstances which are beyond the control of City.

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS
(EXCERPT AS OF MAY 2010)

1. Medical/Drug/Alcohol Testing

City shall require pre-employment medical examinations, including drug testing, for all prospective drivers and other safety sensitive employees of City. In addition, for any prospective employee who held prior safety-sensitive positions for another United States Department of Transportation (USDOT)-funded employer, City shall, after obtaining the required permission, check with those previous employers for any prior positive test results. Additionally, City must have an anti-drug program established for employees under the Congressionally Mandated Drug-Free Workplace Act.

City shall comply with the Congressionally Mandated Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991, and 49 Code of Federal Regulations (CFR) Parts 653 and 654, superseded by Part 655 in 2002, regarding Drug and Alcohol Testing, and the FTA Drug and Alcohol testing requirements. The required testing includes pre-employment testing, testing after an accident, testing when there is reasonable suspicion, random testing, and testing before returning to duty to perform sensitive safety functions after a positive drug test.

2. Audit and Inspection

City shall permit the authorized representatives of Moorpark, the Ventura County Transportation Commission (VCTC), the USDOT and the Controller General of the United States to inspect and audit all data and records of City relating to its performance under this Agreement.

City also shall maintain all required records relating to this project for at least three (3) years after Moorpark makes final payment and all other pending matters are closed.

3. Clean Water

City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 United States Code (USC) Sections 1251 *et seq.* City agrees to report each violation to Moorpark and understands and agrees that Moorpark shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. City also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA if the subcontract includes services for Moorpark.

4. Equal Employment Opportunity

In connection with the execution of this Agreement, City shall not discriminate against any employee or applicant for employment because of age, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. City shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. Such actions shall include, but not be limited to the following: Employment, up-grading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. Such shall be in compliance with Executive Order 11246 amended by Executive Order 11375 and amended by Executive Order 11478 and as supplemented in United States Department of Labor (USDOL) regulations 41 CFR Part 60.

In connection with the execution of this Agreement, City shall comply with all aspects of the Federal Immigration and Naturalization Act of 1986.

5. Conservation

City shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act 42 USC, Sections 6321 et seq.

6. Clean Air

City agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC Sections 7401 et seq. City agrees to report each violation to Moorpark and understands and agrees that Moorpark shall, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. City also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA if the subcontract includes services for Moorpark.

7. Title VI of the Civil Rights Act of 1964

During the performance of this Agreement, City, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations:** City shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the USDOT 49 CFR, Part 21, as they may be amended from time to time, (Regulations), which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination:** City, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment City shall not participate either directly or indirectly in the discrimination prohibited by Part 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations. The proposal should include a statement by City certifying its compliance with the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by City for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by City of City's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- D. Information and Reports:** City shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Moorpark or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, City shall so certify to Moorpark or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of City's noncompliance with nondiscrimination provisions of this Agreement, Moorpark shall impose sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to City under the Agreement until City complies; and/or
 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions:** City shall include the provisions of paragraphs "A" through "E" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

8. Contract Work Hours and Safety Standards Act (CWHSSA)

The CWHSSA, 40 USC Sections 327-333 applies to all agreements over \$100,000 that may require or involve laborers or mechanics. The CWHSSA requires that laborers or mechanics cannot be required, or permitted, to work more than forty (40) hours in any workweek unless paid overtime at not less than one and one-half (1.5) times the basic rate of pay.

9. No Obligation by the Federal Government

Moorpark and City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Moorpark, City, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

City agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. Program Fraud and False or Fraudulent Statements or Related Acts

City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC Sections 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on City to the extent the Federal Government deems appropriate.

City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC Section 5307, the Federal Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 5307(n)(1) on City, to the extent the Federal Government deems appropriate.

City agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. Incorporation of FTA Terms

The provisions in Attachment 3 include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as it may be amended from time to time, are hereby

incorporated in this Agreement reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. City shall not perform any act, fail to perform any act or refuse to comply with any requests of Moorpark which would cause Moorpark to be in violation of the FTA terms and conditions.

12. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to City and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (A) City agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC Section 552(a). Among other things, City agrees to obtain the express consent of the Federal Government before THOUSAND OAKS or its employees operate a system of records on behalf of the Federal Government. City understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
- (B) City also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- (C) City agrees to comply with applicable transit employee protective requirements as follows:
 - (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, City agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 USC Section 5333(b), and USDOL guidelines at 29 CFR Part 215, and any agreements thereto. These terms and conditions are identified in the letter of certification from the USDOL to FTA applicable to the FTA recipient's project from which Federal assistance is provided to support work on the underlying contract. City agrees to carry out that work in compliance with the conditions stated in that USDOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 USC Section 5310(a)(2), or for projects for non-urbanized areas authorized by 49 USC Section 5311.

- (D) City also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

13. FEDERAL CHANGES

City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the VCTC and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Failure by City to so comply shall constitute a material breach of this Agreement. In the event any such changes significantly affect the cost or the schedule to perform the work, City shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this Agreement.

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, City will maintain insurance in conformance with the requirements set forth below. City will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, City agrees to amend, supplement or endorse the existing coverage to do so. City acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Moorpark in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to Moorpark.

City shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$5,000,000 per occurrence for all covered losses and no less than \$10,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$5,000,000 per accident. If City owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If City or City's employees will use personal autos in any way on this project, City shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease. City shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Moorpark for injury to employees of City, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval by Moorpark following receipt of proof of

insurance as required herein. Limits are subject to review but in no event less than \$10,000,000 aggregate.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by City. City and Moorpark agree to the following with respect to insurance provided by City:

1. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies. City agrees to have its insurer endorse the third party general liability coverage required herein using standard ISO endorsement CG 2010 with an edition prior to 1992 or other endorsement form that City considers equivalent. City also agrees to require all contractors and subcontractors to do likewise.
2. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow City or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. City hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
3. All insurance coverage and limits provided by City and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Moorpark or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to Moorpark and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by Moorpark, as the need arises. City shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect Moorpark's protection without Moorpark's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured

endorsement to City's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement or supplemental coverage is provided, Moorpark has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by Moorpark shall be charged to and promptly paid by City or deducted from sums due City, at Moorpark's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to Moorpark of any reduction or cancellation of coverage. City agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by City or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to Moorpark.
10. City agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by City, provide the same minimum insurance required of City. City agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. City agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to Moorpark for review.
11. City agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to Moorpark. If City's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Moorpark. At that time, Moorpark shall review options with the City, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. Moorpark reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the City 90 days advance written notice of such change. If such change results in substantial additional cost to the City, Moorpark will negotiate additional compensation proportional to the increased benefit to Moorpark.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any

steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. City acknowledges and agrees that any actual or alleged failure on the part of Moorpark to inform City of non-compliance with an insurance requirement in no way imposes any additional obligations to Moorpark nor does it waive any rights hereunder in this or any other regard.
15. City will renew the required coverage annually as long as Moorpark, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Moorpark executes a written statement to that effect.
16. City shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from City's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Moorpark within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of City under this Agreement. City expressly agrees not to use any statutory immunity defenses under such laws with respect to Moorpark, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. City agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge Moorpark or City for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Moorpark. It is not the intent

of Moorpark to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Moorpark for payment of premiums or other amounts with respect thereto.

Project Name: Moorpark Dial-a-Ride

**AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
CITY OF MOORPARK**

THIS AGREEMENT, made and entered into this _____ by _____ and between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereinafter referred to as "City"), and **CITY OF MOORPARK**, a municipal corporation (hereinafter referred to as "Moorpark"). The City and Moorpark agree as follows:

1. RETENTION OF CITY

Moorpark hereby retains City, and City hereby accepts such engagement, to perform the services described in Section 2. City warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by City are as follows:

Operation and management of Senior Dial-A-Ride (DAR) and Americans with Disabilities Act (ADA) Paratransit services in conjunction with Moorpark's local transportation programs, through City's contracted transit operator as set forth in the Scope of Work, attached as Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) Compensation. Fees to City for those services and expenses set forth in the Schedule of Fees, attached as Exhibit "B", shall be calculated as set forth therein. The fees set forth in the exhibit shall be binding upon Moorpark for the term of this Agreement. Rates for service will be based on a per ride cost. "Ride" shall be defined as a pick-up of authorized Senior DAR or ADA participant in the service area with transportation to another location within the service area.

(b) Invoice and Payment. All payments shall be made within thirty (30) days after receipt of written verification from the City of the actual compensation earned, in a form satisfactory to Moorpark. City shall address invoices as follows:

Moorpark Public Transit Division
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

4. EXTRA SERVICES

Moorpark shall pay City for Moorpark authorized extra services, not provided pursuant to the services described in Section 2, at fees mutually agreed to in writing in advance by the parties. Unless Moorpark and City have agreed in writing before the performance of extra services, no liability and no right to claim compensation for extra services or expenses shall exist.

5. THOUSAND OAKS PROJECT MANAGER

City shall perform the services required under this Agreement under the general direction of, and coordinated by, City's "Project Manager," who presently is Mike Houser, Transit Manager.

6. TERM

The term of this Agreement shall run concurrently with Transit Operations Contract No. 10470-2014, July 1, 2014 to June 30, 2019.

7. ASSIGNMENT OF SUBCONTRACTOR

City shall not assign this Agreement without Moorpark's prior written consent.

8. HOLD HARMLESS AND INDEMNITY

To the fullest extent permitted by law, City shall defend, indemnify and hold harmless Moorpark and its elected officials, officers, employees, servants, designated volunteers (collectively, "Indemnitees") from and against all claims, demands, lawsuits, judgments, damages, losses, injuries or liability, including, without limitation monetary or property damage, personal injury or wrongful death, and costs or expenses, including legal counsels' fees and costs of defense (collectively, "Claims") whether actual, alleged or threatened, which arise out of, pertain to, or relate to, in whole or in part, the negligent acts or omissions, or willful misconduct, of City, its elected officials, officers, agents, employees, contractors or consultants, including, without limitation, City's contracted transit operator, in the performance of this Agreement, except for such Claims arising from the sole negligence or willful misconduct of Moorpark. City shall require its contracted transit operator to similarly agree to defend and indemnify Moorpark for the acts or omissions of the contracted transit operator or its officers, agents, employees, contractors or consultants.

9. INSURANCE

City shall at all times during the term of this Agreement require City's contracted transit operator to carry the insurance specified in Section 10 ("Insurance") of the Agreement for Professional Services Between the City and Contract Operator, Contract No. 10470-2014, dated May 27, 2014. City shall require City's contracted transit operator to name Moorpark and its elected officials, officers and employees as additional insured on all liability insurance specified in Section 10 of Agreement for Professional Services between the City and Contract Operator, Contract No. 10470-2014, dated May 27, 2014.

10. RELATION OF THE PARTIES

City is and shall at all times remain as to Moorpark a wholly independent contractor. The personnel performing the services under this Agreement on behalf of City shall at all times be under City's exclusive direction and control. Neither Moorpark nor any of its officers, employees, or agents shall have control over the conduct of City or any of City's officers, employees, or agents, except as set forth in this Agreement. City shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of Moorpark. City shall not incur or have the power to incur any debt, obligation, or liability against Moorpark, or bind Moorpark in any manner.

No employee benefits shall be available to City in connection with the performance of this Agreement. Except for the fees paid to City as provided in the Agreement, Moorpark shall not pay salaries, wages, or other compensation to City for performing services hereunder for Moorpark. Moorpark shall not be liable for compensation or indemnification to City for injury or sickness arising out of performing services hereunder.

11. TERMINATION BY CITY

Either party, through written notification, may upon sixty (60) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, City shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by Moorpark to City within thirty (30) days following submission of a final statement by City, unless termination is for cause. In such event, City shall be compensated only to the extent required by law. City or Moorpark, by notifying the other in writing may, upon seven (7) calendar days notice, terminate with cause, any portion or all of the services agreed to be performed under this Agreement. In the event a notice of termination is provided by one party to this Agreement for causable action, the other party to the Agreement will be given seven (7) calendar days to correct the causable action before termination of the Agreement takes place.

12. CORRECTIONS

The City shall correct, at its expense, all errors in the work which may be disclosed during the Moorpark's review of the City's work.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by City of the final payment made under this Agreement shall operate as and be a release of Moorpark from all claims and liabilities for compensation to City for anything done, furnished or relating to City's work or services. Acceptance of payment shall be any negotiation of Moorpark's check or the failure to make a written extra compensation claim within five (5) calendar days of the receipt of that check, whichever occurs first.

14. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

14.1 PERFORMANCE STANDARDS

Moorpark reserves the right to assess Performance Standards specified in Exhibit "C".

15. NON-APPROPRIATION OF FUNDS

Payments due and payable to City for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of Moorpark's funds. In the event Moorpark has not appropriated sufficient funds for payment of City's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

16. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement. Except for City's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

17. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

18. MODIFICATION OF AGREEMENT

The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of Moorpark and City.

19. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

20. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Mike Houser, Transit Manager
City of Thousand Oaks
Municipal Service Center
1993 Rancho Conejo Boulevard
Thousand Oaks, CA 91320

TO MOORPARK: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

22. PERMITS AND LICENSES

City, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

23. LEGAL RESPONSIBILITIES

City shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. City shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act, Federal Transit Administration (FTA) Requirements as specified in Exhibit "D", and Occupational Health and Safety Administration laws and regulations. Moorpark, and its officers and employees, shall not be liable at law or in equity occasioned by failure of City to comply with this Section.

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

CITY OF MOORPARK

CITY OF THOUSAND OAKS

Janice S. Parvin, Mayor

Andrew P. Fox, Mayor

ATTEST:

Maureen Benson, City Clerk

Linda D. Lawrence, City Clerk

APPROVED AS TO ADMINISTRATION:

Steven Kueny, City Manager

Scott Mitnick, City Manager

SCOPE OF WORK

City's Duties and Responsibilities - Operations

City accepts responsibility for and shall perform, through the use of City's contracted transit operator the services set forth below in connection with the operation and management of Moorpark's DAR and ADA services.

Except as specifically noted below or where not applicable in the scope of the duties as described above, the terms of the City's contract with transit operator, shall describe and set forth the standards by which City shall provide services under this Agreement. To the extent of any conflict between the terms of the City's contract with transit operator and the terms of this Agreement, the terms of this Agreement shall control.

1. Operations:

City shall provide operations management at a level sufficient to oversee the performance of the services required under this Agreement.

2. Service Area, and Days and Hours of Operation:

Moorpark Intra-City Senior and ADA Paratransit: This origin-to-destination service is for residents aged 62 and older and persons with disabilities certified under ADA. Service area is within the Moorpark city limits.

Inter-City ADA Paratransit: This origin-to-destination service enables persons with disabilities certified under the ADA to travel from Moorpark to Thousand Oaks/Westlake Village, Oak Park, and Camarillo. The service also provides transfer services to the cities of Oxnard and Ventura, and Los Angeles County. Travel to and from the City of Simi Valley for persons with an ADA card where the trip originates in Moorpark shall be provided as well. Trips originating from Simi Valley (i.e., Simi Valley residents) shall be provided at designated transfer points.

Transfer Points are:

Simi Valley (via Simi Valley Transit):

- Simi Valley Town Center – 1555 Simi Town Center Way, Simi Valley. At the Vista East County bus stop on Jefferson Way (behind the Town Center).
- Wood Ranch Shopping Center – 591 Country Club Drive, Simi Valley, in front of Starbuck's.

Oxnard/Ventura (via Gold Coast Transit):

- Camarillo Bus Stop – 1306 North Del Norte Drive, Camarillo,

Los Angeles County (Via L.A. Access):

- Carl's Jr. – 887 South Westlake Boulevard, Thousand Oaks.

The Moorpark Dial-A-Ride and ADA Paratransit Service is provided on the following schedule: Monday through Friday, 5:00 a.m. – 8:00 p.m., Saturday and Sunday, 8:00 a.m. – 5:00 p.m. Intercity ADA services are provided Monday – Friday from 6:00 a.m. – 6:00 p.m. and from 8:00 a.m. – 5:00 p.m. Saturday and Sunday (Service area limited to Thousand Oaks, Moorpark, Westlake Village, and Oak Park).

There is no service outside these hours, or on the following six (6) national holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Service is provided on other federal, state and local holidays. The service days and hours of the Dial-A-Ride service may be adjusted to match any future changes in the Moorpark Fixed Route service days and hours. Moorpark agrees to match City modified service hours on December 24 and December 31.

Moorpark reserves the right to make adjustments to the service area, days, and hours. For major adjustments, City shall be notified in writing not less than seven (7) calendar days prior to the effective date; for minor adjustments, City shall be given at least twenty-four (24) hours notice.

3. Personnel:

All employees providing services under this Agreement with the exception of City's Project Manager and Fleet staff will be employees of City's contracted transit operator, and subject to the transit operator's rules or requirements of City's transit operator Agreement, Contract No. 10470-2014.

4. Dispatch:

City shall provide dispatch services for Moorpark during the same times and days as required by City. Reservation guidelines are as follows:

Intra-City travel: Participants may call two (2) hours in advance of requested pick-up time.

Inter-City travel: Once ADA certified, participants are advised to make reservations at a minimum of the day before a requested pick-up and not more than fourteen (14) days in advance.

5. Vehicles:

City warrants that it has sufficient vehicles to adequately meet demand and provide service within the on-time performance standards described in the transit operator Agreement, Contract No. 10470-2014, dated May 27, 2014. The additional service demand is estimated to be not more than 500 rides per month. In the event demand for rides exceeds the estimate plus ten percent (10%) as calculated on a monthly basis, Moorpark shall provide additional compensation to City as described in Schedule of Fees, attached as Exhibit "B," to partially offset the cost of additional vehicles that will have to be placed into service to accommodate the excess demand.

6. Drivers:

City shall provide drivers and customer service as required utilizing its contract operator.

7. Operation Records and Reports:

City shall be required to maintain ridership and operations records for this service as described below.

City shall be responsible for submission of monthly service summary reports to Moorpark. These reports, to be submitted by City within fifteen (15) business days of the end of each calendar month, shall include, but not be limited to, the following:

- A. Listing of all vehicle breakdowns/road calls occurring while providing service to Moorpark residents with a description of the cause and corrective actions taken.
- B. Date, time, and length of time for any service disruptions.
- C. A monthly summary of vehicle miles, vehicle miles since last preventive maintenance inspection, a list of any vehicle repairs made, number and length of time a backup vehicle was used, and vehicle road calls.
- D. Total participant counts by category and fare (senior, ADA, Intra, Inter) and date.
- E. Participant counts by payment method (cash, pass, free meal trip, transfer) by date.
- F. Missed or abbreviated route trips, delays or unusual incidents while on duty.

Additionally, City shall collect, record, and report annually other statistical data required under Section 15 of the Federal Transit Act which includes, but is not limited to; participant count by fare, vehicle hours, vehicle miles, vehicle

revenue hours, vehicle revenue miles, participants per hour, wheelchair boardings, participant trip denials, and participant “no-shows”.

8. Fares:

City shall collect fares as established by Moorpark. The fares are (one way):

Intra City

Senior or ADA service: \$1.50 per participant
City Senior Nutrition trips: \$1.50 suggested donation per participant

Inter-City ADA trips: \$3.00 per participant (Thousand Oaks/Moorpark, Simi Valley – via transfer point)
\$4.50 per participant (Camarillo, Oak Park, Gold Coast Transit, L.A. Access)

Senior Nutrition Trips are trips to and from Moorpark’s Active Adult Center, 799 Moorpark Avenue, to access the Senior Nutrition Program. Personal Care Attendants (PCAs) do not pay fare. Companions must pay fare equal to the participant fare.

When performing transfer services, the originating operator collects the full fare. City will keep fares collected by transit operator and deduct the collected fares from Moorpark’s invoice.

9. Meetings and Contact Information:

City shall make administrative staff available to attend two (2) meetings per year of Moorpark’s Transportation and Public Works Committee. Moorpark shall notify City, in advance, of any meeting City is required to attend. City shall provide Moorpark with emergency and after hours contact telephone numbers and pagers that Moorpark may use, as necessary, to communicate with City after normal working hours.

10. Expanded Services:

From time to time Moorpark may wish to expand the hours or the days of services to the community. With twenty-one (21) days written notice, City shall provide the expanded service.

11. Notification of Service Disruptions:

City shall notify Moorpark, at the first available opportunity, but no later than one (1) hour after City is made aware, of any vehicle breakdowns or other problems that may cause service disruptions.

12. Operating During an Emergency:

In the event of a major emergency such as a natural disaster or other catastrophic event, City shall make transportation and communication resources available to Moorpark to the highest degree possible. If the normal

line of direct authority from Moorpark is intact, City shall follow instruction of Moorpark. If normal line of direct authority is broken, and for the period while it is broken, City shall make best use of transportation resources following the direction of the organization which appears to have assumed responsibility.

Emergency transportation may include evacuation, transportation of injured and movement of people to food and shelter. City shall be reimbursed in accordance with the current Agreement rate, or, if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable and prompt reimbursement of City's actual costs. Reimbursements for such major emergency services shall be over and above the maximum obligation of this Agreement. Immediately after the emergency condition ceases, City shall reinstate normal transportation services. Payment shall be based on a written report showing services and cost breakdown related to emergency.

While operating during an emergency, City shall keep records of all emergency transportation in accordance with Federal Emergency Management Agency (FEMA) requirements in order for Moorpark to receive FEMA reimbursement for emergency transportation expenses. In the event that FEMA rejects Moorpark's reimbursement request due to City's reports not meeting FEMA's standards, City shall be required to re-write the reports for resubmittal. In the event FEMA rejects Moorpark's reimbursement request due to City's failure to keep proper records of emergency transportation services, City shall be required to reimburse Moorpark's emergency transportation services expenses within thirty (30) days or the expenses can be deducted from Moorpark's next invoice for Fixed Route Bus services.

While operating during an emergency, City shall not be assessed liquidated damages as specified in Exhibit "C" of this Agreement.

13. Invoice Attachments:

When submitting invoices, Contractor shall also provide driver sheets for all trips provided, which shall include the following:

<ul style="list-style-type: none">• Driver's name and vehicle ID number• Date• Appointment time• Actual pick-up time• Actual drop-off time• ADA number (if applicable)• Participant name• Inter or Intra trip designation• Pick-up address	<ul style="list-style-type: none">• Destination address• Fare paid/transfer• Odometer at pick-up point• Odometer at drop-off point• Mileage/trip• Total mileage• If a PCA and/or companion was included• Total trips• Total participants
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14. Service Complaints:

All service complaints originating from Moorpark's service area shall be handled in accordance with City's standards of response and the obligations of the contracted transit operator. In the event City is unable to satisfactorily resolve the complaint or the complaint involves an issue outside the scope of this Agreement, the complaint will be referred to Moorpark for resolution.

EXHIBIT B

SCHEDULE OF FEES

City shall bill Moorpark on a per ride basis. For year one of the Agreement, this cost shall be \$28.38 per ride including fifteen percent (15%) City administrative charge. Moorpark shall receive credit for all fares collected. For each subsequent contract year, this cost shall be calculated annually for the new fiscal year by City no later than August 31 and shall apply retroactively to July 1 of the fiscal year. City shall notify Moorpark in writing no later than September 15 of the cost per ride for the year beginning July 1. This cost shall be calculated in the following manner:

Sum of costs of all DAR and ADA rides provided by transit operator for the period of July 1 – June 30 of the prior fiscal year divided by the total number of rides provided in the same time period plus contract transit operator’s earned CPI adjustment as described in Agreement for Professional Services Between the City and Contract Operator, Contract No. 10470-2014, May 27, 2014 plus 15 percent City administrative charge. Costs shall be inclusive of all operational and personnel costs but excludes from calculation one-time capital costs associated with vehicle purchases and capital improvement projects specific to the DAR service. Figures will be taken directly from City’s annual ridership report to the Federal Transit Administration and from City’s Accounting System.

The rate shall be recalculated annually each contract year in accordance with the above.

Should the number of rides provided in any calendar month under this Agreement exceed more than ten percent of the base of 500 rides per month, Moorpark shall further compensate City according to the following formula:

Percent over base	Number of Rides	Additional Monthly Cost
11-20%	(551-600)	\$ 200
21-30%	(601-650)	\$ 300
31-40%	(651-700)	\$ 400
41-50%	(701-750)	\$ 500
51-99%	(751-999)	\$1,000
100+%	(1,000+)	\$1,500

Should the number of rides provided in three consecutive calendar months under this Agreement exceed more than 700 rides per month, City and Moorpark shall meet and confer to negotiate a recalculation of the “Additional Monthly Cost.”

Extra services shall be billed at a rate mutually agreeable to Moorpark and City. This extra services billing shall be in writing.

Performance Standards

The performance standards described in Exhibit D, Transit Operations, Contract 10470-2014, dated May 27, 2014, shall apply to this Agreement. In the event Liquidated Damages are levied that apply solely to Moorpark DAR and ADA service, Moorpark shall be entitled to a credit on their next monthly invoice equal to the Liquidated Damages.

Force Majeure:

City shall be excused from performance as described above during the time and to the extent that it is prevented from performing in the customary manner by force majeure, fire, flood, war, riot, civil disturbance, vandalism, terrorism, epidemic, quarantine, strike, lockout, labor dispute, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities of government, or any other occurrences or circumstances which are beyond the control of City.

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS
(EXCERPT AS OF MAY 2010)

1. Medical/Drug/Alcohol Testing

City shall require pre-employment medical examinations, including drug testing, for all prospective drivers and other safety sensitive employees of City. In addition, for any prospective employee who held prior safety-sensitive positions for another United States Department of Transportation (USDOT)-funded employer, City shall, after obtaining the required permission, check with those previous employers for any prior positive test results. Additionally, City must have an anti-drug program established for employees under the Congressionally Mandated Drug-Free Workplace Act.

City shall comply with the Congressionally Mandated Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991, and 49 Code of Federal Regulations (CFR) Parts 653 and 654, superseded by Part 655 in 2002, regarding Drug and Alcohol Testing, and the FTA Drug and Alcohol testing requirements. The required testing includes pre-employment testing, testing after an accident, testing when there is reasonable suspicion, random testing, and testing before returning to duty to perform sensitive safety functions after a positive drug test.

2. Audit and Inspection

City shall permit the authorized representatives of Moorpark, the Ventura County Transportation Commission (VCTC), the USDOT and the Controller General of the United States to inspect and audit all data and records of City relating to its performance under this Agreement.

City also shall maintain all required records relating to this project for at least three (3) years after Moorpark makes final payment and all other pending matters are closed.

3. Clean Water

City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 United States Code (USC) Sections 1251 *et seq.* City agrees to report each violation to Moorpark and understands and agrees that Moorpark shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. City also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA if the subcontract includes services for Moorpark.

4. Equal Employment Opportunity

In connection with the execution of this Agreement, City shall not discriminate against any employee or applicant for employment because of age, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. City shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. Such actions shall include, but not be limited to the following: Employment, up-grading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. Such shall be in compliance with Executive Order 11246 amended by Executive Order 11375 and amended by Executive Order 11478 and as supplemented in United States Department of Labor (USDOL) regulations 41 CFR Part 60.

In connection with the execution of this Agreement, City shall comply with all aspects of the Federal Immigration and Naturalization Act of 1986.

5. Conservation

City shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act 42 USC, Sections 6321 et seq.

6. Clean Air

City agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC Sections 7401 et seq. City agrees to report each violation to Moorpark and understands and agrees that Moorpark shall, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. City also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance by FTA if the subcontract includes services for Moorpark.

7. Title VI of the Civil Rights Act of 1964

During the performance of this Agreement, City, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations:** City shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the USDOT 49 CFR, Part 21, as they may be amended from time to time, (Regulations), which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination:** City, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. City shall not participate either directly or indirectly in the discrimination prohibited by Part 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations. The proposal should include a statement by City certifying its compliance with the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by City for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by City of City's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- D. Information and Reports:** City shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Moorpark or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, City shall so certify to Moorpark or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of City's noncompliance with nondiscrimination provisions of this Agreement, Moorpark shall impose sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to City under the Agreement until City complies; and/or
 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions:** City shall include the provisions of paragraphs "A" through "E" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

8. Contract Work Hours and Safety Standards Act (CWHSSA)

The CWHSSA, 40 USC Sections 327-333 applies to all agreements over \$100,000 that may require or involve laborers or mechanics. The CWHSSA requires that laborers or mechanics cannot be required, or permitted, to work more than forty (40) hours in any workweek unless paid overtime at not less than one and one-half (1.5) times the basic rate of pay.

9. No Obligation by the Federal Government

Moorpark and City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Moorpark, City, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

City agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. Program Fraud and False or Fraudulent Statements or Related Acts

City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC Sections 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on City to the extent the Federal Government deems appropriate.

City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC Section 5307, the Federal Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 5307(n)(1) on City, to the extent the Federal Government deems appropriate.

City agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. Incorporation of FTA Terms

The provisions in Attachment 3 include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as it may be amended from time to time, are hereby

incorporated in this Agreement reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. City shall not perform any act, fail to perform any act or refuse to comply with any requests of Moorpark which would cause Moorpark to be in violation of the FTA terms and conditions.

12. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to City and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (A) City agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC Section 552(a). Among other things, City agrees to obtain the express consent of the Federal Government before THOUSAND OAKS or its employees operate a system of records on behalf of the Federal Government. City understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
- (B) City also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- (C) City agrees to comply with applicable transit employee protective requirements as follows:
 - (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, City agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 USC Section 5333(b), and USDOL guidelines at 29 CFR Part 215, and any agreements thereto. These terms and conditions are identified in the letter of certification from the USDOL to FTA applicable to the FTA recipient's project from which Federal assistance is provided to support work on the underlying contract. City agrees to carry out that work in compliance with the conditions stated in that USDOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 USC Section 5310(a)(2), or for projects for non-urbanized areas authorized by 49 USC Section 5311.

- (D) City also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

13. FEDERAL CHANGES

City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the VCTC and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Failure by City to so comply shall constitute a material breach of this Agreement. In the event any such changes significantly affect the cost or the schedule to perform the work, City shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this Agreement.