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**Title:** CONSIDER APPROVAL OF LETTER AGREEMENT BETWEEN THE CITY OF CARSON AND MV TRANSPORTATION, INC., REGARDING THE REFUND OF UNAUTHORIZED PAYMENTS UNDER FIXED ROUTE TRANSPORTATION CONTRACT SERVICES AGREEMENT (CITY COUNCIL)

**Sponsors:**

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**Attachments:** 1. Letter Agreement

Date	Ver.	Action By	Action	Result
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**Report to Mayor and City Council**

Tuesday, October 01, 2019

Consent

**SUBJECT:**

**CONSIDER APPROVAL OF LETTER AGREEMENT BETWEEN THE CITY OF CARSON AND MV TRANSPORTATION, INC., REGARDING THE REFUND OF UNAUTHORIZED PAYMENTS UNDER FIXED ROUTE TRANSPORTATION CONTRACT SERVICES AGREEMENT (CITY COUNCIL)**

**I. SUMMARY**

If the City Council approves the attached proposed Letter Agreement, the City will receive \$95,036.32 from consultant MV Transportation, Inc. ("MV"), as a refund of unauthorized contract payments that were made based on overbilling by MV for the calendar year 2018 pursuant to the Fixed Route Transportation Contract Services Agreement ("FRTCSA") existing between the parties.

The City's Transportation Services staff identified the discrepancy in the billing earlier this year and worked with the City Attorney's office to demand that MV refund the unauthorized payments to the City. MV has acquiesced to the City's demands and agreed to provide a full refund to the City in accordance with the attached proposed Letter Agreement, which provides for the refunds to be made in four equal monthly installments of \$23,759.08 each.

The proposed Letter Agreement has already been executed by MV, and would go into

effect immediately upon approval and execution by the City, providing for the refund to be made in full by conclusion of the September, 2019 billing cycle.

## **II. RECOMMENDATION**

1. APPROVE the attached proposed Letter Agreement between the City and MV Transportation, Inc. Re: Request for Refund of Unauthorized Payments Regarding that Certain Fixed Route Transportation Contract Services Agreement dated January 1, 2016, by and between the City of Carson and MV Transportation, Inc. (the “Letter Agreement”).
  
2. AUTHORIZE the City Manager to execute the Letter Agreement.

1.

## **III. ALTERNATIVES**

1. DO NOT APPROVE the Letter Agreement.
  
2. TAKE any other action the City Council deems appropriate that is consistent with the requirements of the law.

## **IV. BACKGROUND**

Under the FRTCSA, MV provides certain bussing services to the City, including operating the City’s fixed route transit system known as the Carson Circuit.

The FRTCSA establishes a maximum number of “revenue hours” for which the City may compensate MV annually for services performed. For calendar year 2018, the maximum number of revenue hours was 26,616. However, MV billed the City for 28,195.91 revenue hours during 2018, exceeding the limit by 1,579.91 hours. At the contract rate of \$60.153 per revenue hour for 2018, the 1,579.91 excess hours equated to a total overbilled amount of \$95,036.32. City staff, unaware that the annual revenue hours limit had been exceeded and that the overbilled hours were not authorized under the FRTCSA, caused the City to make payment of the overbilled amount in response to MV’s invoices.

Transportation staff identified the discrepancy and worked with the City Attorney’s office to send a demand letter to MV, dated July 11, 2019, which provided a thorough explanation of the issue and demanded a full refund of the overbilled amount based on the express terms of the FRTCSA. MV initially responded with a letter dated July 29, 2019, offering a partial

refund on the basis of a stated billing practice not described in the FRTCSEA, and requesting an amendment to the FRTCSEA.

Staff and the City Attorney's office then sent a second, more forceful demand letter dated August 14, 2019, reiterating the demand for a full refund of the overbilled amount of \$95,036.32. MV thereafter acquiesced to the City's demands and notified City staff accordingly.

Staff and the City Attorney's office then worked with MV to develop the terms of the attached Letter Agreement that is presented for the Council's approval. In addition to providing for the full refund, the Letter Agreement also provides that "[m]oving forward, MV shall invoice the City for revenue hours at rates not to exceed those stated in the Contract and shall refrain from invoicing the City for unauthorized revenue hours that exceed the limits under the Contract." (§4).

The City Manager's signature block is included on the Letter Agreement because the original plan of staff and the City Attorney's office was for the City Manager to sign and for Council to then ratify the agreement. However, because the Council is now requested to directly approve the Letter Agreement rather than ratifying it, the Council is also requested to authorize the City Manager to execute the Letter Agreement. This will save time and avoid the need for re-execution by MV.

## **V. FISCAL IMPACT**

If Council approves the Letter Agreement, then the City will receive \$95,036.32 from MV in refunds pursuant to the FRTCSEA. The refunds would be made in four equal monthly installments of \$23,759.08 each, to be applied as a credit against the amounts invoiced to the City for the months of June, July, August and September of 2019.

## **VI. EXHIBITS**

1. Letter Agreement. (Pgs. 4-5)

Prepared by: City Attorney's Office