

**RTS Transportation Services Contract**

**Rowan County & MV Contract Transportation Inc.**  
**CONTRACT FOR TRANSPORTATION SERVICES**

This contract is made and entered into this 30 day of September 2013, by and between the **Rowan County Government** on behalf of Rowan Transit System (hereinafter referred to as "County " or "RTS"), and **MV Contract Transportation Inc.** [hereinafter referred to as "MV"), whose official representatives and contacts are as follows:

**For Rowan Transit System**

Gary Price, RTS Director  
2726 Old Concord Rd.  
Salisbury, NC 28146  
Telephone: (704) 216-8889  
Fax: (704) 630-9638

**For MV Contract Transportation Inc.**

Patricia McArdle, Associate General Counsel  
MV Transportation, Inc.  
5910 North Central Expressway, Suite 1145  
Dallas, TX 75206  
972 391 4679

**WITNESSETH:**

**Whereas**, RTS issued a Request for Proposals ("RFP") on June 25, 2013, seeking a professional management company for its community transportation system, and

**Whereas**, MV responded by presenting RTS with its proposal dated August 7, 2013, and

**Whereas**, RTS desires to purchase transportation services at a coordinated and economical rate per mile, under the terms and conditions set forth herein; and

**Whereas**, MV desires to provide such transportation and to enter into this contract under the terms and conditions set forth herein; and

**Whereas**, RTS and MV mutually desire to enter into a flexible agreement under which they can work together to maximize service quality and system efficiency; and to explore innovative funding and contracting mechanisms; with the mutual goals of establishing new transportation services and expanding mobility choices within the community;

**NOW, THEREFORE**, in consideration of the mutual agreement, the following articles are set forth:

## **RTS Transportation Services Contract**

### **ARTICLE I. MV'S DUTIES AND OBLIGATIONS:**

- A. MV will fully comply with the executed NCDOT Vehicle Lease Agreement, which by reference is made an integral part of this service contract.
- B. MV shall manage and operate the RTS system throughout the term of this contract under the overall direction of the County and the RTS Advisory Committee. Managing and operating the system is understood to include: employing staff and drivers; maintaining, scheduling, and dispatching vehicles; providing all types of insurance required; maintaining financial and operating records; coordinating, scheduling and providing high-quality and efficient transportation services; and all other requirements of the RFP's Scope of Work.
- C. MV will assign vehicles first and foremost to serve core group agencies in the usual and customary manner as described in the RTS Community Transportation Services Plan. Additional capacity of the fleet may then be assigned to occasional and diverse requests of other community agencies when approved by the RTS administration.
- D. MV shall assist the RTS administration in overall system planning activities that may include: developing & promoting new services; exploring alternative funding, initiating public outreach efforts, preparing grant applications and other operating reports that must be submitted to NCDOT.
- E. MV's General Manager and staff will participate in Rowan County's Emergency Management drills making sure that the RTS system fleet is responsive to the needs of the community in times of crisis.
- F. MV shall recruit, hire, train, supervise and manage qualified personnel, including but not limited to drivers, dispatchers, and a general manager to provide daily transportation services for the RTS system. MV must implement employee salaries and benefits as specified in its Proposal. MV agrees to notify RTS whenever there is any change in the structure of wages and benefits.
- G. MV will lease up to 30 vehicles for the sum of \$1.00 per vehicle per year utilizing a separate Vehicle & Equipment Lease agreement as approved by the NC Department of Transportation Public Transportation Division.
- H. MV will utilize an operating facility provided by RTS at no cost. However MV must maintain adequate security measures to protect and safeguard the facility to include locking doors when unoccupied, and insuring MV's business property within.
- I. MV shall use the RTS vehicles, equipment, and operating facility exclusively for RTS public transportation services.

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- J. MV shall be responsible for all warranty work, maintenance and mechanical repairs of each vehicle up to 115,000 miles for lift vans, mini vans and center isle vans and 145,000 miles on Light Transit Vehicles, or when it is eligible for replacement under NCDOT standards for the vehicles model year. After vehicles are replacement eligible MV is responsible for payment of the first \$500 of each major repair expense and RTS will cover the balance on pre-authorized repairs. General maintenance and minor repair items may not be included in the major repair invoice and remain the responsibility of MV.
- K. MV assures the County that they will follow vehicle manufacturer's specifications with respect to maintaining the vehicle. In particular all warranty work must be performed by a certified mechanic at an authorized dealership.
- L. MV and the County shall perform a fleet inspection prior to the renewal of the current contract. Any vehicle defects that are considered to be more than normal wear and tear must be corrected and any missing equipment must be replaced at the sole expense of MV. A similar joint inspection shall be performed thirty days prior to the end of the contract, and MV shall be given the opportunity to repair any vehicle defects identified at that time. The County reserves the right to withhold some or all of MV's final payment until such time as the vehicles are returned in acceptable condition, or until a suitable amount is negotiated to cover any needed repairs.
- M. For fleet maintenance services MV may use any or all of the following sources for preventative maintenance, minor repairs and body work: [1] local dealerships, and [2] certified independent garages.
- N. MV will utilize the County's fuel purchase system in purchasing fuel for operation of all vehicles provided under lease by the County. MV will be billed monthly for the fuel charges, which must be promptly reimbursed to the County.
- O. In the event that MV is delayed in reimbursing the County for fuel charges the County may withhold equal amounts of MV's billing until such time as the fuel reimbursements are received.
- P. The MV "rate-per-mile" charges will be adjusted monthly as affected by the vacillating fuel cost per gallon of gasoline and propane during the period of performance under this contract. For the purposes of this contract, MV and RTS hereby establish a "benchmark" fuel price of \$3.25 per gallon. For every \$0.05 increment above this benchmark in the actual average fuel price paid during each month, MV's billing rate will increase by \$0.005 per mile for that month. And for every \$0.05 increment below this benchmark in the actual average fuel price paid during each month, MV's billing rate will decrease by \$0.005 per mile for that month.
- Q. Fleet insurance shall be procured by MV before commencing work and shall be maintained without interruption for the duration of the contract, in the kinds and amount specified below:

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### Worker's Compensation

Worker's Compensation, unemployment and disability, as required by law. Employer's Liability insurance in the amount of at least \$500,000.

### Comprehensive General Liability

Comprehensive General Liability, including premises-operations; independent Contractor's protective; products and complete operations; broad form property damage shall be maintained as follow:

- |     |  |                |
|-----|--|----------------|
| (1) | Per Person   | \$1,000,000.00 |
|     | Per Occurrence   | \$3,000,000.00 |
| (2) | Property Damage:<br>Per Occurrence   | \$500,000.00   |
| (3) | Property damage liability insurance shall provide explosion and collapse coverage and underground coverage where applicable. |                |
| (4) | Bodily Injury:<br>Per Person   | \$1,000,000.00 |
|     | Per Occurrence   | \$3,000,000.00 |

### Comprehensive Automobile Liability: Owned, Non-owned and Hired:

- |     |                                     |                |
|-----|-------------------------------------|----------------|
| (5) | Bodily Injury:<br>Each Person       | \$500,000.00   |
|     | Each Occurrence                     | \$1,000,000.00 |
| (6) | Property Damage:<br>Each Occurrence | \$500,000.00   |

**NOTE: Rowan County shall be named as a Certificate Holder on the Certificate of Insurance evidencing coverage under the insurance policies identified herein. Each Certificate of Insurance shall contain the following clause: It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the county shall have received written notice of such cancellation or reduction.**

- R. MV agrees to defend, indemnify and hold harmless both Rowan County and RTS, for all loss, liability, claims or expenses (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of MV personnel, except to the extent same are caused by the negligence or willful misconduct of RTS.

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- S. MV shall invoice the RTS participating agencies for services provided through the RTS system no later than the 5<sup>th</sup> working day following the end of each month. It is understood that the agencies shall pay MV within 15 days of the submission of a correct invoice. It is also understood that that the County and RTS will assist with MV's efforts to collect invoiced amounts from the member agencies in a timely manner.
- T. MV shall prepare and submit the following comprehensive monthly and cumulative year to date reports to the RTS Advisory Committee.
- A monthly management summary highlighting system achievements, setting system goals, identification of significant issues that must be addressed, and providing information on any accidents, incidents, complaints, and commendations.
  - A monthly year-to-date "system report" on the following performance measures: Operating days, number of accounts, fuel consumed, fuel cost, total miles, total trips, total hours, avg. passenger per mile, average passenger per hour, average miles per day, average miles per trip, average cost per mile, average cost per hour, average cost per day, average cost per trip. All of this presented in a concise **one page** report.
  - Monthly statistics per "billing account" stating the number of operating days, # of trips, total mileage, rate per mile charge, total cost, average cost per trip, average miles per trip and any fares that may have been collected. Grand totals per column must add up to the monthly totals shown on the System Report.
  - Year to Date Area Report per "billing account": same factors as above but now reflecting the data for a year to date report.
- U. The MV Service Proposal dated August 7, 2013, in its entirety, is an integral part of this service contract with specific references made to the following points:
1. Unconditional Satisfaction Guarantee Warranty given to the County as outlined in proposal
  2. New reduced overhead for year one of the contract term , with further reduction in year two
  3. New Smart Alert Messenger
  4. New Grant Application Assistance
  5. New (Optional) Progress Payments
- V. MV shall give same-day notification to RTS staff of all major vehicle accidents, driver citations, or passenger incidents/complaints. MV must fully investigate all accidents, passenger injuries, and significant service complaints, and file a written report with the RTS Administration within 48 hours of occurrence. MV will endeavor to repair all physical damage to the vehicles within 30 days of occurrence.
- W. MV shall not enter into any third party covenants relating to this contract without the approval and written consent of RTS. No such consent shall be construed as making RTS a party to such subcontract, or subjecting RTS to liability of any kind to any subcontract. No subcontract if approved, shall under any circumstances, relieve MV of its liability and obligation under this contract.

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### **ARTICLE II.        RTS DUTIES AND OBLIGATIONS:**

- A. RTS shall provide overall direction and administration of the system. RTS will work closely and cooperatively with MV to design and implement the system's policies, services, contractual and rate structures so as to minimize cost, improve service quality, maximize efficiency, and to meet the system's goals of expanding transportation options within the community.
  
- B. RTS will provide the following free accommodations for MV's transit operations:
  - 1. Office space, utilities, telephone network
  - 2. Secure fleet and employee parking
  - 3. Fleet base station, mobile radios in each vehicle & 3 handheld radios
  - 4. SEON Camera systems in each vehicle
  - 5. RouteMatch Advanced Scheduling Software
  - 6. Asset Works Maintenance Software
  - 7. Fuel cards for each of the fleet vehicles for a centralized billing system
  - 8. On site Propane fueling station for propane vehicles
  - 9. Driver of the month \$25.00 gift certificate from Wal-Mart
  - 10. Fleet insurance reimbursement for actual documented costs not to exceed \$19,200.00
  
- C. RTS shall provide a sufficient number of vehicles to operate the demands of the system, and will lease these vans to MV at the rate of One Dollar (\$1.00) per van, per year.
  
- D. RTS will apply for replacement vehicles as each vehicle reaches NCDOT's minimum threshold for replacement. It is understood that all replacement vehicle requests are conditional to NCDOT approval in the capital budget.

### **ARTICLE III.        TERMS OF CONTRACT:**

- A. In addition to this contract the following documents are incorporated herein by reference and made a part hereof: (1) The NCDOT Vehicle Lease Agreement [attached] [2] the Rowan County Request For Proposals (RFP), and [3] The MV Management and Cost Proposal. If there are any material conflicts in the information provided, then the order of precedence for resolving any problems shall be addressed in the same sequence of importance. Following the execution of this document any written modifications and amendments signed by both parties will take precedence over documents listed above.
  
- B. The estimated mileage to be purchased by RTS is 650,000 in the first 12 months. If the actual mileage deviates by greater than or less than 10% on the 364<sup>th</sup> day after the start of the contract, or, during any consecutive 12 month period, the County or MV may request an adjustment in the rate per mile charges.
  
- C. The first contract period will begin on October 1, 2013 and extend through September 30, 2014. The base rate-per-mile charge for this period of time is \$1.682 per mile.

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- D. After the first contract period, this agreement is automatically renewed for an additional year with the same operating conditions and rate per mile unless a 60-day written notice is given by either organization. If the proposed rate changes are greater than the rate of inflation, the County is under no obligation to continue the contract.

### **ARTICLE IV: MISCELLANEOUS PROVISIONS:**

- A. This contract is executed and is to be performed in the State of North Carolina and all questions of interpretation and construction shall be construed by the laws of this state.
- B. If one section of this contract is found to be improper or legally unenforceable, the remaining sections are still applicable and are intended to stand without the offending section.
- C. Non-appropriation clause: MV acknowledges that Rowan County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of Rowan County's obligations under this contract, then this contract shall automatically expire without penalty to Rowan County thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that Rowan County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in Rowan County's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects Rowan County's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to Rowan County upon written notice to Contractor of such limitation or change in Rowan County's legal authority.
- D. Termination. This contract may be terminated by either party upon ninety (90) days written notice with or without cause. If either party shall willfully violate any of the covenants or duties imposed upon it by this contract, such willful violation shall entitle the other party to terminate this contract. The party desiring to terminate for such cause shall give the offending party at least thirty (30) days written notice to remedy the violation. If at the end of such time the party notified has not removed the cause of complaint or remedied the purported violation, then this contract shall be deemed terminated.

In the event of any termination, RTS shall pay the agreed rate only for services delivered up to the date of termination and RTS has no obligation to pay MV for services of any kind rendered or to be rendered after the effective date of termination. MV shall deliver all records, equipment, and materials to RTS within 30 days of the effective date of termination. This requirement specifically includes electronic files pertaining to the system's passengers, routes, billing history, and eligibility status - as such data are recognized to be RTS property.

All written notices and communications under this contract shall be mailed, delivered or sent by facsimile with following confirmation to RTS and MV at the addresses noted above.

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Either RTS or MV 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.

- E. Appeal Procedures: Any formal dispute and/or appeal concerning a question of fact arising under this agreement shall be identified in writing by either party, and submitted to the Rowan County Manager. The County Manager will then give a decision or recommended action to the administrative officials of this purchasing agreement. The decision of the County Manager is final, unless MV files a written appeal to the Rowan County Board of Commissioners within twenty [20] days of receipt of such decision. The request for an appeal shall state the exact nature of the complaint. The decision of the Board of Commissioners is final, unless MV files a written appeal to the NCDOT.
- F. Amendments or changes to this contract shall be submitted in writing and will become a part of this contract when agreed upon by both parties.
- G. All certifications and assurances required by the NCDOT-PTD and the Federal Transit Administration, as outlined in the Vehicle Lease Agreement, the RFP or the Contractors Proposal, and as may be amended in the future, are hereby included as part of this contract and made applicable thereto. These include Federal Drug & Alcohol testing program requirements, Buy America provisions, Non-Collusion certification, Equal Employment / Anti-Discrimination and other assurances as may be applicable to the expenditure of federal funds on public transportation programs.
- H. Force Majeure. Either party 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 strike, acts of God, acts of the government, war or civil disorder; violence or the threat thereof, severe weather, commandeering of material, products plants or facilities by the federal, state, or local government; fuel shortages, or a rational act or omission of the other party, when satisfactory evidence of such cause is presented to the other party, and provided that such non performance is beyond the reasonable control of, and not due to the fault or negligence of the non performing party.

This contract and the attachments and exhibits identified herein constitute the entire agreement between the parties.

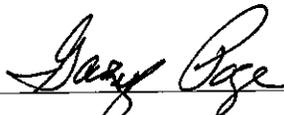
## RTS Transportation Services Contract

### ACKNOWLEDGEMENT:

As signatories to this contract, RTS and MV do mutually agree to abide by the terms of this agreement, and do hereby execute this Contract as of the date first above written.

**For Rowan County**

**MV Contract Transportation Inc.**

  
\_\_\_\_\_  
Gary Page, County Manager

  
\_\_\_\_\_  
W.C. Little, Executive VP

9/4/13  
\_\_\_\_\_  
Date

10/10/13  
\_\_\_\_\_  
Date

**THIS INSTRUMENT HAS BEEN PRE-AUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.**

  
\_\_\_\_\_  
**Rowan County Finance Director.**