



REPORT TO CITY COUNCIL

Approved by:

Anthony R. Forestiere

Department Director

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

Council Meeting of: October 6, 2021

Agenda Number: B-9

SUBJECT:

Amendment to Agreements between the City and MV Public Transportation, Inc.

RECOMMENDATION:

1. Adopt a Resolution Approving Amendment to No. 2 to Agreement for Management and Operation of Madera Transit Services Agreement with MV Public Transportation, Inc. and
2. Adopt a Resolution Approving Amendment No. 2 to the Lease Agreement Between the City and MV Public Transportation, Inc.

SUMMARY:

The City has two agreements with MV Public Transportation, Inc. (MVPT Inc.). One is an agreement for management and operation of the Madera Transit Services and the other is a lease agreement for the Madera Transit Center. The City recently participated in the Federal Transportation Administration (FTA) Triennial Review for the implementation and oversight of Federal Funds. During the review, the City was evaluated in the areas of Policies and Procedures, Procurement, Maintenance, and other items as it relates to Madera Metro Transit services. In short, the FTA outlined areas of improvement in their Preliminary Findings. Said items need to be addressed by October 29, 2021.

To address Preliminary Finding Area 7 (See Attachment A), both agreements need to be amended. First, the Management and Operation Agreement needs to include language that the Agreement term coincides with the Madera Transit Center Lease Agreement term through June of 2023. It is noted that the Management and Operation expenses will be paid for through the allotment of Federal FTA Funds during the agreed term period. Second, the Lease Agreement needs to be amended to include default termination language required by FTA. It appears the missing text was inadvertently omitted as it appeared in a draft of the lease agreement. In any event, staff will use the required lease provisions as noted in the FTA Circular 5010.1E, Chapter

IV, Section 41(4) – (5). Leases (Attachment B) for all future agreements involving FTA funded assets with private operators.

DISCUSSION:

As mandated by US Congress, FTA is required to conduct Triennial Reviews with all transit agencies who are recipients for Federal Funds. The FY21 Triennial Review focused on Policies and Procedures, Procurement, Maintenance, Project Management, and other Transit related areas recorded during the FY 2018 – FY2021 review period. The review session opened August 9, 2021 and began with the City displaying its FTA Funded Transit Projects, FTA Awards and Procurements, Madera Metro Services, Challenges Faced During Covid-19, Transit Highlights, and Future Transit Projects. Due to Covid-19, unlike the previous 2018 Triennial Review, all sessions were held virtually and required the involvement of multiple City Staff and the City Transit Operator General Manager.

It is important to note the Triennial Review is not an audit. Instead, it is FTA's Technical Assistance tool to provide the resources needed to ensure Transit agencies are in compliance. In closing, the Triennial Review resulted in multiple Preliminary Findings ranging from the required implementation of policies and procedures, enhanced systems and documentation, training, and evaluation and monitoring. Each corrective action must be adopted with a submission of records to the FTA Region 9 offices by October 29, 2021.

FINANCIAL IMPACT:

These amendments do not impact the City's General Fund as all transit services and personnel time is expended through Local Transportation Funds and other Transit related budgets which are grant funded.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The lease of the MTC supports the Vision Madera 2025 Plan as follows:

- Strategy 121:
 - Multi-modal transportation: Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.
- Strategy 407:
 - Promote and expand existing services, supportive services, case management, and self-sufficiency for Madera residents to maintain independent lifestyles.
- Strategy 431.1:
 - Continue and expand use of low emission or alternative energy source vehicles for all public jurisdictions.

ALTERNATIVES:

As an alternative, Council may:

1. Direct staff to alter terms of the lease.

ATTACHMENTS:

1. Resolution Approving Amendment No. 2 Re Management & Operation and Amendment No. 2
2. Resolution Approving Amendment No. 2 Re Lease and Amendment No. 2
3. Attachment A – 2021 FTA Triennial Review Closing Conference
4. Attachment B – FY2020 Contractors Manual – Satisfactory Continuing Control 7-22, 23

RESOLUTION NO. 21-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, APPROVING AMENDMENT NO. 2 TO THE AGREEMENT FOR
MANAGEMENT AND OPERATION OF MADERA TRANSIT SERVICES
BETWEEN THE CITY OF MADERA AND MV PUBLIC TRANSPORTATION, INC.**

WHEREAS, the City of Madera (City) and MV Public Transportation, Inc. (MVPTI) entered an agreement for the Management and Operation of Madera Transit Services (Agreement) on November 7, 2018; and

WHEREAS, the parties entered Amendment No. 1 on July 1, 2021; and

WHEREAS, the Agreement between the City and MVPTI is set to expire June 30, 2022;
and

WHEREAS, a further Amendment to the Agreement is needed to include FTA required terms and conditions; and

WHEREAS, this Amendment will allow this Agreement and the related Lease Agreement for the Madera Transit Center between the parties to coincide and expire June 30, 2023; and

WHEREAS, should MVPTI wish to extend Lease Agreement, by default MVPTI will be required to extend the Management and Operations Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY the City Council of the City of Madera finds, determines, resolves and orders as follows:

1. The above recitals are true and correct.
2. The City Council approves Amendment No. 2 to the Agreement for Management and Operations with MV Public Transportation, Inc. which is attached as Exhibit A and incorporated by reference.
3. This resolution is effective immediately upon adoption.

AMENDMENT NO.2 TO AGREEMENT FOR MANAGEMENT AND OPERATION OF MADERA TRANSIT SERVICES BETWEEN THE CITY OF MADERA AND MV PUBLIC TRANSPORTATION, INC.

This Amendment No. 2 to the Agreement for Management and Operation of Madera Transit Services between the City of Madera (City) and MV Public Transportation, Inc. (Contractor) is entered into effective October 6, 2021.

RECITALS

WHEREAS, the City and Contractor entered into an Agreement for the Management and Operations of Madera Metro Transit Services (Agreement) on November 7, 2018; and

WHEREAS, the Parties entered Amendment No. 1 to the Agreement on July 1, 2021, to extend the Agreement to June 30, 2022; and

WHEREAS, FTA requires that the term of the Agreement coincide with the term of the Lease Agreement between the City and Contractor; and

WHEREAS, the parties mutually agree to the addition of the FTA requirement that the term of this Agreement coincide with the term of the Lease Agreement.

AMENDMENT

SECTION 1. The language in Section 2 of the Agreement and in Section 2 of the First Amendment to Agreement have no further force and effect and shall be replaced with a new Section 2 to read as follows:

2. Term of Agreement

a. The term of this Agreement is extended to June 30, 2023. The purpose of this extension is to comply with the federal required provisions that the term of this Agreement shall coincide with the Madera Transit Center Lease Agreement between the City and MVPT, Inc.

b. Any further extension of this Agreement must also coincide with the term of the Lease Agreement between the City and MVPT, Inc. for the Madera Transit Center.

c. If both parties mutually agree to an extension of the Lease Agreement between the City and MVPT, Inc., thereby triggering a needed extension of the term of this Agreement, Contractor must submit a cost proposal to City for the Management and Operation for consideration by City for an extended term to coincide with the duration of the Lease Agreement.

d. If a default is to occur under the lease agreement with MVPT, Inc. for the Madera Transit Center, this service agreement will be terminated.

SECTION 2. Except as amended by this Amendment No. 2 all terms and conditions of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed or caused the extension to the Agreement to be executed as of the date and year written above.

CITY OF MADERA

MV PUBLIC TRANSPORTATION, INC.

By: _____
Santos Garcia, Mayor

By: _____

Print Name: _____

Title: _____

Date: _____

Date: _____

Taxpayer ID Number

APPROVED AS TO FORM:

By: _____
Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

RESOLUTION NO. 21-____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, APPROVING AMENDMENT NO. 2 TO THE LEASE
AGREEMENT BETWEEN THE CITY OF MADERA AND MV PUBLIC
TRANSPORTATION, INC.**

WHEREAS, the City of Madera (City) and MV Public Transportation, Inc. (MVPTI) entered an agreement for the Lease of the Madera Transit Center (Lease Agreement); and

WHEREAS, an Amendment is needed to include termination language to the Lease Agreement as required by FTA.

NOW, THEREFORE, the City Council of the City of Madera finds, determines, resolves and orders as follows:

1. The above recitals are true and correct.
2. The City Council approves Amendment No. 2 to the Lease Agreement with MV Public Transportation, Inc. which is attached to this Resolution as Exhibit A.
3. This resolution is effective immediately upon adoption.

**AMENDMENT NO.2 TO LEASE AGREEMENT BETWEEN THE CITY OF MADERA AND MV PUBLIC
TRANSPORTATION, INC. FOR THE MADERA TRANSIT CENTER**

This Amendment No. 2 to Lease Agreement between the City of Madera, a municipal corporation of the State of California (“Lessor”) and MV Public Transportation, Inc. (“Lessee) for the Lease of the Madera Transit Center is entered into effective October 6, 2021.

RECITALS

WHEREAS, the Lessor and Lessee entered into an Agreement for the Lease of the Madera Transit Center (Lease Agreement) on September 2, 2020; and

WHEREAS, the parties entered Amendment No. 1 to the Lease Agreement effective February 1, 2021; and

WHEREAS, both the Lessor and Lessee mutually agree to the addition of termination language to the Lease Agreement.

AMENDMENT

NOW THEREFORE, the Parties agree to enter this Amendment No. 2 to Lease Agreement as follows:

SECTION 1. Section 3 of the Lease Agreement is amended to read as follows:

3. Term and Termination.

a. The term of this Lease shall commence on September 3, 2020 and shall continue through June 30, 2023. If Lessee wishes to extend the Lease, Lessee shall send a written notice to Lessor 120 days before June 30, 2023, asking that the term be extended for an additional period of time. If Lessor decides to lease the Premises, the parties may negotiate to extend the term of this Lease under terms and conditions mutually acceptable.

b. In the event the Lessee determines in good faith that it no longer practicably, economically, or operationally can do business from the Premises, upon making a reasonable showing of same to Lessor, Lessee shall have the right to terminate this Lease with ninety (90) days prior written notice.

c. It is understood and agreed by parties hereto that Lessor and its successors in interest shall and hereby do reserve the right to cancel or terminate this Lease prior to expiration of the term or renewed or extended term hereof as follows:

i. If a default under the lease is to occur, the service agreement will be terminated and vice versa; as otherwise provided by law; or

ii. If the Lessee assigns or sublets the Premises without the prior written consent of Lessor; or

iii. If the Lessee no longer serves as the Contractor of the Agreement for Management and Operation of Madera Transit Services between the City and MV Public Transportation Inc.

SECTION 2. Except as amended by this Amendment No. 2 all terms and conditions of the Lease Agreement and Amendment No. 1 shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as set forth below.

CITY OF MADERA

MV PUBLIC TRANSPORTATION, INC.

By: _____

By: _____

Santos Garcia, Mayor

Print Name: _____

Title: _____

Date: _____

Date: _____

Taxpayer ID Number

APPROVED AS TO FORM:

By: _____

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____

Alicia Gonzales, City Clerk

City of Madera
6264



**2021 FTA TRIENNIAL REVIEW
CLOSING CONFERENCE**

AUGUST 16, 2021
CALYPTUS CONSULTING GROUP, INC.

Noted Areas of Performance

- Oversight of Transit Facility construction project
- Vehicle preventive maintenance on-time performance
- Title VI Program implementation

Summary of Preliminary Findings

Area	Code #	Rationale	Corrective Action	Due Date (tentative)
1. Legal	ND			
2. Financial Management & Capacity	F6-2	Outstanding annual audit deficiencies	The recipient must submit to the FTA regional office procedures and a schedule for resolving Single Audit findings for the charging of direct labor. The recipient must report on the status of addressing audit findings in its progress reports.	10/29/2021
3. Technical Capacity – Award Management	ND			
4. Technical Capacity – Program Management	NA			
5. Technical Capacity – Project Management	ND			

Summary of Preliminary Findings

Area	Code #	Rationale	Corrective Action	Due Date (tentative)
6. Transit Asset Management	ND			
7. Satisfactory Continuing Control	SCC8-7	Lease missing required provisions	The recipient must submit to the FTA regional office amended leases of FTA-funded assets to private operators that include the required terms and conditions, along with procedures for including the terms and conditions in future leases.	10/29/2021
	SCC9-3	Non-permitted use of insurance proceeds	The recipient must work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. The recipient must submit to the FTA regional office procedures for addressing insurance proceeds.	10/29/2021

Summary of Preliminary Findings

Area	Code #	Rationale	Corrective Action	Due Date (tentative)
8. Maintenance	ND			
9. Procurement	P1-3	Procurement policies and procedures not current/complete	The recipient must develop and submit to the FTA regional office revised procurement policies that include all required provisions and identify procedures that ensure compliance with 2 CFR 200.318 through 200.326 in the areas of Independent cost estimate, cost and price analysis, debarment checks, responsibility determinations, and written record of the procurement history. The recipient must also submit evidence of training on the revised procedures for any staff conducting procurement.	10/29/2021
10. DBE	DBE12-1	Insufficient documentation of monitoring DBE compliance of contractors and/or subrecipients	The recipient must submit to the FTA RCRO documentation that it has updated and uploaded the DBE program into TrAMS to reflect current monitoring procedures for contractors along with evidence of implementation.	10/29/2021
11. Title VI	ND			

Summary of Preliminary Findings

Area	Code #	Rationale	Corrective Action	Due Date (tentative)
12. ADA – General	ADA-GEN8-11	Insufficient monitoring of operations for ADA service provisions	The recipient must submit to the RCRO procedures for ensuring that its operations comply with ADA service provisions.	10/29/2021
13. ADA – Complementary Paratransit	ADA-CPT2-2	Eligibility letter deficiencies	The recipient must submit to the RCRO a procedure for stating the specific reason for granting less than unconditional eligibility and evidence of its implementation.	10/29/2021
	ADA-CPT2-5	Personal care attendant deficiencies	<p>The recipient must submit to the RCRO revised procedures that do not condition the accommodation of a PCA upon the PCA providing assistance with boarding, disembarking, or the travel process and evidence of its implementation.</p> <p>The recipient must submit to the RCRO revised procedures that do not condition the accommodation of a PCA upon the applicant always traveling with the same PCA and evidence of its implementation.</p>	10/29/2021
	ADA-CPT4-7	Restrictions on companions	The recipient must submit to the RCRO evidence that at least one other individual may accompany an eligible passenger.	10/29/2021

Summary of Preliminary Findings

Area	Code #	Rationale	Corrective Action	Due Date (tentative)
14. Equal Employment Opportunity	NA			
15. School Bus	NA			
16. Charter Bus	NA			
17. Drug-Free Workplace Act	ND			

Summary of Preliminary Findings

Area	Code #	Rationale	Corrective Action	Due Date (tentative)
18. Drug and Alcohol Program	DA2-1	Employee training not provided/ insufficient	The recipient must submit to the FTA regional office its covered employee training protocols and documentation that covered employees that were placed in safety-sensitive positions within the past two years have received at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use, along with procedures for ensuring that covered employees receive the training.	10/29/2021
	DA3-1	Deficiencies in process of checking previous drug and alcohol testing records	The recipient must submit to the FTA regional office a process for ensuring that the previous drug and alcohol testing records for employees are reviewed before allowing employees to perform safety-sensitive functions for more than 30 days.	10/29/2021
19. Section 5307 Program Requirements	ND			

Next Steps

- Calyptus will send Draft Report to FTA by August 19, 2021
- FTA will review
- FTA will send Draft Report to the City no later than August 31, 2021
- Recipient must submit comments on Draft Report to FTA and Calyptus within 10 business days of receipt
- FTA will review
- FTA will send Final to the City no later than September 29, 2021

Submitting Corrective Actions

- **Due dates:** “clock” starts when Recipient receives Final Report from FTA
- Final Report Date: no later than September 29, 2021
- Civil rights corrective actions: region9civilrights@dot.gov, Nicholas Sun, and Luis Rodriguez and cc: Ellen Harvey and Jameson Beekman
- All other corrective actions: Amitra Mamdouhi and cc: FTA Program Manager Catherine Luu, Ellen Harvey, and Jameson Beekman
- Corrective action materials may be considered until issuance of the Draft Report
- Corrective Actions that are submitted and closed before Final Report is issued will appear in the report, but will be marked “closed”
- It is not possible to remove findings from a Final Report

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Calyptus Consulting Group

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Cambridge, MA 02139



SUGGESTED CORRECTIVE ACTION: The recipient must obtain approval for leases of FTA-funded assets to private operators and submit to the FTA regional office procedures for obtaining FTA approval before leasing FTA-funded assets to private operators.

The recipient is deficient if the lease for FTA-funded assets to private operators does not include the required provisions.

DEFICIENCY CODE SCC8-7: Lease missing required provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office amended leases of FTA-funded assets to private operators that include the required terms and conditions, along with procedures for including the terms and conditions in future leases.

GOVERNING DIRECTIVE

2 CFR 200.313 Equipment

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

FTA Circular 5010.1E, Chapter IV, Section 4I(4) – (5). Leases

(4) The Recipient as Lessor. In all instances in which the recipient is a lessor (the party leasing an asset to another), the recipient must obtain FTA's written concurrence before leasing federally assisted assets to others. In addition, for equipment leasing, recipients must comply with FTA's Charter Service regulations, School Bus Operations regulations, and with requirements below:

(5) Leasing FTA Assisted Assets to Others for Transit Service. The recipient may enter into a contract for leasing its federally assisted property to a private operator (the lessee). The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement. Under this arrangement, the recipient (the lessor) should include the following provisions in the proposed lease agreement:

- 1 The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement;
- 2 The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient,