

ORDINANCE NO. 1343

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH MV TRANSPORTATION, INC OF FAIRFIELD, CALIFORNIA FOR PROVIDING TRANSIT OPERATIONS FOR CANBY AREA TRANSIT (CAT); AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby on behalf of Canby Area Transit (CAT) heretofore issued Request for Proposal (RFP) CAT2011 on March 18, 2011 requesting proposals from qualified companies for Canby Area Transit Operations; and

WHEREAS, the City of Canby received proposals from four (4) potential companies as follows on or before 5:00 pm on April 15, 2011:

Company Name:

MV Transportation, Inc.
Oregon Housing & Associated Services (OHAS)
First Transit, Inc.
Marson Transit, Inc.

WHEREAS, following an interview process, a four (4) member Selection Committee met on April 21, 2011, to score the proposals in accordance with the Evaluation Criteria detailed in the RFP.


WHEREAS, MV Transportation, Inc. received the top score of 94% and was identified unanimously by the Selection Committee as the most able, experienced and cost efficient proposer; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and the City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with MV Transportation, Inc. of Fairfield, California to provide transit operations for the City's Transit System. A copy of said contract is attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to implement this ordinance in order to be able to provide its transit service to local citizens without further delay, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, June 15, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 6, 2011 commencing at the hour of 7:30 P.M. in the City Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon.




Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on July 6, 2011, by the following vote:

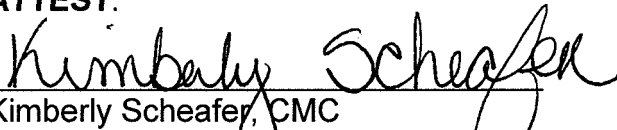
YEAS 5

NAYS 0



Randy Carson
Mayor

ATTEST:



Kimberly Scheafer, CMC
City Recorder

Contract for Transit Service

No: CAT2011

THIS CONTRACT made and entered into, in duplicate, this 6th day of July, 2011 by and between the City of Canby, Oregon, a municipal corporation, hereinafter called "City," and MV Public Transportation, Inc., with headquarters located in Fairfield, California hereinafter called "Contractor" for the following project and amount as set forth below.

WHEREAS, City is authorized by the Oregon Revised Statutes to furnish and operate public transportation services for the City of Canby and to enter into a contract with an operator to provide such services and City has determined such public transportation services were in the best interest of the residents of City and has exercised its authority within its boundaries to furnish such services; and

WHEREAS, City issued its Request for Proposal (RFP) dated March 18, 2011 to provide such services, and Contractor submitted its Proposal dated April 15, 2011 in response thereto. Following an evaluation by the City and its selection committee, Contractor was selected to be the most efficient and reliable service provider among the field of qualified competitors; and

WHEREAS, the Parties now wish to enter into this Transit Contract Agreement to memorialize their agreement,

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

Contractor will provide services as specified to operate Canby Area Transit service as described in the Request for Proposal and listed attachments beginning July 1, 2011 through June 30, 2013, with three (3) one-year options to renew in succeeding years. The Parties acknowledge and agree that a decision to renew is completely within the discretion of the City.

Attachments on file and FTA Requirements made part of this contract:

RFP CAT2011 - Which includes Federal Transit Administration Requirements (Section 4)
Amended RFP CAT2011 Section 1.3 and Attachment H (dated May 16, 2011)

Contractor response to RFP CAT2011 dated March 18, 2011

Contractor revised Cost Proposal (dated May 16, 2011)

This Transit Contract relies heavily on the published RFP by the City and the Proposal as submitted by the Contractor. Unless specifically noted in writing between the Parties, Contractor and City will follow all Terms and Conditions as outlined in the RFP and Contractor's Proposal dated May 31, 2011.

TERM OF CONTRACT: The initial term of this Contract shall be for a period of two (2) years commencing July 1, 2011 and ending on June 30, 2013. Thereafter, upon mutual agreement of the parties, the Contract may be extended for three (3) additional periods of one (1) year each. Both parties shall notify each other in writing at least 90 days in advance of the expiration date (June 30th) of its intention to either extend or not extend into the next

succeeding year. In the event the parties mutually agree to extend, the parties shall amend the Contract in a formal writing signed by both parties.

COMPENSATION: Compensation is based on a "revenue hour rate".

For purposes of this Contract, "Revenue Hour" shall be defined as: For fixed-route and commuter services the Revenue Hours are calculated from the start of customer service to the end of customer service for each route. Vehicle pre-trip inspections, fueling, cleaning and dead head are not included in fixed-route/commuter Revenue Hours. Therefore proposers should assure that these costs are covered by their Revenue Hour rate. For Dial-a-Ride (which is our paratransit service) Revenue Hours are calculated driver's clock time. Dial-a-Ride drivers hours vary based on demand. Dial-a-Ride drivers are given a new start time each day which is based on the ride requests for that day. Currently, the dispatching, call taking, scheduling, supervision of these services and all other activities detailed in the RFP are included in the Revenue Hour rate

Budget – Year 1 & 2 \$672,478.00 (14,280 Revenue Hours - @ \$47.08 per revenue hour)

Budget – Year 3 – Year 5 - To be added by amendment as agreed upon between the parties in future negotiation should the parties mutually agree to renew the agreement for succeeding year(s).

Compensation amount awarded is a not-to-exceed dollar figure which cannot be increased without documented justification and a signed authorization of contract change.

GENERAL CONDITIONS

CONTRACTOR IDENTIFICATION AND BUSINESS LICENSE: Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service. Contractor understands it is required to obtain an annual City of Canby business license for conducting business in the City.

SUBCONTRACTORS AND ASSIGNMENT: Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Contract incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all applicable OSHA regulations and requirements.

WAIVER OF CONDITIONS: The waiver of any provision, term or condition of these Contract Documents by City on any particular occasion shall not constitute a general waiver of said provision, term or condition, nor a release from Contractor's obligation to otherwise perform or observe such condition or any other term of the Contract.

SEVERABILITY: In the event any provision of this Contract is declared or determined to be unlawful, invalid or unconstitutional such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract and each provision of the Contract will be and is deemed to be separate and severable from each provision.

GOVERNING LAW AND VENUE: Contractor warrants and covenants that it shall fully and completely comply with all applicable Federal, State and local laws and ordinances, and all lawful orders, rules and regulations issued by any authority with jurisdiction in all aspects of its performance of this Contract. The laws of the State of Oregon shall govern the interpretation of any provisions of this contract. Venue shall be in the Clackamas County Circuit Court.

LEGAL EXPENSES: In the event legal action is brought by the City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs and expenses as may be set by the court both at trial and all appeals therefrom.

NOTICES: Either the City or Contractor may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

AMENDMENTS: Amendment or changes to this Contract shall be in writing and will become a part of this Contract when agreed upon by both parties and signed by the Authorized Officials.

CHANGES IN SCOPE:

a. The City may, at any time, request changes within the general scope of this Contract. If any such requested change would result in an anticipated increase in the cost of, or the time required for, the performance or any part of the work under this Contract, or would result in an anticipated increase or decrease of ten percent (10%) or more to Contractor's estimated annual revenue hours stated in the RFP, the parties shall negotiate an equitable adjustment to Contractor's rate and the Contract will be amended accordingly.

b. In the event any Federal, State, or local law, rule, regulation or ordinance becomes operative during the term of this Contract that has the effect of increasing Contractor's operating costs by ten percent (10%), to include, but not limited to, laws, rule, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on energy consumption; changes in the Americans With Disabilities Act; or government required increases to employee wages and/or benefits, to include health care benefits, the City and Contractor shall meet to discuss the impact of these unanticipated additional costs and negotiate an equitable adjustment to Contractor's rates.

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE: Throughout the term of this Contract, the City shall maintain a policy of automobile liability insurance with a combined single limit of not less than \$1,000,000 as to the ownership, maintenance, and use of "any auto." The Automobile Liability Insurance shall name the Contractor and the Contractor's officers, agents, and employees as additional insured parties. The City's insurance shall be primary and any insurance maintained by Contractor shall be non-contributory.

VEHICLE PHYSICAL DAMAGE INSURANCE: The City shall provide vehicle physical damage coverage (Comprehensive and Collision). Comprehensive covers losses caused by or resulting from damage from any cause except as otherwise excluded by Contractor insurance; and excluding terrorism, collision, upset, or overturn. Comprehensive coverage includes such perils as fire, lightning, explosion, theft, windstorm, hail, earthquake, flood, mischief, and vandalism. Collision covers losses caused by or resulting damage from collision with another object, upset, or overturn. The City's insurance shall be primary and any insurance maintained by Contractor shall be non-contributory.

INDEMNIFICATION:

a. Excluding all automobile liability and vehicle physical damage liabilities, damages, demands, judgments, awards, losses, costs, expenses, suits and actions (collectively referred to as "claims"), and all claims involving injury or death, or damages to person or property arising and resulting from the negligent acts, errors, or omissions of the City, its officers, employees, agents, or consultants, Contractor shall, to the extent permitted by law, protect, indemnify, and save the City and its officers, employees, and agents, harmless from and against any and all claims, including reasonable expenses, costs, and attorneys fees incurred by the City and its officers, employees and agents in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property, arising or resulting from the negligent acts, errors, or omissions of the Contractor, including the negligent acts, errors, or omissions of its officers, employees, servants, agents, subcontractors, and suppliers.

b. The City shall, to the extent permitted by law, protect, indemnify, and save the Contractor and its officers, employees, and agents, harmless from and against any and all automobile liability claims and vehicle physical damages claims, and any and all claims arising or resulting from the negligent acts, errors, or omissions of the City, including the negligent acts, errors, or omissions of its officers, employees, servants, agents, subcontractors, and suppliers, including reasonable expenses, costs, and attorneys fees incurred by the Contractor and its officers, employees and agents in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property, arising or resulting from operation and use of City-owned vehicles or Contractor's other performance of the Contract.

FORCE MAJEURE: Contractor shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to, any incidence of fire, flood, or severe weather; strike, labor dispute, labor work stoppages; acts of God, acts of the government, war or civil disorder, violence or the threat thereof, severe traffic congestion, commandeering of material, products, and plants or facilities by the government, and fuel shortages. Contractor agrees not to charge City for revenue hours not performed due to force majeure.

Any and all notices, writings, correspondence, etc as required by this Contract shall be directed to City and Contractor, respectively, as follows:

CITY OF CANBY:

Greg Ellis, City Administrator
PO Box 930
Canby, OR 97013
503.266.4021

CONTRACTOR:

Daniel Lee, Director, Contracts Administration
2024 College Street
Elk Horn, IA 51531
712.243.4478

IN WITNESS WHEREOF, City and Contractor have executed this Contract for Transit Service dated 6 July, 2011.

CITY:



Signature of Authorized Official

Greg Ellis, City Administrator
Name, Title of Authorized Official
(print or type)

7-6-11
Date

CONTRACTOR:

Signature of Authorized Official

Brad Cornelsen, CFO
Name, Title of Authorized Official
(print or type)

7/11/11
Date