

# AGENDA

## Planning & Legislative Committee

**Tuesday, July 13, 2010**  
 11:30 a.m. - 1:00 p.m.  
 Board Room, 4600 Emperor Blvd., Suite 100  
 Durham, NC  
 Web Site: [www.TriangleTransit.org](http://www.TriangleTransit.org)



Agenda Topic	Presenter(s)
I. Adoption of Agenda	Sig Hutchinson
II. Approval of Minutes Attachment: April 14, 2010 <span style="float: right;"><a href="#">page 2</a></span> Action Requested: Approve minutes.	Michelle Dawson
III. Unified Planning and Work Program for FY 2011 Attachments: Memorandum & UPWP <span style="float: right;"><a href="#">page 4</a></span> Action Requested: Recommend Board approval of FY11 UPWP.	Patrick McDonough
IV. Durham Demand Response Contract with First Transit Attachments: Summary & Draft Contract <span style="float: right;"><a href="#">page 7</a></span> Action Requested: Recommend Board approval of contract.	Karen Porter
V. Durham Fixed Route Contract with First Transit Attachments: Summary & Draft Contract <span style="float: right;"><a href="#">page 37</a></span> Action Requested: Recommend Board approval of contract.	Karen Porter
VI. Contract with Transloc for Regional Real-Time System Attachment: Memorandum <span style="float: right;"><a href="#">page 63</a></span> Action Requested: Recommend Board approval of contract.	Brian Fahey
VII. Adjournment	Sig Hutchinson

Triangle Transit Board Meeting Calendar		
Group	Monthly Meeting	Next Meeting
Board of Trustees	4 <sup>th</sup> Wednesday, 1:30 p.m.	July 28, 2010
Board of Trustees Work Session	as scheduled	September 22, 2010, 10 a.m.
Personnel Committee	as scheduled	September 7, 2010, 1 p.m.
Planning & Legislative Committee	1 <sup>st</sup> Tuesday, 11:30 a.m.	August 3, 2010
Operations & Finance Committee	1 <sup>st</sup> Thursday, 10:00 a.m.	August 5, 2010

**Triangle Transit Board of Trustees**  
**Planning & Legislative Committee Minutes**  
**April 14, 2010**

Board Room, The Plaza, 4600 Emperor Blvd., Suite 100  
Durham, NC

**Committee Members Present:**

Bill Bell  
Joe Freddoso

Sig Hutchinson  
Ellen Reckhow

**Committee Members Absent:**

Alice Gordon (excused)

Nina Szlosberg-Landis (excused)

**Staff Present:**

Laurie Barrett  
Michelle Dawson  
Audra Foree  
Saundra Freeman  
Sylvester Goodwin  
Damien Graham  
Wib Gulley  
David King

Maurice McGhee  
Greg Northcutt  
Jonathan Parker  
Thomas Peckham  
Brad Schulz  
John Tallmadge  
Emily Yasukochi

Committee Chair Sig Hutchinson called the meeting to order at 11:41 a.m.

**I. Adoption of Agenda**

**Action:** On motion by Freddoso and second by Reckhow the agenda was approved adding an item regarding the reconvening of the STAC. The motion was carried unanimously.

**II. Approval of Minutes**

**Action:** On motion by Reckhow and second by Freddoso the Committee approved the minutes of the December 1, 2009, regular session meeting. The motion was carried unanimously.

**III. PR Consulting Services Contract with Fleishman Hillard**

Brad Schulz presented a request to extend the contract with Fleishman Hillard for another year, with no increase in the budget proposed.

Reckhow asked if the firm has been involved with or assisted with the passage of a successful public referendum. Schulz responded not the local office, but said staff would ask for information from the corporate office. King added that they have been involved in successful campaigns but the specific locations are unknown.

**Action:** On motion by Freddoso and second by Reckhow the Committee voted to recommend that the Board authorize the General Manager to extend the PR Consulting Services Contract with Fleishman Hillard until June 30, 2011. The motion was carried unanimously.

#### **IV. Demonstration Project with Susan G. Komen Foundation**

Audra Foree introduced several new programs that are being developed: Safe Place, Safe Ride and the “pink bus.” She said that some legal issues have to be addressed before moving forward. The presentation is attached and hereby made a part of these minutes.

Reckhow commented that these are great ideas.

Gulley explained that liability and safety issues have to be considered regarding Safe Place and Safe Ride. He also discussed issues related to advertising on buses and how social messaging and advertising on a bus can lead to the creation of a public forum, which can cause the body to lose its ability to regulate the speech. Gulley said he has begun to research this matter and will bring information and recommendations to the Board.

Bell said that although he personally likes wraps, he remembers that the Board did not and this issue seems to be a slippery slope.

Hutchinson commented that he loves the clean design of Triangle Transit’s buses and recognized the public good in not having a lot of signage on them. He said he would be concerned about inhibiting Triangle Transit’s ability to make a decision about keeping the bus design clean and simple.

Freddoso said courts have allowed commercial sponsors to purchase advertising for their cause related marketing, but agreed that he did not want Triangle Transit to lose its brand identity.

#### **V. Reconvening the STAC**

Reckhow reported on her suggestion at the joint TAC meeting to reconvene the STAC. A proposal was made at the DCHC TAC to reconvene the STAC over the next 15 months with three meetings; the first in the next 90 days to brief them on current plans, a second meeting after the counties have adopted their plans and finally in late spring or summer of 2011 if referenda have been scheduled. She said these citizens could be important advocates for transit. Reckhow added that CAMPO will be asked to decide on a similar course of action. She added that a consulting firm would not be hired this time around.

Hutchinson and Freddoso stated their support for the idea.

Hutchinson noted that the NCCR forum conflicts with the next Planning & Legislative and Personnel committees meetings on May 11. The Committee agreed to keep the meeting as scheduled.

#### **VI. SmartCommute Challenge Preview**

Lauren Parker’s presentation on the SmartCommute Challenge is attached and hereby made a part of these minutes.

#### **VII. Adjournment**

**Action:** On motion by Freddoso and second by Reckhow the meeting was adjourned at 12:18 p.m.

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Sig Hutchinson, Committee Chair

# MEMORANDUM

TO: Triangle Transit Board of Trustees  
FROM: Capital Development  
DATE: June 15, 2010  
SUBJECT: Unified Planning and Work Program for FY 2011

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## Action Requested

Recommend Board approval of the FY 2011 UPWP.

## Background and Purpose

Each year, in conjunction with the two Metropolitan Planning Organizations (MPOs) in the region, Triangle Transit prepares a Unified Planning and Work Program (UPWP) to guide planning activities, data collection, and regional processes such as work on the Triangle Regional Model, the MPO Long Range Transportation Plans (LRTPs) and customer surveys of bus riders and potential riders.

Several staff salaries are funded through the UPWP, including employees in Commuter Resources, Capital Development, and Bus Operations.

All UPWP funds are part of the larger subset of 5307 formula funds provided by the Federal Government through the MPOs to Triangle Transit. Unused planning funds at the end of the fiscal year, if they exist, can and will be reprogrammed to cover preventative maintenance costs in bus operations. All UPWP funds have been included in the Triangle Transit fiscal year 2011 Budget.

## Attachments

- Triangle Transit Draft UPWP for FY 2011, page 5

## Staff Contacts

Patrick McDonough, 485-7455, [pmcdonough@triangletransit.org](mailto:pmcdonough@triangletransit.org)  
Jonathan Parker, 485-7425, [jparker@triangletransit.org](mailto:jparker@triangletransit.org)

Triangle Transit							
1-	MPO						
2-	FTA Code	442400	442301	442301	442400	442302	
3-	Task Code	II-A-5	II-B-3	II-B-10	II-C-1	III-D-3	
4-	Title of Planning Task	Transit System Data	Travel Model Updates	Transit Element of the LRTP	Short Range Transit Planning	Special Studies	TOTALS
5-	Task Objective	To collect route patronage, on-time performance data, passenger amenity data and customer preferences for service improvements	Support for Triangle Regional Model Service Bureau	To provide travel market analysis and cost information for development of transit investments for the LRTP; and to acquire GIS support services from TJCOG	This covers a portion of staff salaries in the Departments of Commuter Resources and Capital Development related to Triangle Transit's short-range transit service and facility planning	Studies may be conducted for corridors that show promise during the course of the development of the transit element of the LRTP, including capital cost estimation, financial planning, and transit expert studies for corridors and alignments	
6-	Tangible Product Expected	Route planning changes and recommendations from both staff and hired consultants	Updated Triangle Regional Model	Technical planning report provided to regional leaders and the MPO; other GIS service needs as required.	On-going staff salaries	RFP and/or Technical Report	
7-	Expected Completion Date of Product(s)	6/30/2011	6/30/2011	6/30/2011	6/30/2011	6/30/2011	
8-	Previous Work	Initial analysis of amenities and on-time performance	Ongoing support of TRM service bureau	Continued and ongoing regional corridor analysis for LRTP and other projects	Ongoing staff salaries	Schedule report from PB	
9-	Prior FTA Funds	\$20,000	\$0	\$0	\$0	\$57,000	
10-	Relationship To Other Activities	APC data can be used to calibrate the travel times in the regional model. Data will inform route planning decisions.	Supports the regional travel model utilized for the LRTP and other transit and highway planning purposes.	This supports regional transit planning for capital investments.	Provides staff support to carry out Triangle Transit planning activities related to service planning and capital development.	This task will follow from the transit infrastructure planning conducted for the LRTP.	
11-	Agency Responsible for Task Completion	Triangle Transit	Service Bureau at ITRE responsible for task - Triangle Transit is a funding partner	Triangle Transit (with joint sponsorship by TJCOG and MPOs, NCDOT)	Triangle Transit	Triangle Transit	
12-	HPR - Highway - NCDOT 20%						
13-	HPR - Highway - FHWA 80%						
14-	Section 104 (f) PL Local 20%						
15-	Section 104 (f) PL FHWA 80%						
16-	Section 5303 Local 10%						
17-	Section 5303 NCDOT 10%						
18-	Section 5303 FTA 80%						
19-	Section 5307 Transit - Local 10%	\$18,200	\$16,000	\$4,500	\$67,000	\$13,800	\$119,500
20-	Section 5307 Transit - NCDOT 10%	\$18,200	\$16,000	\$4,500	\$67,000	\$13,800	\$119,500
21-	Section 5307 Transit - FTA 80%	\$145,600	\$128,000	\$36,000	\$536,000	\$110,400	\$956,000
22-	Additional Funds - Local 100%						

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July 13, 2010

## SUMMARY

### TTA & FIRST TRANSIT, INC. **DEMAND RESPONSIVE CONTRACT DRAFT** FOR THE DURHAM TRANSIT SYSTEM

*Note: First Transit was the first choice of the committee evaluating the responses to the RFP issued in March for management of the Durham demand responsive (paratransit) system, known in Durham as the "ACCESS" service. First Transit is the current ACCESS service management company.*

#### Duties of First Transit:

1. Perform all management functions including hiring employees, negotiating with the union, handling payroll, benefits, pension plan, maintaining vans and equipment, complying with all applicable laws and regulations, providing customer service.
2. First Transit will determine the eligibility of individuals for the service with initial appeals going to TTA for determination and the City to conduct any final appeals of eligibility.

#### Payment to First Transit:

1. First Transit will be paid a fixed fee per month as set forth in the contract.
2. In addition to the fixed fee, First Transit will also be paid a variable rate/revenue hour fee as set forth in the contract.
3. A plus or minus per passenger incentive/penalty determined by the passenger per hour efficiency achieved will be applied to the sum of (1) and (2) above.

#### Term of Contract and Termination Rights:

1. Term is three years with two, one-year renewal option years.
2. TTA may terminate at any time for default or for convenience.

#### Scope of Service:

1. Subject to funding from the City.
2. Service (and payments) can be adjusted if funds reduced, with 60 day's notice.

#### Main Points Still in Negotiation:

*The contract attached to the RFP was the contract that is currently in place for the ACCESS service with First Transit, and during the selection process First Transit indicated that they had no changes to make. Subsequently, First Transit has asked for some changes that TTA has agreed to, with the exception of allowing First Transit to opt out of the fourth and fifth extension years, to which TTA will not agree. TTA has added provisions to the original contract for Notices, software license grant and "time is of the essence."*

**TRIANGLE TRANSIT**

**And**

**FIRST TRANSIT, INC.**

**CONTRACT FOR**

**MANAGEMENT AND OPERATION OF  
THE CITY OF DURHAM'S**

**DEMAND RESPONSIVE TRANSIT SERVICE  
(TRANSIT CONTRACTING)**

**EFFECTIVE OCTOBER 1, 2010**

This Contract is made and entered into this \_\_\_\_ day of July 2010 by and between the Research Triangle Regional Public Transportation Authority, d/b/a Triangle Transit (hereinafter referred to as the "TTA"), and First Transit Inc. (hereinafter "Contractor"). TTA and Contractor may be individually referred to as "Party" and collectively referred to as "Parties." The City of Durham is a municipal corporation organized under the laws of the State of North Carolina (hereinafter "City").

## **SEC. 1 PURPOSE**

The purpose of this Contract is for the Contractor to manage and operate the entire operations of the City's demand responsive transit (hereinafter "Services" or "Service") in Durham County under the supervision and direction of TTA.

## **SEC. 2 DEFINITIONS**

As used in this Contract:

**ACCESS Service.** The term ACCESS Service means all of the Demand Responsive Services as defined below.

**Americans with Disabilities Act of 1990 (ADA).** The term "Americans with Disabilities Act" or "ADA" means the statute enacted by the United States Congress as Public Law Number 101-336.

**Days.** The term "days" means business days recognized by TTA, unless otherwise specifically noted.

**Demand Responsive Services.** The term "Demand Responsive Services" means all of the demand responsive or paratransit services provided for the City and the County of Durham, North Carolina as supervised and directed by TTA.

**Facilities.** The term "Facilities" means the transit administrative and operating facilities owned by the City of Durham, assigned to TTA, and located at 1824 North Miami Boulevard and 1911 Fay Street, Durham.

**Federal Transit Administration (FTA).** The term "Federal Transit Administration" or "FTA" means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

**General Manager.** The term "General Manager" means the General Manager identified by the Contractor, and approved by TTA, responsible for carrying out the Contractor's duties under this Contract.

**Proposal.** The term "Proposal" refers to a written document submitted by the Contractor in response to the Request for Proposals (RFP) issued by the City.

**Public Hearing.** The term “Public Hearing” means an open forum in which the opinions and concerns of the public community are solicited.

**TTA Liaison.** The term “TTA Liaison” means the individual designated by the TTA General Manager to administer TTA’s responsibilities under this Contract. Unless otherwise indicated in writing by the TTA General Manager, TTA’s Director of Bus Operations shall be the TTA Liaison.

### **SEC. 3 CONTRACT DOCUMENTATION**

The Contractor acknowledges that the Request for Proposals issued by the City, the Clarifications and Responses to Questions issued by the City, and the Proposal submitted by the Contractor are hereby incorporated into and made a part of this Contract by reference as if they were attached hereto. In the event any provision of this Contract is in conflict with any provision of the documents stated herein, this Contract shall govern.

### **SEC. 4 RESERVED**

### **SEC. 5 EMPLOYMENT OF PERSONNEL**

The Contractor shall be the employer of all persons necessary for the day-to-day management and operation of the ACCESS Service. The Contractor will be responsible for the payment of all employee wages and benefits. The compensation paid to all management and/or non-union personnel shall be no less than the compensation proposed in Exhibit 8 of the Contractor’s proposal. The compensation paid to all union personnel shall be as stated in the collective bargaining agreement.

**The Contractor will determine the total number of personnel necessary for the ACCESS Service unless otherwise agreed to by the Parties. However, the Contractor must adhere to its proposed staffing and personnel program at all times, unless TTA explicitly authorizes otherwise in writing.** All operators, maintenance personnel, and other employees of the Contractor shall have the skills and training necessary for the safe and effective performance of their responsibilities in providing the Services.

### **SEC. 6 COMPLIANCE WITH CITY’S MINIMUM LIVABLE WAGE ORDINANCE**

The Contractor shall at all times pay all of its employees who provide services under this Contract at a minimum hourly wage rate that meets or exceeds the City’s Minimum Livable Wage ordinance (“MLW ordinance”), provided however that if the increased minimum wage requirement under the MLW ordinance exceeds 3.5% in any one year period, then the Contractor shall be required to increase the minimum hour wage rate of all employees by no more than 3.5%. If the wage rate increase in any year is less than 3.5%, then Contractor shall adjust downward the payment for services it receives in that year under Section 42 of this Contract by an amount equal to the difference in wages paid

under the MLW ordinance and the wages that would have been paid if the full 3.5% increase were in effect.

## **SEC. 7 SCOPE OF WORK – ACCESS SERVICE**

The Contractor shall manage and control all activities necessary for the provision of the ACCESS Service in compliance with all applicable federal, state and local regulations, excepting only those activities specifically denoted herein as a responsibility of TTA. The responsibilities of the Contractor include, but are not limited to:

Providing all operators, mechanics and service personnel as well as all other personnel;

Training personnel as necessary;

Ensuring that all personnel maintain a professional, courteous attitude toward passengers, including answering to the best of their ability all passenger questions; refraining from disparaging TTA, the City or the Contractor to passengers, the public or the media; and performing other tasks as directed.

Implementing a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654; producing any documentation necessary to establish its compliance; and permitting any authorized representative of the U.S. Department of Transportation or its operating administrations, the State Oversight Agency of North Carolina, or TTA to inspect the facilities and records associated with the implementation of the drug and alcohol testing program.

Fostering improved labor relations and conducting the labor contract negotiations;

Ensuring safety of personnel and patrons, preventing losses and arranging and paying for all required insurance coverage.

Ensuring compliance with applicable environmental and occupational safety and health laws and regulations.

Maintaining all facilities, vehicles, and equipment according to original equipment manufacturers and industry standards;

Developing methods for improving the reliability and efficiency of service operations;

Instituting operational and maintenance reporting procedures, and submitting regular reports to TTA as requested on the performance of the Services hereunder;

Establishing financial controls for the protection of all revenues;

Instituting reporting procedures necessary for the timely and accurate reporting of all required financial statements including but not necessarily limited to a monthly revenue and expense statement, and reimbursement request with all supporting documentation;

Establishing an asset control system for all City owned assets;

Conducting all operational (non-capital) procurements;

Providing the review, research and specifications for all capital procurements other than the construction of buildings;

Providing customer service;

Conducting fare media sales;

Paying for all services (including maintenance of 1824 North Miami Boulevard and 1911 Fay Street and the vehicle washing equipment located in 1824 North Miami Boulevard) and materials and supplies, as well as paying for the cost of insurance, taxes, and miscellaneous expenses.

Recommending employee incentive programs designed to improve employee performance and reduce employee absenteeism.

Performing all ADA certification work including the sending and receipt of applications; the review of applications; and the notification of outcome to the applicants. This work shall be performed by an employee of the Contractor who is expertly familiar with the corresponding ADA certification regulations;

and any and all other work necessary to render the ACCESS Service fully functional, again excepting only those activities specifically denoted herein as a responsibility of TTA.

## **SEC. 8 RESPONSIBILITIES OF TTA**

For the ACCESS Service, TTA will provide the Contractor with fuel for all revenue and service vehicles assigned to the Contractor and pay for such fuel independent of this Contract. Contractor shall not have to pay for all utilities for the facilities located at 1824 North Miami Boulevard and 1911 Fay Street, Durham.

Also, TTA is responsible for: federal, state, and local grant management and reporting; conducting capital procurements; short and long term service planning; and marketing and public affairs. However, the Contractor will be responsible for working cooperatively with TTA in providing any and all information and/or assistance reasonable and necessary for this work to be performed successfully.

To the extent of TTA's license or sublicense, TTA grants to Contractor a royalty-free,

non-exclusive license or sublicense and right to use, copy and make derivative works thereof of the software, data, programming code, reports and other work product developed by, for or licensed to the City's Demand Responsive Services, and all patent rights, copyrights, trade secret rights relating thereto, to the extent necessary for Contractor to perform this Contract.

## **SEC. 9 TITLE OF PROPERTY**

For the ACCESS Service, all real estate, buildings and improvements, vans and cut-aways, staff motor vehicles will be furnished by TTA or by the City and shall remain the property of TTA or the City. The Contractor shall keep a perpetual inventory of all property and equipment belonging to TTA and the City and being managed by the Contractor. Said inventory shall be provided to TTA on an annual basis upon the anniversary date of this Contract. Said inventory shall be available for inspection by TTA Liaison at any time during the term of this Contract.

The Contractor shall furnish any and all equipment, service vehicles, and any and all other materials and supplies reasonably necessary for the ACCESS Service, and necessary to properly maintain the vehicle washing equipment located in 1824 North Miami Boulevard.

## **SEC.10 PERFORMANCE BOND**

Before this Contract shall be valid or binding against TTA, but within 30 days after the award of this Contract, the Contractor shall obtain a performance bond for the use of TTA, which bond shall be signed by the Contractor and two or more good and sufficient sureties, or with a surety company as "Surety", and shall be in the amount of \$2,000,000.00. The performance bond shall be provided by a firm licensed as a surety in the State of North Carolina, with a Best and Co. rating of A- or better, and the bond shall be kept in full force and effect at all times during the term of this Contract. The performance bond may be a one-year renewable bond.

The condition of the performance bond shall be that the Contractor shall fully and faithfully perform all conditions of this Contract.

If TTA determines that the Contractor has substantially failed to keep and perform the covenants, conditions, and agreements in this Contract, then TTA may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, the TTA Liaison shall notify the Surety and give the Surety an opportunity to perform within a reasonable time certain. If the Surety fails to perform, TTA Liaison shall perform and assess the Surety on its bond for the cost of such performance.

## **SEC. 11 DISCLAIMER OF LIABILITY**

TTA will not hold harmless or indemnify the Contractor for any liability whatsoever, except as permitted by law and so noted in this Contract.

## **SEC. 12      HOLD HARMLESS**

The Contractor agrees to protect, defend, indemnify and hold TTA, its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "Claims") in connection with or arising directly or indirectly out of this Contract or the performance hereof by the Contractor or any subcontractor, except to the extent that such Claims are the result of the negligence of TTA, its officers, employees or agents. Without limiting the generality of the foregoing, any and all such Claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such Claims, whether or not it is alleged or determined that the Contractor was negligent, and without regard to whether such Claim is groundless, false, or fraudulent. The Contractor shall provide TTA with regular notice of the status of Claims covered by this Section, and TTA may, in its discretion, participate in the defense of any such Claim.

## **SEC. 13      DISPUTES**

Any dispute between the Contractor and TTA relating to the implementation, interpretation, or administration of this Contract shall be resolved in accordance with this Section.

The Parties shall first negotiate in good faith in an attempt to resolve the dispute informally in meetings or communications between the Contractor and TTA Liaison. If the dispute remains unresolved 15 days after it first arises, the Contractor may request the TTA General Manager to issue a recommended decision on the matter in dispute. The TTA General Manager shall issue the recommended decision in writing and provide a copy to the Contractor.

The recommended decision of the TTA General Manager shall become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the Durham City Council. In connection with any such review, the Contractor and the TTA General Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Durham City Council, either Party may seek judicial resolution of the dispute in the General Court of Justice, Superior Court Division for Durham County.

By mutual agreement, the Parties may choose to submit the dispute to mediation using a mutually acceptable mediator. In the case of mediation where a mutually acceptable mediator cannot be chosen, each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator.

Further, the Parties may by mutual agreement submit a dispute to arbitration using a mutually acceptable arbitration procedure.

Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with this Contract and the TTA General Manager's recommended decision.

#### **SEC. 14 CANCELLATION OF CONTRACT**

In any of the following cases, TTA shall have the right to cancel this Contract without expense to TTA: (1) the Contractor is guilty of misrepresentation; (2) this Contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) this Contract conflicts with any statutory or constitutional provision of the State of North Carolina or the United States. This Section shall not be construed to limit TTA's right to terminate this Contract for convenience or default, as provided in Sections 15 and 17, respectively.

#### **SEC. 15 TERMINATION FOR CONVENIENCE**

The performance of work under this Contract may be terminated by TTA in accordance with this Section in whole, or from time to time, in part, whenever TTA determines, upon recommendation of the TTA General Manager, that such termination is in the best interest of TTA. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under this Contract is terminated and the date upon which such termination becomes effective.

Upon receipt of a notice of termination, and except as otherwise directed by TTA Manager, the Contractor shall: (1) stop work under this Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to TTA in the manner, at the times, and to the extent directed by the TTA General Manager, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of TTA, to the extent the TTA General Manager may require, which approval or ratification shall be final for all the purposes of this Section; (6) deliver to TTA in the manner, at the times, and to the extent, if any, directed by the TTA General Manager, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if this Contract had been completed, would have been required to be furnished to TTA; (7) complete any such part of the work as shall not have been terminated by the

notice of termination; and (8) take such action as may be necessary, or as the TTA General Manager may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor, and in which TTA has or may acquire an interest. Payments by TTA to the Contractor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

## **SEC. 16        TERMINATION BY MUTUAL AGREEMENT**

This Contract may be terminated by mutual agreement of the Parties. Such termination shall be effective in accordance with a written agreement by the Parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 15 and 17.

## **SEC. 17        TERMINATION FOR DEFAULT**

17.1 Subject to the provisions of Subsection 17.3 of this Section, TTA may, by 10-day advance written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

If the Contractor fails to provide the services in the manner required by this Contract or in accordance with the performance standards articulated herein;

If the Contractor fails to perform any of the provisions of this Contract in accordance with its terms; or

If the Contractor fails to make progress in the prosecution of the work under this Contract so as to endanger such performance.

17.2 In the event that TTA terminates this Contract in whole or in part as provided in Subsection 17.1 of this Section, TTA may procure, upon such terms and in such manner as the TTA General Manager may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to TTA for costs associated with the termination of this Contract, the procurement of replacement services by TTA, and any excess costs of such similar supplies or services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and TTA are subject to resolution pursuant to Section 13.

17.3 Prior to terminating this Contract for default, TTA shall provide a written notice to Contractor of default and shall provide Contractor a minimum of ten (10) days to cure said default, and a longer period of time where the Contractor demonstrates to TTA's satisfaction that (1) it has taken substantive steps to cure during the ten (10) days following receipt of written notice and that (2) a cure can

be achieved within a reasonable or acceptable additional period of time, prior to termination for default, except in the case where Contractor fails to maintain the proper insurance coverage as specified in Section 45 herein, in which case City may terminate this Contract without such notice to cure.

- 17.4 Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance to the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

**SEC. 18 FORCE MAJEURE**

The Contractor shall not be liable for any failure to perform if convincing evidence has been submitted to the TTA General Manager that failure to perform this Contract was due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, civil disturbances, fire, war, or floods, war or terrorism. Strikes or labor disputes may be included at the sole discretion of TTA.

**SEC. 19. NOTICE**

A. All notices and other communications required or permitted by this Contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To Contractor:  
First Transit, Inc.  
600 Vine St., STE 1400  
Cincinnati, OH 45202  
The fax number is:.

To TTA:  
David King  
General Manager  
Triangle Transit  
P.O. Box 13787                      Mail  
RTP, NC 27709  
Suite 100                              Delivery  
4600 Emperor Blvd.  
Durham, NC 27703  
The fax number is(919) 485-7441.

With a copy to:  
Wib Gulley, General Counsel  
Triangle Transit  
P.O. Box 13787, RTP, NC 27709

*B. Change of Address. Date Notice Deemed Given.* A change of address, fax number, or person to receive notice may be made by either Party by written notice given to the other Party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

## **SEC.20 INTERESTS OF MEMBERS OF, OR DELEGATES TO, CONGRESS**

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

## **SEC. 21 DEBARRED BIDDERS**

The Contractor shall provide TTA with a certification addressing its debarment and suspension status and that of its principals. The Contractor shall promptly inform TTA of any change in the suspension or debarment status of the Contractor or its principals during the term of this Contract.

## **SEC. 22 SUBCONTRACTING OF CONTRACT AND TRANSFER OF INTERESTS**

This Contract or any portion thereof shall not be subcontracted except with the prior review and written approval of TTA. In any case in which the Contractor desires to subcontract, it shall provide TTA with all proposed subcontracting agreements and documents (including scope of work and terms of compensation). If permitted to subcontract, the Contractor shall be fully responsible for all work performed by the subcontractors.

The Contractor may not, by subcontract, modify its obligation to perform in full accordance with this Contract, or otherwise modify the basis upon which the Contractor was selected and Contract award made. Any action of the Contractor in violation of the preceding sentence shall constitute a breach of this Contract and an act of default. Further, the entering into of a subcontract shall not, under any circumstances, relieve the Contractor of its liability and obligations under this Contract, and all transactions with TTA must be through the Contractor.

Any approval of a subcontract shall not be construed as making TTA a party of such subcontract, giving the subcontractor privity of contract with TTA, or subjecting TTA to liability of any kind to any subcontractor.

The Contractor shall incorporate in each subcontract the provisions of this Contract in full, with the same conditions being imposed upon subsequent subcontractors.

There shall be no assignment or transfer of interests or delegation of the Contractor's rights, duties, or responsibilities of the Contractor under this Contract, except at the direction or with the advance written consent of TTA.

### **SEC. 23 LICENSING, PERMITS, AND TAXES**

The Contractor shall be appropriately licensed for the work required as a result of this Contract. The cost for any required licenses and permits, excepting the cost of permits that are to be included in operating expenses, shall be the responsibility of the Contractor. The Contractor is liable for any and all taxes due as a result of this Contract, provided, however, the taxes due upon licensing and registering revenue and support vehicles or taxes due on any other operating expenses shall be paid by TTA.

### **SEC. 24 LACK OF FUNDS CLAUSE**

The entering into of this Contract by TTA is subject to its receipt of local, state and Federal funds adequate to carry out the provisions of this Contract in full.

The TTA General Manager may cancel or reduce the amount of Service to be rendered if the TTA General Manager determines that such action is in TTA's best interests, or that there will be a lack of funding available for the Service. In such event, the TTA General Manager will notify the Contractor in writing sixty (60) days in advance of the date such cancellation or reduction is to be effective.

### **SEC. 25 INDEPENDENT CONTRACTOR**

Under the terms of this Contract, the Contractor is an independent Contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than City or TTA employees, assisting in the performance of its services. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the term of this Contract.

### **SEC. 26 WAIVER OF TERMS AND CONDITIONS**

The failure of the TTA General Manager or the Contractor to enforce one or more of the terms or conditions of this Contract or to exercise any of its rights or privileges, or the waiver by TTA of any breach of such terms or conditions, shall not be construed as

thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

## **SEC. 27 INTERPRETATION, JURISDICTION, AND VENUE**

All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of North Carolina. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of North Carolina or of the United States having jurisdiction in North Carolina for adjudication of any suit or cause of action arising under or in connection with the Contract documents, or the performance of this Contract, and agrees that any such suit or cause of action may be brought in any such court.

## **SEC. 28 INSPECTION OF WORK**

All work, which term in this Section includes ACCESS Service performed, material furnished or utilized in the performance of services, and workmanship in the performance of services, shall be subject to inspection and test by TTA Liaison to the extent practicable at all times and places during the term of this Contract. All inspections by TTA Liaison shall be made in such a manner as to not unduly delay the work. TTA Liaison shall have the right to enter the premises used by the Contractor for the purpose of inspecting and auditing all data and records that pertain to the Contractor's performance under this Contract. TTA Liaison shall also have the right to enter the premises used by the Contractor for the purpose of inspecting vehicles that are used to provide services under this Contract.

If any work performed is not in conformity with the requirements of this Contract, TTA Liaison shall have the right to require the Contractor to perform the work again in conformity with such requirements. In the event the Contractor fails promptly to perform the work again and take necessary steps to ensure future performance of the work is in conformity with the requirements of this Contract, TTA shall have the right to terminate this Contract for default as provided in Section 17.

## **SEC. 29 ANTIDISCRIMINATION CLAUSE**

The Contractor shall not in any way, directly or indirectly, in the performance of this Contract, discriminate against any person because of age, race, color, disability, sex, national origin, or religious creed.

## **SEC.30 EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor shall comply with the equal opportunity provisions of the Civil Rights Act of 1964, as amended, Executive Orders Numbers 11375 and 11246 as amended as supplemented in the Department of Labor Regulations 41 C.F.R. Part 60 and of the rules, regulations, and relevant orders of the Secretary of Labor. In connection with the performance of this Contract, the Contractor shall not discriminate against any employee

or applicant for employment because of race, religion, color, age, disability, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and treated during their employment without regard to their race, religion, color, age, disability, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts.

### **SEC. 31 AMERICANS WITH DISABILITIES ACT**

The Contractor shall comply with all provisions of the Americans with Disabilities Act of 1990 (P.L. No. 101-336) and Section 504 of the Rehabilitation Act of 1973 (P.L. No. 93-112). TTA shall ensure its policies with respect to the operation of the transit system meet the requirements of the Americans with Disabilities Act of 1990.

### **SEC. 32 ENERGY EFFICIENCY**

The Contractor shall recognize the mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

### **SEC. 33 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

### **SEC. 34 BUY AMERICA**

The Contractor shall comply with the applicable Buy America requirements set forth in 49 U.S.C. § 5323(j) and the applicable regulations in 49 C.F.R. Part 661, as amended. If the Contractor procures any capital items with federal funds, it is the Contractor's responsibility to obtain the Buy America certification required under such regulations.

### **SEC. 35 ENVIRONMENTAL REQUIREMENTS**

The Contractor agrees to comply with any federal environmental and resource conservation requirements that are in effect during the term of this Contract. The Contractor shall report any violation of standards, orders or regulations issued under the Clean Air Act (42 U.S.C. § 7401 et seq.) or the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) resulting from any activity of the Contractor in connection with the performance of this Contract to FTA and to the appropriate U.S. EPA Regional Office. The Contractor shall be responsible for the disposal of hazardous materials, including, but not limited to, waste oil, grease, automatic transmission fluid, diesel fuel and detergents, in accordance with applicable federal, state and local law and regulations.

## **SEC. 36 COMPLIANCE WITH LAWS AND PERMITS**

The Contractor shall give all notices and comply with all existing and future federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of this Contract, including, but not limited to, the laws referred to in these provisions of this Contract and in the other Contract documents. If the Contract documents are at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to the TTA Liaison certificates of compliance with all such laws, orders, and regulations.

## **SEC. 37 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of TTA that DBEs as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Contract. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Contract. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

The Contractor shall not discriminate on the basis of race, color, national origin, physical or mental disability, or sex in the award and performance of contracts assisted by the U.S. Department of Transportation.

The established goals for this Contract shall be in accordance with TTA/Durham Area Transit Authority's approved Disadvantaged Business Enterprise Program.

## **SEC. 38 SECTION 13(c) OBLIGATIONS**

The Contractor shall be responsible for and legally be bound by the obligations under the 1990 13 (c) Agreement between Transit Management of Durham, Inc. and Local 1437 of the Amalgamated Transit Union.

The Contractor shall have financial liability for any 13(c) claims or obligations that are created by acts or omissions of the Contractor that are not specifically directed by TTA. In addition, the Contractor shall cooperate with TTA (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes for which TTA has responsibility.

The Contractor shall not assist or encourage any employee to file or otherwise pursue a 13(c) claim against TTA, or take any action which is contrary to the interests of TTA under 13(c) or its 13(c) arrangements or agreements, relating to the termination of services under this Contract, any future transition from the Contractor to another service provider, or any other action or event relating to this Contract. If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by TTA (including attorneys' fees) associated with any 13(c) claims or delays in the receipt of federal grants.

The Contractor agrees to provide a preference in hiring to the employees of the current Contractor who are engaged in the provision of ACCESS Service to TTA (except executive and administrative officers) to fill positions reasonably comparable to the positions currently held by those employees in accordance with paragraph (23) of the 1990 13(c) Agreement between Transit Management of Durham and the Amalgamated Transit Union ("13(c) Agreement). The Contractor also agrees to assume and/or fulfill the obligations of the Contractor to the City with respect to wages, hours, working conditions, health and welfare, and pension or retirement provisions for those fixed route employees for whom the Contractor is required to provide a preference in hiring, in accordance with the 13(c) Agreement; provided however, those rights, privileges and benefits not previously vested may be modified by collective bargaining by the Contractor and the union representing the employees. Unless otherwise specified herein, the Contractor shall not be required to assume any liabilities with respect to employees hired from the previous contractor where such liabilities were created prior to employment of these employees by Contractor, including liabilities for accrued benefits.

### **SEC. 39        FTA TITLE VI SERVICE STANDARDS**

The Contractor agrees to meet TTA's and the City's service standards developed in compliance with FTA Circular 4702.1 implementing Title VI of the Civil Rights Act of 1964. Title VI service standards include a minimum of five elements: (1) Vehicle Load; (2) Vehicle Assignment; (3) Vehicle Headway; (4) Distribution of Transit Amenities; and (5) Transit Access.

### **SEC.40        PATENT RIGHTS**

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery may be patentable under the patent laws of the United States of America or any foreign country, the Contractor shall immediately notify the TTA Liaison and provide a detailed report. The rights and responsibilities of TTA, the Contractor and the federal government with respect to each such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies and any waiver thereof.

### **SEC. 41        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 this Contract and each provision of this Contract will be and is deemed to be separate and severable from each other provision.

## **SEC. 42 CONTRACT TERM**

The term of this Contract is for a period of three (3) years beginning October 1, 2010, with two (2), one (1) year options as described immediately below.

TTA shall have the option of extending this Contract for two (2), one (1) year periods commencing respectively the day after the initial three (3) year term or any one (1) year extension. TTA will provide the Contractor with notice of whether it intends to exercise an option at least 90 days before the end of the initial (3) year term or any one (1) year extension. This option is the unilateral right of TTA to obtain services for the option periods at the established management fee.

## **SEC. 43 INVOICES AND PAYMENTS**

For the ACCESS Service, the Contractor shall be compensated by TTA for the services performed under the Contract on the basis of a Fixed Fee, plus a Variable Rate Per Revenue Hour multiplied by Revenue Hours, and plus or minus a per passenger incentive/penalty as more fully described herein.

For the ACCESS Service, the Fixed Fee equals \$ 109,510.58 per month in year 1.  
For the ACCESS Service, the Fixed Fee equals \$ 113,511.58 per month in year 2.  
For the ACCESS Service, the Fixed Fee equals \$ 117,630.66 per month in year 3.  
For the ACCESS Service, the Fixed Fee equals \$ 121,935.75 per month in Option Year 4.  
For the ACCESS Service, the Fixed Fee equals \$ 126,394.41 per month in Option Year 5.

For the ACCESS Service, the Variable Rate/Revenue Hour equals \$24.30 in year 1.  
For the ACCESS Service, the Variable Rate/Revenue Hour equals \$25.37 in year 2.  
For the ACCESS Service, the Variable Rate/Revenue Hour equals \$26.33 in year 3.  
For the ACCESS Service, the Variable Rate/Revenue Hour equals \$27.39 in Option Year 4.  
For the ACCESS Service, the Variable Rate/Revenue Hour equals \$28.43 in Option Year 5.

The per passenger incentive ranges from \$0.0000 to \$0.4427 depending on the passenger per hour efficiency achieved by the Contractor as denoted on the attached Exhibit A. The per passenger penalty ranges from \$0.0000 to \$0.8939 depending on the passenger per hour efficiency achieved by the Contractor as denoted on the attached Exhibit A.

For the ACCESS Service, invoices to each agency for which service has been provided shall be calculated on the basis of the number of passengers transported for each agency as follows: The Fixed Fee is to be added to the result of the Variable Rate Per Revenue Hour multiplied by the number of Revenue Hours, and this sum is then to be divided by the number of passengers, resulting in an initial charge per passenger. The per passenger incentive/penalty is then to be added/subtracted from the initial charge per passenger and then this result equals the final charge per passenger. Each agency shall then be charged an amount that is equal to the number of passengers for which it is responsible multiplied by the final charge per passenger.

For the ACCESS Service, on or before the 15<sup>th</sup> day of each month, the Contractor shall send the Transit Liaison an invoice for the total charge for the previous month. Upon receipt, TTA shall have up to 10 days to approve of the invoice. The foregoing notwithstanding, TTA shall have no obligation to approve or cause any invoice to be paid to the Contractor until such time as all required monthly financial and operating reports are submitted to TTA and found to be materially correct.

#### **SEC. 44 FARE COLLECTION**

The Contractor is responsible for collecting fares in strict accordance with instructions provided by TTA. The Contractor's vehicle operators are to record each boarding by type of fare, including recording of non-fare boardings on days designated by TTA.

All fares collected are the property of TTA. Any cash fares and tickets are to be collected from the operators. The amount of the collected fares shall substantially correspond to the number of passenger trips recorded by the Contractor.

TTA will periodically conduct on-board farebox checks. The Contractor shall cooperate with TTA in any such on-board checks.

#### **SEC. 45 PROJECT MANAGEMENT**

For the ACCESS Service, the Contractor will designate a full-time General Manager dedicated to services performed under this Contract who will manage and supervise the day-to-day operations of the ACCESS Service in accordance with Section 7 of this Contract. This person is to be an employee of the Contractor. This person or his/her designees are to be available by telephone or in person during all hours of operation to make decisions as necessary at the request of TTA.

For the ACCESS Service, TTA reserves the right to approve the selection of the General Manager and to direct the removal of the General Manager at any time during the term of this Contract. The TTA Liaison must be notified at least 30 days prior to any contemplated changes to the General Manager, and the TTA Liaison must provide written approval of changes to the General Manager prior to the action being taken.

TTA reserves the right to require the Contractor to immediately remove an employee from transportation service for any of, but not necessarily limited to, the following items:

Committing unsafe or inappropriate acts while providing transportation services;

Revocation or non-renewal of a valid North Carolina driver's license;

Distributing any unauthorized materials while performing services under this Contract;

Soliciting a gratuity from a passenger;

Failure to notify the Contractor of an arrest or conviction of a criminal offense of a Class A or Class B misdemeanor or felony; or placement on probation or deferred adjudication for the same; or a driving while intoxicated (DWI) charge, before the end of the business day following the day the employee receives notice of such action;

Incurring excessive customer complaints due to discourtesy, rudeness, and use of profanity or any other act deemed unacceptable; or

Failing or refusing to take a drug or alcohol test.

#### **SEC. 46 INSURANCE**

For the ACCESS Service, the cost of insurance and whatever liability for personal injury or property damage or loss may be incurred to third parties in connection with or arising out of the Contractor's performance under this Contract, shall be paid for by the Contractor. The Contractor shall be liable for any negligent, dishonest, fraudulent, misconduct, or intentional tort committed or directed by any officer or employee of the Contractor, or any other such act or omission, on the part of any person or persons directly or indirectly employed and paid by Contractor

For the ACCESS Service, the Contractor will be responsible for obtaining the insurance denoted below and for maintaining this insurance in full force and effect during the term of this Contract:

Workers' Compensation Insurance covering all of Contractor's employees engaged in work under this Contract as required under the Workers' Compensation Act of the State of North Carolina and/or any applicable law or laws of any other state or states. Employer's Liability Insurance with limits of liability of not less than \$1,000,000 per accident, \$1,000,000 per employee for disease, and \$1,000,000 policy total for disease.

General Liability Insurance covering the Facilities premises used in performance of this Contract with limits of liability equal to \$5,000,000 each occurrence combined single limit, with an aggregate limit not less than and \$10,000,000. Such liability insurance shall also include coverage for all operations of the Contractor in the performance of this contract, Personal Injury Liability, Contractual Liability, XCU Hazards (explosion, collapse, and underground), Broad Form Property Damage, and Liability for Independent Contractors. In addition, Fire Damage Liability Limit shall not be limited except by the coverage limit of the policy or the amount of damage to City's buildings, whichever is less.

Automobile Liability Insurance covering all Revenue and Support Vehicles used in connection with the work performed under this Contract with limits of not less than \$10,000,000 each occurrence combined single limit for bodily injury and property damage.

Automobile Physical Damage Insurance on all City-owned Revenue Vehicles covering collision and fire, theft, combined additional coverage with limits of liability not less than the actual cash value of the vehicle at time of loss or the cost to repair or replace with like kind and quality with deduction for depreciation. Deductibles shall not exceed \$10,000 for each loss and TTA shall be named Loss Payee under the policy.

TTA will be named as an additional insured for all commercial coverage for all City-owned or leased assets and for all liability coverage.

All such policies as required above shall be endorsed to provide a thirty (30) day written Notice of Cancellation, renewal, or material change to the TTA Liaison.

The limits of liability as required under this Section may be provided by a single policy of insurance or a combination of policies including excess insurance. Self-insurance or the use of deductibles or self-insured retentions may be permitted in lieu of these requirements if so approved in advance in writing by the TTA Manager.

The Contractor shall require any and all subcontractors performing work under this Contract to carry insurance to the types and with limits of liability as the Contractor shall deem appropriate and adequate. The Contractor shall obtain and make available for inspection by the TTA Liaison upon request Certificates of Insurance evidencing insurance coverage carried by such subcontractors.

All insurance required to be maintained or provided by the Contractor and subcontractors shall be with companies and through policies approved by the TTA Liaison. The TTA Liaison has the right to inspect in person, prior to commencement of the work, all of the Contractor's insurance policies in regard to required insurance coverage. All such Insurance Companies shall carry a Best's rating of A+ (or equivalent) and be authorized to do business in the State of North Carolina.

The Contractor shall provide the TTA Liaison with full and complete loss runs for all insurance policies within 30 days of such loss runs being produced.

Proof of the required insurance coverage shall be furnished to the TTA Liaison within thirty (30) calendar days prior to the effective date of this Contract. Renewal or replacement policies shall be furnished fifteen (15) days prior to the expiration date or termination date of any policy furnished in compliance with the requirements of this Contract. Proof of insurance shall consist of duplicate original insurance policies and a

certificate issued by the agent summarizing the insurance and indicating the 90-day notice requirement.

If at any time during this Contract term the Contractor fails to provide proof of insurance required above or fails to provide the required loss runs, TTA reserves the right, but not the obligation, to purchase other insurance to protect TTA's interests and to find the Contractor in default of this Contract.

#### **SEC. 47      AUDIT AND INSPECTION OF RECORDS**

The Contractor agrees that TTA, the Comptroller General of the United States, and the U.S. Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of this Contract. Further, the Contractor agrees to maintain all required records for at least three (3) years after TTA has made final payment and all other pending matters are closed.

The TTA General Manager may, at any time, conduct an audit of any and/or all records kept by the Contractor that are directly or indirectly related to the services provided under this Contract. Appropriate financial adjustments shall be made by the TTA General Manager based upon any inconsistency, irregularity, discrepancy or unsubstantiated billing revealed as a result of such audit. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices.

#### **SEC. 48      OWNERSHIP OF DOCUMENTS**

The Contractor agrees that any and all information, in oral or written form, whether obtained from TTA, its agents or assigns, or other sources, or generated by the Contractor pursuant to this Contract, shall not be used for any purpose other than fulfilling the requirements of this Contract. Any documents, reports, or data generated by the Contractor in connection with the performance of this Contract shall become the sole property of TTA, subject to any rights asserted by the FTA. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports, or data without the prior written consent of TTA.

#### **SEC. 49      PERFORMANCE REQUIREMENT**

The Contractor shall, at all times during the term of this Contract, perform all work diligently, carefully, and in a professional manner; and shall furnish all labor, supervision, and management necessary therefore. The Contractor shall conduct all work in the Contractor's own name and as an independent Contractor and not in the name of, or as an agent for, TTA.

#### **SEC.50      CONTINUITY OF SERVICES**

The Contractor recognizes that the services under this Contract are vital to TTA and must be continued without interruption and that, upon Contract expiration or termination, another entity, either TTA or another provider, may continue those services. The Contractor agrees to: (1) furnish phase-in training; and (2) exercise its best efforts and cooperate to effect an orderly and efficient transition to the subsequent provider.

The Contractor shall, upon the TTA General Manager's written notice: (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires or terminates; and (2) negotiate in good faith a plan with the subsequent provider to determine the nature and extent of phase-in, phase-out service required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the TTA General Manager's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs that are incurred and not compensated by TTA in the Service Hour method of compensation within the agreed period after Contract expiration or termination that directly result from phase-in, phase-out operations.

#### **SEC. 51 CHARTER SERVICE**

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

#### **SEC. 52 SCHOOL BUS**

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

#### **SEC. 53 ENERGY CONSERVATION**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **SEC. 54 CLEAN WATER**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to TTA and understands and agrees that TTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **SEC. 55        CLEAN AIR**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to TTA and understands and agrees that the

TTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **6        NO OBLIGATION by the FEDERAL GOVERNMENT**

TTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the Contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to TTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **SEC. 57        PROGRAM FRAUD and FALSE or FRAUDULENT STATEMENTS or RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil

Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **SEC. 58            INCORPORATION of FEDERAL TRANSIT ADMINISTRATION TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause TTA to be in violation of the FTA terms and conditions.

#### **SEC. 59            TIME IS OF THE ESSENCE**

The Parties agree that time is of the essence in the performance of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized officers.

Research Triangle Regional  
Public Transportation Authority

First Transit, Inc.

By: \_\_\_\_\_  
General Manager

By: \_\_\_\_\_  
Bradley A. Thomas  
President  
First Transit & First Services

ATTEST:

By: \_\_\_\_\_  
Corporate Secretary

This instrument has been pre-audited in the manner required by the  
Local Government Budget and Fiscal Control Act.

Reviewed and approved as to legal form.

\_\_\_\_\_  
Saundra Freeman, TTA Director of Financial and Administrative  
Services

\_\_\_\_\_  
Wib Gulley, TTA General Counsel

Exhibit A

Pass. Per Hour	Penalty/ Bonus Per Pass.	City Savings	Contractor Incentive/ Penalty	Pass. Per Hour	Penalty/ Bonus Per Pass.	City Savings	Contractor Incentive/ Penalty
1.950	-0.8939	86,014.73	-86,014.73	2.107	0.0221	2,122.81	2,122.81
1.951	-0.8866	85,309.33	-85,309.33	2.108	0.0252	2,424.92	2,424.92
1.952	-0.8793	84,604.65	-84,604.65	2.109	0.0283	2,726.74	2,726.74
1.953	-0.8719	83,900.69	-83,900.69	2.110	0.0315	3,028.28	3,028.28
1.954	-0.8646	83,197.46	-83,197.46	2.111	0.0346	3,329.53	3,329.53
1.955	-0.8573	82,494.94	-82,494.94	2.112	0.0377	3,630.49	3,630.49
1.956	-0.8500	81,793.14	-81,793.14	2.113	0.0409	3,931.17	3,931.17
1.957	-0.8428	81,092.06	-81,092.06	2.114	0.0440	4,231.57	4,231.57
1.958	-0.8355	80,391.70	-80,391.70	2.115	0.0471	4,531.68	4,531.68
1.959	-0.8282	79,692.05	-79,692.05	2.116	0.0502	4,831.51	4,831.51
1.960	-0.8209	78,993.12	-78,993.12	2.117	0.0533	5,131.05	5,131.05
1.961	-0.8137	78,294.89	-78,294.89	2.118	0.0564	5,430.31	5,430.31
1.962	-0.8064	77,597.38	-77,597.38	2.119	0.0595	5,729.29	5,729.29
1.963	-0.7992	76,900.58	-76,900.58	2.120	0.0626	6,027.99	6,027.99
1.964	-0.7920	76,204.49	-76,204.49	2.121	0.0657	6,326.40	6,326.40
1.965	-0.7847	75,509.11	-75,509.11	2.122	0.0688	6,624.54	6,624.54
1.966	-0.7775	74,814.44	-74,814.44	2.123	0.0719	6,922.39	6,922.39
1.967	-0.7703	74,120.47	-74,120.47	2.124	0.0750	7,219.96	7,219.96
1.968	-0.7631	73,427.21	-73,427.21	2.125	0.0781	7,517.25	7,517.25
1.969	-0.7559	72,734.65	-72,734.65	2.126	0.0812	7,814.27	7,814.27
1.970	-0.7487	72,042.79	-72,042.79	2.127	0.0843	8,111.00	8,111.00
1.971	-0.7415	71,351.64	-71,351.64	2.128	0.0874	8,407.45	8,407.45
1.972	-0.7343	70,661.19	-70,661.19	2.129	0.0905	8,703.63	8,703.63
1.973	-0.7272	69,971.43	-69,971.43	2.130	0.0935	8,999.53	8,999.53
1.974	-0.7200	69,282.38	-69,282.38	2.131	0.0966	9,295.15	9,295.15
1.975	-0.7129	68,594.02	-68,594.02	2.132	0.0997	9,590.49	9,590.49
1.976	-0.7057	67,906.36	-67,906.36	2.133	0.1027	9,885.56	9,885.56
1.977	-0.6986	67,219.40	-67,219.40	2.134	0.1058	10,180.35	10,180.35
1.978	-0.6914	66,533.13	-66,533.13	2.135	0.1089	10,474.86	10,474.86
1.979	-0.6843	65,847.55	-65,847.55	2.136	0.1119	10,769.10	10,769.10
1.980	-0.6772	65,162.67	-65,162.67	2.137	0.1150	11,063.06	11,063.06
1.981	-0.6701	64,478.48	-64,478.48	2.138	0.1180	11,356.75	11,356.75
1.982	-0.6630	63,794.98	-63,794.98	2.139	0.1211	11,650.16	11,650.16
1.983	-0.6559	63,112.17	-63,112.17	2.140	0.1241	11,943.30	11,943.30
1.984	-0.6488	62,430.04	-62,430.04	2.141	0.1272	12,236.16	12,236.16
1.985	-0.6417	61,748.61	-61,748.61	2.142	0.1302	12,528.76	12,528.76
1.986	-0.6346	61,067.86	-61,067.86	2.143	0.1332	12,821.07	12,821.07
1.987	-0.6276	60,387.79	-60,387.79	2.144	0.1363	13,113.12	13,113.12
1.988	-0.6205	59,708.41	-59,708.41	2.145	0.1393	13,404.89	13,404.89
1.989	-0.6135	59,029.71	-59,029.71	2.146	0.1423	13,696.39	13,696.39
1.990	-0.6064	58,351.70	-58,351.70	2.147	0.1454	13,987.62	13,987.62

1.991	-0.5994	57,674.36	-57,674.36	2.148	0.1484	14,278.58	14,278.58
1.992	-0.5924	56,997.71	-56,997.71	2.149	0.1514	14,569.27	14,569.27
1.993	-0.5853	56,321.74	-56,321.74	2.150	0.1544	14,859.69	14,859.69
1.994	-0.5783	55,646.44	-55,646.44	2.151	0.1574	15,149.83	15,149.83
1.995	-0.5713	54,971.82	-54,971.82	2.152	0.1605	15,439.71	15,439.71
1.996	-0.5643	54,297.87	-54,297.87	2.153	0.1635	15,729.32	15,729.32
1.997	-0.5573	53,624.60	-53,624.60	2.154	0.1665	16,018.66	16,018.66
1.998	-0.5503	52,952.01	-52,952.01	2.155	0.1695	16,307.73	16,307.73
1.999	-0.5433	52,280.09	-52,280.09	2.156	0.1725	16,596.53	16,596.53
2.000	-0.5363	51,608.84	-51,608.84	2.157	0.1755	16,885.07	16,885.07
2.001	-0.5294	50,938.26	-50,938.26	2.158	0.1785	17,173.34	17,173.34
2.002	-0.5224	50,268.35	-50,268.35	2.159	0.1815	17,461.34	17,461.34
2.003	-0.5155	49,599.11	-49,599.11	2.160	0.1845	17,749.07	17,749.07
2.004	-0.5085	48,930.53	-48,930.53	2.161	0.1874	18,036.54	18,036.54
2.005	-0.5016	48,262.63	-48,262.63	2.162	0.1904	18,323.74	18,323.74
2.006	-0.4946	47,595.39	-47,595.39	2.163	0.1934	18,610.68	18,610.68
2.007	-0.4877	46,928.81	-46,928.81	2.164	0.1964	18,897.35	18,897.35
2.008	-0.4808	46,262.90	-46,262.90	2.165	0.1994	19,183.75	19,183.75
2.009	-0.4739	45,597.65	-45,597.65	2.166	0.2023	19,469.89	19,469.89
2.010	-0.4670	44,933.07	-44,933.07	2.167	0.2053	19,755.77	19,755.77
2.011	-0.4601	44,269.14	-44,269.14	2.168	0.2083	20,041.39	20,041.39
2.012	-0.4532	43,605.88	-43,605.88	2.169	0.2112	20,326.74	20,326.74
2.013	-0.4463	42,943.27	-42,943.27	2.170	0.2142	20,611.82	20,611.82
2.014	-0.4394	42,281.32	-42,281.32	2.171	0.2172	20,896.65	20,896.65
2.015	-0.4325	41,620.03	-41,620.03	2.172	0.2201	21,181.21	21,181.21
2.016	-0.4257	40,959.39	-40,959.39	2.173	0.2231	21,465.51	21,465.51
2.017	-0.4188	40,299.41	-40,299.41	2.174	0.2260	21,749.55	21,749.55
2.018	-0.4120	39,640.09	-39,640.09	2.175	0.2290	22,033.33	22,033.33
2.019	-0.4051	38,981.41	-38,981.41	2.176	0.2319	22,316.85	22,316.85
2.020	-0.3983	38,323.39	-38,323.39	2.177	0.2349	22,600.10	22,600.10
2.021	-0.3914	37,666.02	-37,666.02	2.178	0.2378	22,883.10	22,883.10
2.022	-0.3846	37,009.30	-37,009.30	2.179	0.2408	23,165.84	23,165.84
2.023	-0.3778	36,353.23	-36,353.23	2.180	0.2437	23,448.31	23,448.31
2.024	-0.3710	35,697.81	-35,697.81	2.181	0.2466	23,730.53	23,730.53
2.025	-0.3642	35,043.04	-35,043.04	2.182	0.2496	24,012.49	24,012.49
2.026	-0.3574	34,388.91	-34,388.91	2.183	0.2525	24,294.19	24,294.19
2.027	-0.3506	33,735.43	-33,735.43	2.184	0.2554	24,575.64	24,575.64
2.028	-0.3438	33,082.59	-33,082.59	2.185	0.2583	24,856.82	24,856.82
2.029	-0.3370	32,430.39	-32,430.39	2.186	0.2612	25,137.75	25,137.75
2.030	-0.3303	31,778.84	-31,778.84	2.187	0.2642	25,418.42	25,418.42
2.031	-0.3235	31,127.93	-31,127.93	2.188	0.2671	25,698.84	25,698.84
2.032	-0.3167	30,477.66	-30,477.66	2.189	0.2700	25,979.00	25,979.00
2.033	-0.3100	29,828.03	-29,828.03	2.190	0.2729	26,258.90	26,258.90
2.034	-0.3032	29,179.04	-29,179.04	2.191	0.2758	26,538.55	26,538.55
2.035	-0.2965	28,530.68	-28,530.68	2.192	0.2787	26,817.94	26,817.94
2.036	-0.2898	27,882.97	-27,882.97	2.193	0.2816	27,097.08	27,097.08
2.037	-0.2830	27,235.89	-27,235.89	2.194	0.2845	27,375.96	27,375.96
2.038	-0.2763	26,589.44	-26,589.44	2.195	0.2874	27,654.59	27,654.59
2.039	-0.2696	25,943.63	-25,943.63	2.196	0.2903	27,932.96	27,932.96
2.040	-0.2629	25,298.45	-25,298.45	2.197	0.2932	28,211.09	28,211.09

2.041	-0.2562	24,653.90	-24,653.90	2.198	0.2961	28,488.95	28,488.95
2.042	-0.2495	24,009.99	-24,009.99	2.199	0.2990	28,766.57	28,766.57
2.043	-0.2428	23,366.70	-23,366.70	2.200	0.3018	29,043.93	29,043.93
2.044	-0.2362	22,724.05	-22,724.05	2.201	0.3047	29,321.05	29,321.05
2.045	-0.2295	22,082.02	-22,082.02	2.202	0.3076	29,597.91	29,597.91
2.046	-0.2228	21,440.62	-21,440.62	2.203	0.3105	29,874.51	29,874.51
2.047	-0.2162	20,799.85	-20,799.85	2.204	0.3133	30,150.87	30,150.87
2.048	-0.2095	20,159.70	-20,159.70	2.205	0.3162	30,426.98	30,426.98
2.049	-0.2029	19,520.18	-19,520.18	2.206	0.3191	30,702.83	30,702.83
2.050	-0.1962	18,881.28	-18,881.28	2.207	0.3219	30,978.44	30,978.44
2.051	-0.1896	18,243.01	-18,243.01	2.208	0.3248	31,253.80	31,253.80
2.052	-0.1830	17,605.35	-17,605.35	2.209	0.3277	31,528.91	31,528.91
2.053	-0.1763	16,968.32	-16,968.32	2.210	0.3305	31,803.76	31,803.76
2.054	-0.1697	16,331.91	-16,331.91	2.211	0.3334	32,078.37	32,078.37
2.055	-0.1631	15,696.12	-15,696.12	2.212	0.3362	32,352.74	32,352.74
2.056	-0.1565	15,060.94	-15,060.94	2.213	0.3391	32,626.85	32,626.85
2.057	-0.1499	14,426.39	-14,426.39	2.214	0.3419	32,900.72	32,900.72
2.058	-0.1433	13,792.45	-13,792.45	2.215	0.3448	33,174.34	33,174.34
2.059	-0.1368	13,159.13	-13,159.13	2.216	0.3476	33,447.71	33,447.71
2.060	-0.1302	12,526.42	-12,526.42	2.217	0.3504	33,720.83	33,720.83
2.061	-0.1236	11,894.32	-11,894.32	2.218	0.3533	33,993.71	33,993.71
2.062	-0.1170	11,262.84	-11,262.84	2.219	0.3561	34,266.34	34,266.34
2.063	-0.1105	10,631.97	-10,631.97	2.220	0.3589	34,538.73	34,538.73
2.064	-0.1039	10,001.71	-10,001.71	2.221	0.3618	34,810.87	34,810.87
2.065	-0.0974	9,372.06	-9,372.06	2.222	0.3646	35,082.77	35,082.77
2.066	-0.0909	8,743.03	-8,743.03	2.223	0.3674	35,354.42	35,354.42
2.067	-0.0843	8,114.60	-8,114.60	2.224	0.3702	35,625.83	35,625.83
2.068	-0.0778	7,486.78	-7,486.78	2.225	0.3731	35,897.00	35,897.00
2.069	-0.0713	6,859.56	-6,859.56	2.226	0.3759	36,167.92	36,167.92
2.070	-0.0648	6,232.95	-6,232.95	2.227	0.3787	36,438.59	36,438.59
2.071	-0.0583	5,606.95	-5,606.95	2.228	0.3815	36,709.03	36,709.03
2.072	-0.0518	4,981.55	-4,981.55	2.229	0.3843	36,979.22	36,979.22
2.073	-0.0453	4,356.75	-4,356.75	2.230	0.3871	37,249.17	37,249.17
2.074	-0.0388	3,732.56	-3,732.56	2.231	0.3899	37,518.88	37,518.88
2.075	-0.0323	3,108.97	-3,108.97	2.232	0.3927	37,788.34	37,788.34
2.076	-0.0258	2,485.97	-2,485.97	2.233	0.3955	38,057.57	38,057.57
2.077	-0.0194	1,863.58	-1,863.58	2.234	0.3983	38,326.55	38,326.55
2.078	-0.0129	1,241.79	-1,241.79	2.235	0.4011	38,595.29	38,595.29
2.079	-0.0064	620.60	-620.60	2.236	0.4039	38,863.80	38,863.80
2.080	0.0000	0.00	0.00	2.237	0.4067	39,132.06	39,132.06
2.081	0.0000	0.00	0.00	2.238	0.4095	39,400.08	39,400.08
2.082	0.0000	0.00	0.00	2.239	0.4122	39,667.86	39,667.86
2.083	0.0000	0.00	0.00	2.240	0.4150	39,935.41	39,935.41
2.084	0.0000	0.00	0.00	2.241	0.4178	40,202.71	40,202.71
2.085	0.0000	0.00	0.00	2.242	0.4206	40,469.78	40,469.78
2.086	0.0000	0.00	0.00	2.243	0.4234	40,736.61	40,736.61
2.087	0.0000	0.00	0.00	2.244	0.4261	41,003.20	41,003.20
2.088	0.0000	0.00	0.00	2.245	0.4289	41,269.55	41,269.55
2.089	0.0000	0.00	0.00	2.246	0.4317	41,535.67	41,535.67
2.090	0.0000	0.00	0.00	2.247	0.4344	41,801.55	41,801.55

2.091	0.0000	0.00	0.00	2.248	0.4372	42,067.19	42,067.19
2.092	0.0000	0.00	0.00	2.249	0.4399	42,332.60	42,332.60
2.093	0.0000	0.00	0.00	2.250	0.4427	42,597.77	42,597.77
2.094	0.0000	0.00	0.00				
2.095	0.0000	0.00	0.00				
2.096	0.0000	0.00	0.00				
2.097	0.0000	0.00	0.00				
2.098	0.0000	0.00	0.00				
2.099	0.0000	0.00	0.00				
2.100	0.0000	0.00	0.00				
2.101	0.0032	304.12	304.12				
2.102	0.0063	607.96	607.96				
2.103	0.0095	911.51	911.51				
2.104	0.0126	1,214.77	1,214.77				
2.105	0.0158	1,517.74	1,517.74				
2.106	0.0189	1,820.42	1,820.42				

July 13, 2010

## SUMMARY

### TTA & FIRST TRANSIT, INC. **FIXED ROUTE CONTRACT DRAFT** FOR THE DURHAM BUS SYSTEM

*Note: First Transit was the second choice of the committee evaluating the responses to the RFP issued in March for management of the Durham bus system. The Committee's first choice, Veolia, withdrew when it determined that it could not be the plan sponsor of the employee pension plan (through its required ownership of the DCTC). Veolia's board of directors forbids any such responsibility.*

#### Duties of First Transit:

1. Assume ownership of the Durham City Transit Company (DCTC) from the current management company. (DCTC is the company created by the City of Durham to manage the operations of the Durham transit system.)
2. Perform all management functions including hiring employees, negotiating with the union, handling payroll, benefits, pension plan, maintaining buses and equipment, complying with all applicable laws and regulations, providing customer service.

#### Payment to First Transit:

1. Reimbursement of all operating expenses.
2. Annual management fee of \$25,000 (increases to \$29,280/year over 5 year term).

#### Term of Contract and Termination Rights:

1. Term is three years with two, one-year renewal option years.
2. TTA may terminate at any time for default or for convenience, with a 30 day notice.

#### Scope of Service:

1. Subject to funding from the City.
2. Service (and payments) can be adjusted if funds reduced.

#### Main Points Still in Negotiation:

1. Definition of Operating Expenses. TTA will agree to specify that all pension fund liability and sick leave and vacation will be covered operating expenses.
2. Necessity of a Performance Bond. TTA has asked the City for its position on this.
3. Disclaimer of Liability and Hold Harmless. First Transit wants to strictly limit its exposure, especially regarding pension plan and sick/vacation leave benefits.
4. Term: Option Years. First Transit wants to be able to opt out of option years.  
*TTA will also be adding a Notice section, a software license section and a "time is of the essence" section.*

**TRIANGLE TRANSIT**

**And**

**FIRST TRANSIT, INC.**

**CONTRACT FOR  
MANAGEMENT AND OPERATION OF  
CITY OF DURHAM'S**

**FIXED ROUTE TRANSIT SERVICE  
(TRANSIT MANAGEMENT)**

**EFFECTIVE OCTOBER 1, 2010**

This Contract (“Contract”) is made and entered into this \_\_\_\_th day of June, 2010 by and between the Research Triangle Regional Public Transportation Authority, d/b/a Triangle Transit (hereinafter “Triangle Transit” or “TTA”), and First Transit, Inc., a private for-profit corporation organized under the laws of the state of \_\_\_\_\_ (hereinafter “Contractor”). TTA and Contractor may be referred to individually as “Party” and collectively as “Parties” in this Contract. The City of Durham is a municipal corporation organized under the laws of the State of North Carolina (hereinafter “City”).

## **SEC. 1 PURPOSE**

The purpose of this Contract is for the Contractor to manage and operate the entire operations of the fixed route transit services in the service areas of the City and Durham County under the supervision and direction of TTA and by utilizing the subsidiary corporation as set forth in Section 4 below (hereinafter “Services”).

## **SEC. 2 DEFINITIONS**

As used in this Contract:

**Americans with Disabilities Act of 1990 (ADA).** The term “Americans with Disabilities Act” or “ADA” means the statute enacted by the United States Congress as Public Law Number 101-336.

**TTA Liaison.** The term “TTA Liaison” means the individual designated by TTA to administer TTA’s responsibilities under this Contract. Unless otherwise indicated in writing by TTA, the TTA Director of Bus Operations shall be the TTA Liaison.

**Days.** The term “days” means business days recognized by TTA, unless otherwise specifically noted.

**Facilities.** The term “Facilities” means the transit administrative and operating facilities owned by the City of Durham, assigned to TTA for located at 1820 North Miami Boulevard, 1903 Fay Street, 1907 Fay Street, Durham, and Durham Station which is located at 515 West Pettigrew Street in Downtown Durham.

**Federal Transit Administration (FTA).** The term “Federal Transit Administration” or “FTA” means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

**General Manager.** The term “General Manager” means the General Manager identified by the Contractor for the Services and approved by TTA, who is responsible for carrying out the Contractor’s duties under this Contract.

**Assistant General Manager.** The term “Assistant General Manager” means the Assistant General Manager identified by the Contractor for the Services, and

approved by TTA, who is responsible for carrying out the Contractor's duties under this Contract.

**Controller.** The term "Controller" means the Controller identified by the Contractor for the Services, and approved by TTA, who is responsible for carrying out the Contractor's duties under this Contract.

**Maintenance Manager.** The term "Maintenance Manager" means the Maintenance Manager identified by the Contractor for the Services, and approved by TTA, who is responsible for carrying out the Contractor's maintenance related duties under this Contract.

**Operations Manager.** The term "Operations Manager" means the Operations Manager identified by the Contractor for the Services, and approved by TTA, who is responsible for carrying out the Contractor's operation related duties under this Contract.

**Operating Expenses.** The term "operating expenses" shall mean all necessary ~~reasonable~~ operating expenses such as but not limited to salaries, payroll, wages, fringe benefits, social security, property and all other taxes pertaining to the operation of the transit system, pension benefits of all personnel, employment litigation costs and liabilities, attorney's fees, arbitrations, services, materials and supplies, utilities, insurance premiums and deductibles, uninsured losses, judgments, settlements and awards and all other non-capital expenses needed for use in providing the Services.

*Comment: The deletion of this language is problematic. First Transit cannot take on any pension plan liabilities – past, present or future. This is a management contract – one where First Transit will get paid a yearly fee of approximately \$25,000. It is untenable to expect that FT would be on the hook for any such potential liabilities. None of First Transit management contracts include such liabilities and we cannot make nay concessions here. The same goes for sick pay and vacation pay liabilities.*

**Proposal.** The term "Proposal" refers to a written document submitted by the Contractor in response to the Request for Proposals (RFP) issued by the City.

**Public Hearing.** The term "Public Hearing" means an open forum in which the opinions and concerns of the public community are solicited.

### **SEC. 3            CONTRACT DOCUMENTATION**

The Contractor acknowledges that the March 1, 2010 Request for Proposals issued by the City, the Clarifications and Responses to Questions subsequently issued by the City, and the Proposal submitted by the Contractor are hereby incorporated into and made a part of this Contract by reference as if they were attached hereto. In the event any provision of this Contract is in conflict with any provision of the documents stated herein, this Contract shall govern.

#### **SEC. 4           SUBSIDIARY CORPORATION**

At no cost to the Contractor, the Contractor, subject to the laws of the State of North Carolina, shall assume ownership from the incumbent contractor of and maintain a separate subsidiary corporation named the Durham City Transit Company, Inc (“DCTC”). The DCTC by assignment shall assume the rights and obligations of the Contractor under this Contract, provided however, that upon any such assignment made by the Contractor, the Contractor shall remain guarantor of each and every one of the obligations to TTA provided by this Contract; and any breach or violation thereof by DCTC shall be deemed a breach or violation by the Contractor.

In the event this Contract is terminated or expires, TTA or the City may, at their sole option, purchase all of the stock of the DCTC, the purchase price being the exact cost expended by the Contractor in assuming ownership of the DCTC, and all of such stock shall be forthwith transferred, assigned and conveyed to TTA or the City of Durham respectively, its assignee or designee at which time TTA or the City shall assume the rights and obligations of Contractor; thereafter, TTA or the City shall become the guarantor or each and every one of the obligations provided in this Contract and shall assume all liabilities and costs going forward.

#### **SEC. 5           EMPLOYMENT OF PERSONNEL**

The DCTC shall be the employer of all persons necessary for the day to day management and operation of the Services; provided however, that the number of personnel employed by DCTC shall at all times be subject to the approval of TTA. The compensation paid to all management and/or non-union personnel shall be within the total compensation range for each such position, as recommended by the Contractor and approved by TTA. The compensation paid to all union personnel shall be as stated in the collective bargaining agreement.

#### **SEC. 6           SCOPE OF WORK – SERVICES**

The Contractor shall manage and control all activities necessary for the provision of the Services in compliance with all applicable federal, state and local regulations, excepting only those activities specifically denoted herein as a responsibility of TTA or another party. The responsibilities of the Contractor include, but are not limited to:

Providing all operators, mechanics and service personnel as well as all other personnel;

Training or providing training for all personnel as necessary;

Ensuring that all personnel maintain a professional, courteous attitude toward passengers, including answering to the best of their ability all passenger questions; refraining from disparaging TTA, the City or the Contractor to passengers, the public or the media; and performing other tasks as directed.

Implementing a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654; producing any documentation necessary to establish its compliance; and permitting any authorized representative of the U.S. Department of Transportation or its operating administrations, the State Oversight Agency of North Carolina, or TTA to inspect the facilities and records associated with the implementation of the drug and alcohol testing program.

Fostering improved labor relations and conducting the labor contract negotiations;

~~Ensuring~~ **Promoting** safety of personnel and patrons, preventing losses and arranging for all appropriate insurance coverages;

~~Ensuring~~ **Promoting** compliance with applicable environmental and occupational safety and health laws and regulations.

Comment: The language implies that First Transit must guarantee these items. First Transit cannot make any such guarantees because it implies that if accidents or environmental liabilities, First Transit would be legally responsible for them. Not possible under a transit management contract.

Maintaining all facilities, vehicles, and equipment according to OEM and industry standards;

Developing methods for improving the reliability and efficiency of service operations;

Developing operational and maintenance reporting procedures;

Developing an annual operating budget;

Developing financial controls for the protection of all funds and assets;

Developing reporting procedures necessary for the timely and accurate reporting of all required financial statements including but not necessarily limited to a monthly balance sheet, revenue and expense statement, and cash reimbursement request with all supporting documentation;

Establishing an asset and inventory control system;

Conducting all operational (non-capital) procurements;

Providing the research and specifications for all capital procurements other than the construction of buildings;

Providing customer service;

Conducting fare media sales;

Administering all necessary third party service contracts;

Recommending employee incentive programs designed to improve employee performance and reduce employee absenteeism;

And any and all other work necessary to render the Services fully functional, again excepting only those activities specifically denoted herein as a responsibility of TTA.

**SEC. 7            RESERVED**

**SEC. 8            RESPONSIBILITIES OF TTA**

For the Services, TTA will provide the Contractor with sufficient working funds to pay **all** Operating Expenses, or to reimburse Operating Expenses under policies, procedures, and controls established and/or approved by TTA. The power to increase or decrease the amount of such working funds is reserved to TTA. Upon termination or expiration of this Contract, all unexpended balances remaining in such accounts shall revert and be returned to TTA.

For the Services, TTA will provide the Contractor with fuel for all revenue and service vehicles owned by or assigned to TTA or DCTC and pay for such fuel independent of this Contract.

Comment: Need to discuss with client.

**SEC. 9            TITLE OF PROPERTY**

For the Services, all real estate, buildings and improvements, equipment, buses, motor vehicles and any and all other materials and supplies reasonably necessary for the operation of the Services transit services shall be furnished by TTA and shall remain the property of the City or TTA. The Contractor shall keep a perpetual inventory of all property and equipment belonging to the City or TTA and being managed by the Contractor. Said inventory shall be provided to TTA on an annual basis upon the anniversary date of this Contract. Said inventory shall be available for inspection by TTA Liaison at any time during the term of this Contract.

**~~SEC.10            PERFORMANCE BOND~~**

~~Before this Contract shall be valid or binding against TTA, but within 30 days after the award of this Contract, the Contractor shall obtain a performance bond for the use of TTA, which bond shall be signed by the Contractor and two or more good and sufficient sureties, or with a surety company as Surety, and shall be in the amount of \$2,000,000.00. (This seems to be way in excess of a \$ 25,000 fee in the first year especially since this fee covers corporate support only and not operating expenses.) The performance bond shall be kept in full force and effect at all times during the term of this~~

~~Contract. The performance bond may be a one year renewable bond. The cost of this bond shall not be an operating expense of DCTC but rather an expense of the Contractor that shall be paid by the Contractor out the management fees denoted in Section 42 herein.~~

~~The condition of the performance bond shall be that the Contractor shall fully and faithfully perform all conditions of this Contract.~~

~~If TTA determines that the Contractor has substantially failed to keep and perform the covenants, conditions, and agreements in this Contract, then TTA may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, TTA Liaison shall notify the Surety and give the Surety an opportunity to perform within a reasonable time certain. If the Surety fails to perform, TTA Liaison shall perform and assess the Surety on its bond for the cost of such performance.~~

Comment: Performance Bonds are not SOP in transit management contracts because for the most part TM contract must be void of any liabilities to the management firm due to the limited fees associated with the contract.

## **SEC. 11 — DISCLAIMER OF LIABILITY**

~~Except as provided in Section 12, below, TTA will not hold harmless or indemnify the Contractor for any liability whatsoever. TTA~~

## **SEC. 12 HOLD HARMLESS**

The Contractor agrees to protect, defend, indemnify and hold TTA, its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "claims") in connection with or arising directly or indirectly out of the gross negligence of the General Manager, Assistant General Manager, Controller, Maintenance Manager or operatio's Manager ~~this Contract or the performance hereof by the Contractor or any subcontractor,~~ except to the extent that such claims, liens, demands, obligations, actions, proceedings or causes of action are the result of the negligence of TTA, its officers, employees or agents. ~~Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, whether or not it is alleged or determined that the Contractor was negligent, and without regard to whether such claim is groundless, false, or fraudulent. First Transit's obligations to indemnify~~

and hold harmless under this paragraph do not apply to those liabilities and claims that are otherwise covered by insurance.

TTA and/or the City will indemnify, defend and hold harmless FIRST TRANSIT, its parent, subsidiaries, affiliates, officers, directors, shareholders, agents, servants, employees and assigns (collectively, "FIRST TRANSIT") from and against any and all loss or liability (including but not limited to all past, present, and future pension or profit sharing plan liability, including without limitation, liability for vested but unfunded or underfunded benefits, ~~prior to the Effective Date of this Contract~~ payable by the City or its contractors, as well as any accrued sick time and/or vacation time ~~that may be owed prior to the Effective Date of this Contract~~— past, present or that may be due and owing at the time of retirement), claims, damage or expenses (including, but not limited to, attorneys' fees) arising out of, or related to, the management or operation of the Transit System, other City/TTA operations or businesses, or in any way associated with this contract, whether or not caused, in whole or in part, by the negligence of FIRST TRANSIT or its agents, servants or employees.

### **SEC. 13        DISPUTES**

Any dispute between the Contractor and TTA relating to the implementation, interpretation, or administration of this Contract shall be resolved in accordance with this Section.

The parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor and TTA Liaison. If the dispute remains unresolved 15 days after it first arises, the Contractor may request TTA General Manager to issue a recommended decision on the matter in dispute. TTA General Manager shall issue the recommended decision in writing and provide a copy to the Contractor.

The recommended decision of the TTA General Manager shall become final unless the Contractor submits a written request to submit the matter to mediation using a mutually agreed upon mediator. ~~In the absence of an agreement on a mediator, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. If mediation is not successful,~~ either party may seek judicial resolution of the dispute in the General Court of Justice, Superior Court Division for Durham County.

~~The recommended decision of TTA General Manager shall become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the Durham City Council (why not a neutral arbitrator? City Council is way too biased and political). In connection with any such review, the Contractor and TTA General Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Durham City Council, either party may seek judicial resolution of the dispute in the General Court of Justice, Superior Court Division for Durham County.~~

~~The Parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this Contract. Disputes that cannot be resolved by negotiation shall be submitted to mediation using a mutually agreed upon mediator. In the absence of an agreement on a mediator, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator.~~

~~Pending final resolution of a dispute under this Section, the Contractor the Parties shall proceed diligently with performance in accordance with this Contract and TTA General Manager's recommended decision.~~

#### **SEC. 14 CANCELLATION OF CONTRACT**

In any of the following cases, TTA shall have the right to cancel this Contract without expense to TTA: (1) the Contractor is guilty of misrepresentation; (2) this Contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) this Contract conflicts with any statutory or constitutional provision of the State of North Carolina or the United States. This Section shall not be construed to limit TTA's right to terminate this Contract for convenience or default, as provided in Sections 15 and 17, respectively.

#### **SEC. 15 TERMINATION FOR CONVENIENCE**

The performance of work under this Contract may be terminated by TTA in accordance with this Section in whole, or from time to time, in part, whenever TTA determines, upon recommendation of TTA General Manager, that such termination is in the best interest of TTA. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under this Contract is terminated and the date (at least thirty days hence) upon which such termination becomes effective.

Upon receipt of a notice of termination, and except as otherwise directed by TTA General Manager, the Contractor shall: (1) stop work under this Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to TTA in the manner, at the times, and to the extent directed by the TTA General Manager, all of the right, title and interest of the Contractor

under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of TTA, to the extent the TTA General Manager may require, which approval or ratification shall be final for all the purposes of this Section; (6) deliver to TTA in the manner, at the times, and to the extent, if any, directed by the TTA General Manager, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if this Contract had been completed, would have been required to be furnished to TTA; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the TTA General Manager may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor, and in which TTA has or may acquire an interest. Payments by TTA to the Contractor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

## **SEC. 16        TERMINATION BY MUTUAL AGREEMENT**

This Contract may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 15 and 17.

## **SEC. 17        TERMINATION FOR DEFAULT**

17.1    Subject to the provisions of Subsection 17.3 of this Section, TTA may, by 30-day advance written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

If the Contractor fails to provide the services in the manner required by this Contract or in accordance with the performance standards articulated herein;

If the Contractor fails to perform any of the provisions of this Contract in accordance with its terms; or

If the Contractor fails to make progress in the prosecution of the work under this Contract so as to endanger such performance.

17.2    In the event that TTA terminates this Contract in whole or in part as provided in Subsection 17.1 of this Section, TTA may procure, upon such terms and in such manner as the TTA General Manager may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to TTA for costs associated with the termination of this Contract, the procurement of replacement services by TTA, and any excess costs of such similar supplies or services. The Contractor shall continue the performance of this Contract to the extent not

terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and TTA are subject to resolution pursuant to Section 13.

- 17.3 Prior to terminating this Contract for default, TTA shall provide a written notice to Contractor of default and shall provide Contractor a minimum of thirty (30) days to cure said default prior to termination for default, except in the case where Contractor fails to maintain the proper insurance coverage as specified in Section 45 herein, in which case City may terminate this Contract without such notice.
- 17.4 Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance to the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

## **SEC. 18 FORCE MAJEURE**

The Contractor shall not be liable for any failure to perform if ~~convincing evidence has been submitted to the TTA General Manager~~ that failure to perform this Contract was due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, civil disturbances, fire, war, or floods, war or terrorism, Strikes or labor disputes. ~~may be included at the sole discretion of TTA.~~

## **SEC. 19 INTERESTS OF MEMBERS OF, OR DELEGATES TO, CONGRESS**

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

## **SEC. 20 DEBARRED BIDDERS**

The Contractor shall provide TTA with a certification addressing its debarment and suspension status and that of its principals. The Contractor shall promptly inform TTA of any change in the suspension or debarment status of the Contractor or its principals during the term of this Contract.

## **SEC. 21 SUBCONTRACTING OF CONTRACT AND TRANSFER OF INTERESTS**

This Contract or any portion thereof shall not be subcontracted except with the prior review and written approval of TTA. In any case in which the Contractor desires to subcontract, it shall provide TTA with all proposed subcontracting agreements and documents (including scope of work and terms of compensation). If permitted to subcontract, the Contractor shall be fully responsible for all work performed by the subcontractors.

The Contractor may not, by subcontract, modify its obligation to perform in full accordance with this Contract, or otherwise modify the basis upon which the Contractor was selected and Contract award made. Any action of the Contractor in violation of the preceding sentence shall constitute a breach of this Contract and an act of default. Further, the entering into of a subcontract shall not, under any circumstances, relieve the Contractor of its liability and obligations under this Contract, and all transactions with TTA must be through the Contractor.

Any approval of a subcontract shall not be construed as making TTA a party of such subcontract, giving the subcontractor privity of contract with TTA, or subjecting TTA to liability of any kind to any subcontractor.

The Contractor shall incorporate in each subcontract the provisions of this Contract in full, with the same conditions being imposed upon subsequent subcontractors.

There shall be no assignment or transfer of interests or delegation of the Contractor's rights, duties, or responsibilities of the Contractor under this Contract, except at the direction or with the advance written consent of TTA.

## **SEC. 22 LICENSING, PERMITS, AND TAXES**

The Contractor shall be appropriately licensed for the work required as a result of this Contract. The cost for any required licenses and permits, excepting the cost of permits that are included in Operating Expenses, shall be the responsibility of the Contractor. The Contractor is liable for any and all taxes due as a result of this Contract, provided, however, the taxes due upon licensing and registering revenue and support vehicles or taxes due on any other Operating Expenses shall be paid by TTA.

## **SEC. 23 LACK OF FUNDS CLAUSE**

The entering into of this Contract by TTA is subject to its receipt of local, state and federal funds adequate to carry out the provisions of this Contract in full.

The TTA General Manager may cancel or reduce the amount of service to be rendered if the TTA General Manager determines that such action is in TTA's best interests, or that there will be a lack of funding available for the service. In such event, the TTA General Manager will notify the Contractor in writing thirty (30) days in advance of the date such cancellation or reduction is to be effective.

## **SEC. 24 INDEPENDENT CONTRACTOR**

Under the terms of this Contract, the Contractor is an independent Contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than City employees, assisting in the performance of its services. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, and working

conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the term of this Contract.

## **SEC. 25 WAIVER OF TERMS AND CONDITIONS**

The failure of the TTA General Manager or the Contractor to enforce one or more of the terms or conditions of this Contract or to exercise any of its rights or privileges, or the waiver by TTA of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

## **SEC. 26 INTERPRETATION, JURISDICTION, AND VENUE**

All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of North Carolina. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of North Carolina or of the United States having jurisdiction in North Carolina for adjudication of any suit or cause of action arising under or in connection with the Contract documents, or the performance of this Contract, and agrees that any such suit or cause of action may be brought in any such court.

## **SEC. 27 INSPECTION OF WORK**

All work (which term in this Section includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by TTA Liaison to the extent practicable at all times and places during the term of this Contract. All inspections by TTA Liaison shall be made in such a manner as to not unduly delay the work. TTA Liaison shall have the right to enter the premises used by the Contractor for the purpose of inspecting and auditing all data and records that pertain to the Contractor's performance under this Contract. TTA Liaison shall also have the right to enter the premises used by the Contractor for the purpose of inspecting vehicles that are used to provide services under this Contract.

If any work performed is not in conformity with the requirements of this Contract, TTA Liaison shall have the right to require the Contractor to perform the work again in conformity with such requirements. In the event the Contractor fails promptly to perform the work again and take necessary steps to ensure future performance of the work is in conformity with the requirements of this Contract, TTA shall have the right to terminate this Contract for default as provided in Section 17.

## **SEC. 28 ANTIDISCRIMINATION CLAUSE**

The Contractor shall not in any way, directly or indirectly, in the performance of this Contract, discriminate against any person because of age, race, color, disability, sex, national origin, or religious creed.

**SEC. 29            EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor shall comply with the equal opportunity provisions of the Civil Rights Act of 1964, as amended, Executive Orders Numbers 11375 and 11246 as amended as supplemented in the Department of Labor Regulations 41 C.F.R. Part 60 and of the rules, regulations, and relevant orders of the Secretary of Labor. In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, disability, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and treated during their employment without regard to their race, religion, color, age, disability, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts.

**SEC. 30            AMERICANS WITH DISABILITIES ACT**

The Contractor shall comply with all provisions of the Americans with Disabilities Act of 1990 (P.L. No. 101-336) and Section 504 of the Rehabilitation Act of 1973 (P.L. No. 93-112). TTA shall ensure its policies with respect to the operation of the transit system meet the requirements of the Americans with Disabilities Act of 1990.

**SEC. 31            ENERGY EFFICIENCY**

The Contractor shall recognize the mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 *et seq.*).

**SEC. 32            CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contractor shall comply with the provisions under this Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

**SEC. 33            BUY AMERICA**

The Contractor shall comply with the applicable Buy America requirements set forth in 49 U.S.C. § 5323(j) and the applicable regulations in 49 C.F.R. Part 661, as amended. If

the Contractor procures any capital items with Federal funds, it is the Contractor's responsibility to obtain the Buy America certification required under such regulations.

#### **SEC. 34 ENVIRONMENTAL REQUIREMENTS**

The Contractor agrees to comply with any Federal environmental and resource conservation requirements that are in effect during the term of this Contract. The Contractor shall report any violation of standards, orders or regulations issued under the Clean Air Act (42 U.S.C. § 7401 et seq.) or the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) resulting from any activity of the Contractor in connection with the performance of this Contract to FTA and to the appropriate U.S. EPA Regional Office. The Contractor shall be responsible for the disposal of hazardous materials, including, but not limited to, waste oil, grease, automatic transmission fluid, diesel fuel and detergents, in accordance with applicable Federal, State and local law and regulations.

#### **SEC. 35 COMPLIANCE WITH LAWS AND PERMITS**

The Contractor shall give all notices and comply with all existing and future Federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of this Contract, including, but not limited to, the laws referred to in these provisions of this Contract and in the other contract documents. If this Contract documents are at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to TTA Liaison certificates of compliance with all such laws, orders, and regulations.

#### **SEC. 36 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of TTA that Disadvantaged Business Enterprises or DBEs as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

The Contractor shall not discriminate on the basis of race, color, national origin, physical or mental disability, or sex in the award and performance of contracts assisted by the U.S. Department of Transportation.

The established goals for this Contract shall be in accordance with the TTA Disadvantaged Business Enterprise Program.

### **SEC. 37 SECTION 13(c) OBLIGATIONS**

The Contractor shall be administratively responsible for obligations under Section 13(c) of the Federal Transit Act (49 U.S.C. § 5333(b)).

The Contractor shall have financial liability for any 13(c) claims or obligations that are created by acts or omissions of the Contractor that are not directed by TTA, and shall also be obligated to comply with any applicable preference in hiring obligations imposed under Section 13(c). In addition, the Contractor shall cooperate with TTA (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes for which TTA has responsibility.

The Contractor shall not assist or encourage any employee to file or otherwise pursue a 13(c) claim against TTA, or take any action which is contrary to the interests of TTA under 13(c) or its 13(c) arrangements or agreements, relating to the termination of services under this Contract, any future transition from the Contractor to another service provider, or any other action or event relating to this Contract. If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by TTA (including attorneys' fees) associated with any 13(c) claims or delays in the receipt of Federal grants.

The Contractor agrees to offer all of the employees of the current Contractor who are engaged in the provision of Services to TTA (except executive and administrative officers) comparable positions to the positions currently held by those employees. ~~The Contractor also agrees to assume and/or fulfill the current Contractor's obligations with respect to wages, hours, working conditions, health and welfare, and pension or retirement provisions for those fixed route employees for whom the Contractor is required to provide comparable positions. Unless otherwise specified herein, The Contractor shall not be required to assume any liabilities with respect to employees hired from the previous contractor where such liabilities were created prior to employment of these employees by Contractor, including liabilities for accrued benefits, pension, sick pay or vacation pay.~~

**Comment:** As discussed earlier, language such as this is problematic. It indicates that First Transit would be on the hook for pension and retirement benefits. This is too much of a risk for a management contract where First Transit is being paid in the \$25,000 - \$30,000 range yearly.

### **SEC. 38 FTA TITLE VI SERVICE STANDARDS**

The Contractor agrees to meet City's service standards developed in compliance with FTA Circular 4702.1 implementing Title VI of the Civil Rights Act of 1964. Title VI

service standards include a minimum of five elements: (1) Vehicle Load; (2) Vehicle Assignment; (3) Vehicle Headway; (4) Distribution of Transit Amenities; and (5) Transit Access.

**SEC. 39 PATENT RIGHTS**

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery may be patentable under the patent laws of the United States of America or any foreign country, the Contractor shall immediately notify TTA Liaison and provide a detailed report. The rights and responsibilities of TTA, the Contractor and the Federal Government with respect to each such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies and any waiver thereof.

**SEC. 40 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 this Contract and each provision of this Contract will be and is deemed to be separate and severable from each other provision.

**SEC. 41 CONTRACT TERM**

The term of this Contract is for a period of three (3) years beginning October 1, 2010, with two (2), one (1) year options as described immediately below.

TTA shall have the option of extending this Contract for two (2), one (1) year periods commencing respectively the day after the initial three (3) year term or any one (1) year extension. TTA will provide the Contractor with notice of whether it intends to exercise an option at least 90 days before the end of the initial (3) year term or any one (1) year extension.

**Comment: Since TTA has the right to terminate the contract at its convenience and First Transit does not, First Transit should be allowed to turn down the option years.**

**SEC. 42 INVOICES AND PAYMENTS**

For the Services, the Contractor shall be compensated by TTA for the services performed under this Contract solely on the basis of a management fee as follows:

Year 1 Annual Management Fee of \$25,008 Monthly Management Fee of \$ 2084.00  
Year 2 Annual Management Fee of \$26,016 Monthly Management Fee of \$ 2168.00  
Year 3 Annual Management Fee of \$27,060 Monthly Management Fee of \$ 2255.00  
Year 4 Annual Management Fee of \$28,152 Monthly Management Fee of \$ 2346.00  
Year 5 Annual Management Fee of \$29,280 Monthly Management Fee of \$ 2440.00

For the Services, on or before the 15<sup>th</sup> day of each month, the Contractor shall send the Transit Liaison an invoice for the monthly management fee then in effect. Upon receipt, TTA shall have up to 10 days to approve of the invoice and forward to DCTC for actual payment. The foregoing notwithstanding, TTA shall have no obligation to approve or cause any invoice to be paid to the Contractor until such time as all required monthly financial and operating reports are submitted to TTA and found to be materially correct.

#### **SEC. 43 FARE COLLECTION**

The Contractor is responsible for collecting fares in strict accordance with instructions provided by TTA. The Contractor's vehicle operators and/or the fareboxes are to record each boarding by type of fare, including recording of non-fare boardings on days designated by TTA.

All fares collected are the property of TTA. Any cash fares and tickets are to be emptied from the farebox by the Contractor or collected from the operators in the case of the ACCESS service. The amount of the collected fares shall substantially correspond to the number of passenger trips recorded by the Contractor and/or the fareboxes.

TTA will periodically conduct on-board farebox checks. The Contractor shall cooperate with TTA in any such on-board checks.

#### **SEC. 44 PROJECT MANAGEMENT**

For the Services, the Contractor will designate a full-time General Manager, Assistant General Manager, Controller, Maintenance Manager, and an Operations Manager dedicated to services performed under this Contract who will manage and supervise the day-to-day operations of the Services in accordance with Section 6 of this Contract. All such persons are to be employees of DCTC. All of these persons or their designees are to be available by telephone or in person during all hours of operation to make decisions as necessary at the request of TTA.

For the Services, TTA reserves the right to approve the selection of the General Manager, Assistant General Manager, Controller, Maintenance Manager, and the Operations Manager, and to direct the removal of one or more of these persons at any time during the term of this Contract. TTA Liaison must be notified at least 30 days prior (except where short-term notifications of termination or resignation may occur) to any contemplated changes to the General Manager, Assistant General Manager, Controller, Maintenance Manager, and/or the Operations Manager, and TTA Liaison must provide written approval of changes to the General Manager, Assistant General Manager, Controller, Maintenance Manager, and/or the Operations Manager prior to the action being taken.

TTA reserves the right to require the Contractor to immediately remove an employee from transportation service for any of, but not necessarily limited to, the following items:

Committing unsafe or inappropriate acts while providing transportation services;

Revocation or non-renewal of a valid North Carolina driver's license;

Distributing any unauthorized materials while performing services under this Contract;

Soliciting a gratuity from a passenger;

Failure to notify the Contractor of an arrest or conviction of a criminal offense of a Class A or Class B misdemeanor or felony; or placement on probation or deferred adjudication for the same; or a driving while intoxicated (DWI) charge, before the end of the business day following the day the employee receives notice of such action;

Incurring excessive customer complaints due to discourtesy, rudeness, and use of profanity or any other act deemed unacceptable; or

Failing or refusing to take a drug or alcohol test.

## **SEC. 45 INSURANCE**

For the Services, the cost of insurance and whatever liability for personal injury or property damage or loss may be incurred to third parties in connection with or arising out of the Contractor's performance under this Contract, ~~excepting Contractor's indemnification and hold harmless obligations to TTA arising from Section 12 of this Contract~~ ~~except as otherwise provided in this Contract~~, shall be part of Operating Expenses and thus be reimbursed or paid by City. The Contractor shall, however, be liable for any negligent, dishonest, fraudulent, misconduct, or intentional tort committed or directed by any officer or employee of the Contractor, ~~or any other such act or omission, on the part of any person or persons directly or indirectly employed and paid by Operator, but only if such acts resulted from negligent oversight, management, supervision, or training by the Contractor.~~

For the Services, the Contractor will be responsible for obtaining the insurance denoted below and for maintaining this insurance if full force and effect during the term of this Contract:

Workers' Compensation Insurance covering all of Contractor's employees engaged in work under this Contract as required under the Workers' Compensation Act of the State of North Carolina and/or any applicable law or laws of any other state or states. Employer's Liability Insurance with limits of liability of not less than \$1,000,000 per accident, \$1,000,000 per employee for disease, and \$1,000,000 policy total for disease.

General Liability Insurance covering the Facilities premises used in performance of this Contract with limits of liability not less than \$5,000,000 each occurrence combined single limit, with an aggregate limit not less than \$10,000,000. Such liability insurance shall also include coverage for all operations of the Contractor in the performance of this contract, Personal Injury Liability, Contractual Liability, XCU Hazards (explosion, collapse, and underground), Broad Form Property

Damage, and Liability for Independent Contractors. In addition, Fire Damage Liability Limit shall not be limited except by the coverage limit of the policy or the amount of damage to City's buildings, whichever is less.

Automobile Liability Insurance covering all Revenue and Support Vehicles used in connection with the work performed under this Contract with limits of not less than \$10,000,000 each occurrence combined single limit for bodily injury and property damage.

Automobile Physical Damage Insurance on all vehicles used by Contractor in providing Services under this Contract which covers collision and fire, theft, combined additional coverage with limits of liability not less than the actual cash value of the vehicle at time of loss or the cost to repair or replace with like kind and quality with deduction for depreciation. Deductibles shall not exceed \$10,000 for each loss and TTA shall be named Loss Payee under the policy.

TTA will be named as an additional insured for all liability coverage and for all commercial coverage for all assets utilized by Contractor in the provision of Services under this Contract.

All such policies as required above shall be endorsed to provide a thirty (30) day written Notice of Cancellation, renewal, or material change to TTA Liaison.

The limits of liability as required under this Section may be provided by a single policy of insurance or a combination of policies including excess insurance. Self-insurance or the use of deductibles or self-insured retentions may be permitted in lieu of these requirements if so approved in advance in writing by the TTA General Manager.

The Contractor shall require any and all subcontractors performing work under this Contract to carry insurance to the types and with limits of liability as the Contractor shall deem appropriate and adequate. The Contractor shall obtain and make available for inspection by TTA Liaison upon request Certificates of Insurance evidencing insurance coverages carried by such subcontractors.

All insurance required to be maintained or provided by the Contractor and subcontractors shall be with companies and through policies approved by TTA Liaison. TTA Liaison has the right to inspect in person, prior to commencement of the work, all of the Contractor's insurance policies in regard to required insurance coverages. All such Insurance Companies shall carry a Best's rating of A+ (or equivalent) and be authorized to do business in the State of North Carolina.

The Contractor shall provide TTA Liaison with full and complete loss runs for all insurance policies within 30 days of such loss runs being produced.

Proof of the required insurance coverage shall be furnished to TTA Liaison within thirty (30) calendar days prior to the effective date of this Contract. Renewal or replacement

policies shall be furnished fifteen (15) days prior to the expiration date or termination date of any policy furnished in compliance with the requirements of this Contract. Proof of insurance shall consist of duplicate original insurance policies and a certificate issued by the agent summarizing the insurance and indicating the 90-day notice requirement.

If at any time during this Contract term the Contractor fails to provide proof of insurance required above or fails to provide the required loss runs, TTA reserves the right, but not the obligation, to purchase other insurance to protect TTA's interests and to find the Contractor in default of this Contract.

#### **SEC. 46      AUDIT AND INSPECTION OF RECORDS**

The Contractor agrees that TTA, the Comptroller General of the United States, and the U.S. Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of this Contract. Further, the Contractor agrees to maintain all required records for at least three (3) years after TTA has made final payment and all other pending matters are closed.

The TTA General Manager or his designee may, at any time, conduct an audit of any and/or all records kept by the Contractor that are directly or indirectly related to the services provided under this Contract. Appropriate financial adjustments shall be made by the TTA General Manager based upon any inconsistency, irregularity, discrepancy or unsubstantiated billing revealed as a result of such audit. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices.

#### **SEC. 47      OWNERSHIP OF DOCUMENTS**

The Contractor agrees that any and all information, in oral or written form, whether obtained from TTA, its agents or assigns, or other sources, or generated by the Contractor pursuant to this Contract, shall not be used for any purpose other than fulfilling the requirements of this Contract. Any documents, reports, or data generated by the Contractor in connection with the performance of this Contract shall become the sole property of TTA, subject to any rights asserted by the FTA. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports, or data from this project without prior written consent of TTA.

#### **SEC. 48      PERFORMANCE REQUIREMENT**

The Contractor shall at all times during the term of this Contract perform all work diligently, carefully, and in a professional manner; and shall furnish all labor, supervision, and management necessary therefore. The Contractor shall conduct all work in the Contractor's own name and as an independent Contractor and not in the name of, or as an agent for, TTA.

## **SEC. 49 CONTINUITY OF SERVICES**

The Contractor recognizes that the services under this Contract are vital to TTA and must be continued without interruption and that, upon Contract expiration or termination, another entity, either TTA or another provider, may continue those services. The Contractor agrees to: (1) furnish phase-in training; and (2) exercise its best efforts and cooperate to effect an orderly and efficient transition to the subsequent provider.

The Contractor shall, upon the TTA General Manager's written notice: (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires or terminates; and (2) negotiate in good faith a plan with the subsequent provider to determine the nature and extent of phase-in, phase-out service required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the TTA General Manager's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs that are incurred and not compensated by TTA in the Service Hour method of compensation within the agreed period after contract expiration or termination that directly result from phase-in, phase-out operations.

## **SEC. 50 CHARTER SERVICE**

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

## **SEC. 51 SCHOOL BUS**

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

## **SEC. 52 ENERGY CONSERVATION**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**SEC. 53 CLEAN WATER**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**SEC. 54 CLEAN AIR**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the

Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**SEC. 55 NO OBLIGATION by the FEDERAL GOVERNMENT**

(1) TTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to TTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**SEC. 56 PROGRAM FRAUD and FALSE or FRAUDULENT STATEMENTS or RELATED ACTS**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **SEC. 57        INCORPORATION of FEDERAL TRANSIT ADMINISTRATION TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause TTA to be in violation of the FTA terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers.

Research Triangle Regional  
Public Transportation Authority

First Transit, Inc.

By: \_\_\_\_\_  
General Manager

By: \_\_\_\_\_ (SEAL)  
President/CEO

# MEMORANDUM

TO: Triangle Transit Planning & Legislative Committee  
FROM: Commuter Resources  
DATE: July 9, 2010  
SUBJECT: Contract with Transloc for Regional Real-Time System

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## Action Requested

Recommend Board approval of contract with Transloc, Inc. not to exceed \$300,000 for the purchase of a regional public real-time information system.

## Background and Purpose

On April 14, 2010 Triangle Transit advertised an RFP on behalf of Capital Area Transit (CAT), Durham Area Transit Authority (DATA), Chapel Hill Transit (CHT), Cary Transit (C-Tran), and NC State University for the purchase and installation of a regional public real-time information system. Six (6) vendors proposed a solution for Triangle Transit. The evaluation committee (made up of representatives from each partner agency) selected Transloc, Inc. (of Raleigh, NC) as the most responsive proposal, based on the evaluation criteria set forth in the RFP.

The purpose of this project is to incorporate real-time locations and predictions for CAT, DATA, Triangle Transit, Chapel Hill Transit, C-Tran, and NCSU Wolfline buses (provided from multiple existing real-time system vendors) into one easy to use public interface, available to customers via multiple channels including internet, mobile internet, smart phone applications, and SMS text messaging.

This project will also include a free real-time data feed that we will make available to local developers, allowing them to create their own free applications (i.e. iPhone, Blackberry, web, etc.).

## Financial Impact

Triangle Transit has \$300,000 of recently approved state advanced technology grant funds budgeted for this project. Staff will begin negotiating items in the scope of work with Transloc, Inc. within the next few weeks. However, the total price will not exceed \$300,000.

## Attachments

- None

## Staff Contact

Brian Fahey, 485-7465, [bfahey@triangletransit.org](mailto:bfahey@triangletransit.org)