

**SETTLEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF CARSON
AND
MV TRANSPORTATION, INC.**

This SETTLEMENT AGREEMENT (“**Agreement**”) is entered into as of December __, 2020, by and between the City of Carson, a municipal corporation (“**City**”), on the one hand, and MV Transportation, Inc., a California corporation, on the other (“**MV**”). City and MV are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**.” This Agreement is entered into with reference to the following facts and circumstances:

RECITALS

WHEREAS, City and MV entered into a “Fixed Route Transportation Contract Services Agreement” dated January 1, 2016 (the “Contract”), whereby City retained MV to provide contract services to City related to operation of the City’s fixed-route bus system known as the “Carson Circuit;” and

WHEREAS, pursuant to an order of the Carson Disaster Council based on the onset of the COVID-19 pandemic, on March 24, 2020, City notified MV that City would be suspending, until further notice (based on determination of the Disaster Council as to when operations could safely resume), the operation of the Carson Circuit, effective March 28, 2020 (the “Suspension”); and

WHEREAS, on March 24, 2020, MV acknowledged receipt of the notice of the Suspension and informed City that MV understood and would be meeting with its drivers to discuss other options; and

WHEREAS, on June 30, 2020, while the Suspension remained ongoing, MV submitted a request to City for financial assistance in the amount of \$31,340 per month (the “Fixed Cost Request”). The Fixed Cost Request stated, “[a]t the heart of this effort is the need for continued payments so that MV can in turn continue to pay not only our employees that are critical to the service, but also continue payments of fixed costs we assumed in the performance of our contracts”; and

WHEREAS, although the Fixed Cost Request states that MV representatives discussed with City representatives “how imperative it is that we do everything we can to maintain operational stability and the safest environment for our employees and passengers, both during this crisis and as service returns to normal levels in the future,” City denies that it or any of its officers, employees or agents ever represented to MV that MV was required to maintain operational readiness during the Suspension period or any portion thereof, or that Carson Circuit operations or Contract services would resume on any date certain or at all prior to expiration or termination of the Contract; and

WHEREAS, the Contract does not expressly require or provide for payment of fixed costs or other amounts during periods when services are suspended, and the Fixed Cost Request did not cite to any provision of the Contract or other legal authority as a basis for the Fixed Cost Request; and

WHEREAS, in or about early October, 2020, City staff engaged in discussions with MV regarding the Fixed Cost Request, resulting in MV reducing the amount requested to \$29,051 per month (the “Modified Request”); and

WHEREAS, on October 8, 2020, City issued MV a notice of termination of the Contract pursuant to Section 7.7 thereof, informing MV that in light of the continued and indefinite nature of the pandemic and the approaching January 1, 2021 expiration date of the five-year term of the Contract, and out of concern for protecting public health, the City did not anticipate resuming services pursuant to the Contract prior to expiration of the term. The Contract was thus terminated effective on or about November 7, 2020. The notice of termination also requested MV to take all feasible measures to reduce or eliminate fixed costs accruing to MV related to preserving its ability to perform or resume services pursuant to the Contract during the period between MV’s receipt of the notice of termination and the effective date of termination of the Contract.

WHEREAS, the Parties intend, by this Agreement, to settle fully and finally any and all claims between them related to the Suspension, the Fixed Cost Request, the Modified Request, or the City’s termination thereof (collectively, the “Dispute”), whether alleged or unalleged, on the terms set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein by reference.
2. **Effective Date.** This Agreement shall take effect upon the date of full execution hereof by the Parties (“**Effective Date**”).
3. **Payment.** City and MV hereby agree that City will pay to MV, within ten (10) City business days of the Effective Date, the sum of \$54,825. This amount represents three months’ worth of payment pursuant to the Modified Request, but excluding from the Modified Request fifty percent (50%) of the requested monthly vehicle lease expenses (i.e., excluding \$10,776 of the requested \$21,552, for a monthly payment amount of \$18,275 x 3 months = \$54,825), and is agreed upon by the Parties for purposes of settlement of the Dispute (the “Settlement Amount”).

4. General Release. For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party (a "Releasing Party") hereby fully and irrevocably releases and forever discharges the other Party, its constituent entities, employees (current and former), officials (elected and appointed), directors, managers, agents, and representatives, and each of them ("Releasees"), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, proceedings, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent ("Claims"), which the Releasing Party now has or may hereafter have related to the Dispute.
5. Civil Code Section 1542 Waiver. The Parties are aware of all rights that may be granted to them pursuant to Civil Code Section 1542, which section reads, in pertinent part, as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Parties nevertheless waive all rights granted to them by Civil Code Section 1542, and any similar statute, code, law or regulation of any state of the United States, or of the United States, and assume all risks for claims arising in the Dispute, heretofore or hereafter arising, known or unknown, from the subject matters of this release.

Furthermore, the Parties agree that the facts on which this release is based may turn out to be different from the facts now known or believed to be true in respect to the matters referred to above. Nevertheless, the Parties accept and assume the risk that such facts may turn out to be different and agree that the terms of this release shall in all respects be effective and not subject to termination, rescission, or modification by any such difference in the facts.

6. Notices. Any notice, demand or other communication of any kind that a Party may be required to serve upon the other Party pursuant to this Agreement shall be given in writing and be delivered (a) in person (including express, courier, or overnight service), (b) by facsimile (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or (c) by certified or registered mail, postage prepaid, return receipt requested, and, in any such case, addressed as follows:

If to MV, addressed to:

MV Transportation, Inc.
Attn.: Office of the General Counsel
2711 N Haskell Ave, Suite 1500 LB2
Dallas, TX 75204

If to City, addressed to:

City of Carson
Attn.: Robert Lennox, Community Services Director
701 E. Carson St.
Carson, CA 90745

With a copy to:

Sunny K. Soltani, City Attorney
Aleshire & Wynder, LLP
18881 Von Karman Ave., #1700
Irvine, CA 92612
Telephone: (949) 223-1170
Facsimile: (949) 223-1180

or to such other address or to such other person as a Party shall have last designated by such notice to the other Party. Each such notice, demand, or other communication, if addressed as aforesaid and delivered by one of the options specified in this paragraph, shall be effective upon the date of delivery, whether or not accepted by the addressee.

7. Compliance with Laws. Nothing contained in this Agreement shall be deemed or construed to waive or excuse any obligation of either Party to comply with any applicable law or regulation.
8. Public Record. This Agreement is not confidential or privileged, and may be disclosed freely at the will of either Party. This Agreement is a public record subject to disclosure pursuant to the California Public Records Act.
9. Non-Admission of Liability. The Parties acknowledge and agree that this Agreement is a settlement of the Dispute. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by the Parties and/or the Parties' releasees, including the Parties' attorneys, all of whom have consistently taken the position that they have no liability whatsoever.
10. Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to MV or any successor in the event of any default or breach by the City of the terms of this Agreement or for any amount which may become due to MV or any successor under the terms of this Agreement.
11. Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

12. Headings. The titles and headings of the paragraphs and sections of this Agreement are intended solely for convenience of reference, and shall not be construed as an explanation, modification or intended construction of any of the terms or provisions of this Agreement.
13. Entire Agreement. This Agreement constitutes the entire understanding by and between the Parties. Each Party acknowledges that no party, agent or representative of another Party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the Party to sign this document.
14. Amendment; Interpretation. The Parties agree that this Agreement shall not be amended or modified, except in writing signed by the Parties, and shall not be construed against any Party because that Party's representative drafted the Agreement or any portion of it.
15. Waiver. Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any time be deemed a waiver or relinquishment of any right or power at any other time or times.
16. Assistance of Counsel. The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.
17. No Assignment of Claims. The Parties, and each of them, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, and shall not hereafter assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of actions released under this Agreement.
18. Additional Acts. The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out this Agreement.
19. Agreement Binding on Successors. It is agreed that this Agreement, together with the releases, shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties.
20. Severability. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement, but in no event shall such provision affect, impair or invalidate any other provision hereof.
21. Jurisdiction and Venue. This Agreement is intended to be construed pursuant to the laws of the State of California. Each Party agrees that the proper venue for any action arising out of the breach or the interpretation of this Agreement or other documents delivered pursuant to any provision thereof, shall be the Superior Court of the State of California for the County of Los Angeles.

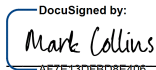
22. Prevailing Party Attorneys' Fees. Should either Party initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to recovery of its reasonable attorneys' fees and costs.
23. Authority to Execute Agreement. Each Party declares that it has read this Agreement and understands and knows the contents thereof, and each Party and signatory represents and warrants that each of the persons executing this Agreement is empowered to do so and thereby bind the respective Party to the terms hereof.
24. Voluntary Agreement. This Agreement is executed knowingly and voluntarily by each of the Parties without any duress or undue influence on the part of, or on behalf of, any of them.
25. Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute an agreement binding on the Parties. The Parties further agree that a digital or electronic signature shall have the same force and effect as a manual or wet-ink signature, and that a facsimile copy or a copy in pdf format of the executed counterparts shall have the same force and effect as an original.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

MV:

MV TRANSPORTATION, INC., a California corporation

By: 
[name, title] Mark Collins President & COO

By: 
[name, title] Marie Meisenbach Gaul CFO

CITY:

CITY OF CARSON, a municipal corporation

By: _____
Albert Robles, Mayor

APPROVED AS TO FORM

Sunny K. Soltani, City Attorney

ATTEST

Donesia Gause-Aldana, City Clerk

Two corporate officer signatures for a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer.