

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: MASS TRANSIT DEPARTMENT (SUN METRO)
AGENDA DATE: MAY 15, 2012
CONTACT PERSON/PHONE: JANE SHANG, DEPUTY CITY MANAGER, 541-4327
BRUCE D. COLLINS, PURCHASING MANAGER, 541-4313
DISTRICT (S) AFFECTED: ALL

SUBJECT:

Mass Transit Department (Sun Metro) recommends award to the following bidders for solicitation 2012-040R (Management and Operation Transit and Lift System) as follows:

- **Option 1-**Transit Management Services for Fixed Route Transit, to First Transit Inc., for an estimated 5 year total of \$4,704,159.00, plus maximum incentives possible \$360,000.00/5 yrs, and 10% allowance for special services over 5 years of \$470,416.00, for an estimated total award of \$5,534,575.00 over 5 years.

Annual Estimated Award Amounts, including incentives and Special Services

Year 1	\$ 1,084,152	12.66 Mos.
Year 2	1,066,222	
Year 3	1,096,385	
Year 4	1,127,673	
Year 5	<u>1,160,142</u>	
Total 5 Yrs	\$ 5,534,575	

- **Option 3-**Transit Service Contract for LIFT Paratransit, to MV Transportation, Inc., for an estimated 5 year total of \$35,044,262.00, plus maximum incentives possible \$300,000.00/5 yrs and a 10% allowable increase based on revenue hours variable costs of \$2,530,693.00 over 5 years for an estimated total award of \$37,874,955.00 over 5 years.

Year 1	\$ 7,241,609	12.66 Mos.
Year 2	7,203,808	
Year 3	7,530,944	
Year 4	7,807,890	
Year 5	<u>8,090,704</u>	
Total 5 Yrs	\$37,874,955	

The term of the agreement shall be for 5 years with an option for two additional years. Option 2 is not being awarded.

BACKGROUND / DISCUSSION:

Last spring the City Council acting in its capacity as the Mass Transit Board directed staff to obtain the best leadership for managing and/or operating the fixed route and paratransit service. The options to be reviewed ranged from a management contract of key staff to a turnkey operation with third party services. The three recommended options to be pursued in a Request for Proposal (RFP) are (1) Transit Management for Fixed Route; (2) Transit Management for Fixed Route and LIFT; and (3) Transit Service Contract for LIFT.

Four firms, including local and national firms, responded to the RFP. Competitive and viable proposals were received. The proposals were evaluated as a best value based on a combination of technical (70%) and price factors (30%) with a focus on customer service/service delivery and then cost. The evaluation team consists of staff from the City Manager's office, Human Resources, Comptroller, General Services, Aviation, Texas Transportation Institute, Sun Metro and Office of Management and Budget. Observers of the process are a City Representative, a member of the Sun Metro Citizens Advisory Committee and Human Resources staff.

Option 1 and 3 provide the best value. Option 1 makes it possible for the City to procure a transit management team of three professionals and the transfer of the safety, security and training function to provide necessary transit management experience. Option 3 provides the community with the opportunity to bring in a nationally recognized company specializing in the transportation of the elderly and persons with disabilities. Further, by awarding Option 3, the City will ensure enhanced customer service to our clientele and compliance with service standards, while realizing a minimum a savings of approximately \$1.25M annually as compared to providing service internally. The City will continue to maintain oversight of the services.

SELECTION SUMMARY:

Solicitation was advertised on 11/09/2011; 11/06/2011 and 11/13/2011. The postcards were mailed out on 11/09/2011. The solicitation was posted on City website on 11/09/2011. The email (Purmail) notification was sent out on 11/10/2011. Total of sixty-seven bidders with 32 local vendors were solicited and four bids were received with one being a local vendor.

PRIOR COUNCIL ACTION:

Mass Transit Board awarded Contract No. 2008-114R SUN METRO TRANSIT MANAGEMENT SERVICES on May 13, 2008. The Mass Transit Board on April 12 and April 26, 2011 approved an extension for six months and gave a directive to issue a Request for Proposal.

AMOUNT AND SOURCE OF FUNDING:

Sun Metro Budget as follows, commencing in FY13:

60600001	-	Sun Metro Administration
502207	-	Management Services
40345	-	Sun Metro Operating fund

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____

Name

Signature

Date

**COUNCIL PROJECT FORM
(RFP)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Council Meeting of **MAY 15, 2012**.

Discussion and action on the award of Solicitation No. 2012-040R (Management and Operation Transit and LIFT System) to First Transit, Inc., and MV Transportation, Inc. for a total estimated award of \$43,409,530.00 for a 5 year term.

Department: Mass Transit Department (Sun Metro)
Award to Vendor 1: First Transit, Inc.
Cincinnati, OH
Item(s): Option 1 – Transit Management Service for Fixed Route Transit
Option: 2 years
Payment Terms: N30
Annual Estimated Amount: YR1: \$1,084,152.00 (12.66 months)
YR2: \$1,066,222.00
YR3: \$1,096,385.00
YR4: \$1,127,673.00
YR5: \$1,160,142.00
Total Estimated Award: \$5,534,575.00 (5 years- includes incentive of possible \$360,000.00 and special allowance \$470,416.00)

Award to Vendor 2: MV Transportation, Inc.
Fairfield, CA
Item(s): Option 3 – Transit Service Contract for LIFT Paratransit
Option: 2 years
Payment Terms: N30
Annual Estimated Amount: YR1: \$7,241,609.00 (12.66 months)
YR2: \$7,203,808.00
YR3: \$7,530,944.00
YR4: \$7,807,890.00
YR5: \$8,090,704.00
Total Estimated Award: \$37,874,955.00 (5 years- includes incentives of possible \$300,000.00 and special allowance \$2,530,693.00)

Total Estimated Award: \$43,409,530.00
Account No.: 60600001 – 502207 – 40345
Funding Source: Sun Metro Operating Fund – Management Service
District(s): All

This is an RFP, service contract.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

The Financial Services - Purchasing Division and Mass Transit Department (Sun Metro) recommend award as indicated to First Transit, Inc., and MV Transportation, Inc. the highest ranked proposers based on evaluation factors established for this procurement.

*******ADDITIONAL INFO BELOW*******

Option 2 - Transit Management Services for Fixed Route Transit and LIFT Paratransit, is not being awarded.

DATE: 5/10/2012

Total Technical and Cost Scores, Weighted

SOLICITATION NO: 2012-040R Best and Final Offer (BAFO)

SOLICITATION TITLE: Management and Operation Transit and LIFT System

	Option 1			Option 2			Option 3			
	First Transit Management Fixed Route Transit	McDonald Management Fixed Route Transit	MV Transport Management Fixed Route Transit	First Transit Management Fixed and LIFT Paratransit	McDonald Management Fixed and LIFT Paratransit	MV Transport Management Fixed and LIFT Paratransit	First Transit Transit Service Contractor for LIFT Paratransit	MV Transport Transit Service Contractor for LIFT Paratransit	Project Amistad Transit Service Contractor for LIFT Paratransit	
TECHNICAL EVALUATION BY TECHNICAL REVIEW TEAM										
Technical Evaluation	100 Points	95	78	84	90	11	76	87	93	68
Weight for Technical Evaluation	70%	70%	70%	70%	70%	70%	70%	70%	70%	70%
Technical Points Score X Weight for Technical Evaluation		66.2	54.6	58.8	63.0	7.7	53.2	60.9	65.1	47.6
COST EVALUATION BY COST REVIEW TEAM										
Cost Evaluation	100 Points	96	100	83	67	100	58	100	93	63
Weight for Cost Evaluation	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%
Cost Points Score X Weight for Cost Evaluation		28.9	30.0	24.8	20.0	30.0	17.5	30.0	28.0	19.0
GRAND TOTAL = Maximum 100 Weighted Points		95.0	84.6	83.6	83.0	37.7	70.7	90.9	93.1	66.6

Summary Score Sheet by Option

SOLICITATION NO: 2012-040R Best and Final Offer (BAFO)
 SOLICITATION TITLE: Management and Operation Transit and LIFT System

Average Technical Score for Each Proposer by Option	Option 1			Option 2			Option 3		
	First Transit Management Fixed Route Transit	McDonald Management Fixed Route Transit	MV Transport Management Fixed Route Transit	First Transit Management Fixed and LIFT Paratransit	McDonald Management Fixed and LIFT Paratransit	MV Transport Management Fixed and LIFT Paratransit	First Transit Transit Service Contractor for LIFT Paratransit	MV Transport Transit Service Contractor for LIFT Paratransit	Project Amistad Transit Service Contractor for LIFT Paratransit
A. Past Performance of the Firm 30 Points Total Performance as reported in reference checks for at least (5) of the most relevant contracts for transit agencies and commercial customers within the last (5) years. 30 Points	29.0	26.0	25.0	28.0	6.0	25.0	27.0	29.0	25.0
B. Management Competence and Staffing Plan 25 Points Total									
1) Organizational structure and staffing plan appropriate to the scope of services. 5 points	5.0	4.0	5.0	5.0	0.0	3.0	4.0	4.0	3.0
2) Description of staff responsibilities in a way that ensures efficient use of staff while promoting high quality performance. 5 points	5.0	4.0	4.0	5.0	0.0	3.0	4.0	4.0	3.0
3) Education and experience of key personnel, as well as any other information relative to performance of contract. The extent, depth and quality of the key personnel's relevant work experience, as well as the quality and applicability of their education, technical experience, and professional development to the proposed position in performance of the contract. 10 points	9.0	7.0	8.0	8.0	1.0	7.0	8.0	9.0	6.0
4) Clear information regarding each proposed staff person's availability to perform the position for which they are proposed. Each person should be available to begin work on this project when the contract award is made. 3 points	3.0	3.0	2.0	3.0	0.0	2.0	3.0	2.0	2.0
5) Plans to replace staff are sufficient to avoid any degradation of work product due to staffing vacancies. 2 points	2.0	2.0	2.0	2.0	0.0	2.0	2.0	2.0	1.0
C. Approach to the Scope of Services 25 points Total									
1) Quality and responsiveness of the approach to the Scope of Services. 4 points	3.0	3.0	4.0	4.0	0.0	2.0	3.0	4.0	3.0
2) Understanding of the activities required to ensure high quality service. Plans to identify and address unfavorable trends and problem areas. 7 points	7.0	5.0	6.0	6.0	1.0	5.0	6.0	7.0	5.0
3) Proposed methodology to monitor and ensure performance standards are met or exceeded. 7 points	7.0	5.0	6.0	6.0	1.0	5.0	7.0	7.0	5.0
4) Proposed action plan to increase ridership (Option 1) or improve paratransit productivity (Options 2 and 3). 7 points	Increase Ridership 6.5	Increase Ridership 5.0	Increase Ridership 5.0	Improve LIFT Productivity 6.0	Improve LIFT Productivity 1.0	Improve LIFT Productivity 5.0	Improve LIFT Productivity 6.0	Improve LIFT Productivity 6.0	Improve LIFT Productivity 4.0
D. Approach to Additional Functions and Value Added Services 20 points Total									
1) Quality and responsiveness of the approach to Safety, Security and Training Function (Option 1) and LIFT Paratransit Call Center and Eligibility Functions (Options 2 and 3). 10 points	Safety & Security 9.0	Safety & Security 7.0	Safety & Security 8.0	LIFT Call Center & Eligibility 9.0	LIFT Call Center & Eligibility 1.0	LIFT Call Center & Eligibility 9.0	LIFT Call Center & Eligibility 9.0	LIFT Call Center & Eligibility 9.0	LIFT Call Center & Eligibility 7.0
2) Value added additional management services based on demonstrated savings and/or improved performance in return for the expanded staff responsibility. 5 points	Additional Management Services 4.0	Additional Management Services 3.0	Additional Management Services 4.0	Additional Management Services 4.0	Additional Management Services 0.0	Additional Management Services 4.0	Additional Management Services 4.0	Additional Management Services 5.0	Additional Management Services 2.0
3) Quality of services offered as Corporate Support and Technical Assistance. 5 points	Corporate Support & Tech Assistance 5.0	Corporate Support & Tech Assistance 4.0	Corporate Support & Tech Assistance 5.0	Corporate Support & Tech Assistance 4.0	Corporate Support & Tech Assistance 0.0	Corporate Support & Tech Assistance 4.0	Corporate Support & Tech Assistance 4.0	Corporate Support & Tech Assistance 5.0	Corporate Support & Tech Assistance 2.0
TECHNICAL EVALUATION SCORE	95	78	84	90	11	76	87	93	68

OPTION 1	First Transit BAFO	McDonald Original	MV BAFO
Total Option 1 Key Management Staff Fixed Route	\$ 2,616,702	\$ 2,516,932	\$ 3,047,589
Point Scores	96.2	100.0	82.6

OPTION 2	First Transit BAFO	McDonald Original	MV BAFO
Total Option 2 Key Management Staff Fixed Route and LIFT	\$ 3,773,299	\$ 2,516,932	\$ 4,312,844
Point Scores	66.7	100.0	58.4

OPTION 3	First Transit BAFO	MV BAFO	Project Amistad BAFO
Total Fee for Transit Service Contract for LIFT Paratransit	\$ 32,386,513	\$ 34,731,303	\$ 51,220,204
Point Scores	100.0	93.2	63.2



CITY OF EL PASO REQUEST FOR PROPOSAL TABULATION FORM



Bid Opening Date: February 8, 2012

Project Name: Management and Operation Transit and Lift System

Solicitation #: 2012-040R

Department: Mass Transit (Sun Metro)

FIRST TRANSIT, INC.	CINCINNATI, OH
LULAC PROJECT AMISTAD dba PROJECT AMISTAD	EL PASO, TX
MCDONALD TRANSIT ASSOCIATES, INC.	FT. WORTH, TX
MV TRANSPORTATION, INC.	FAIRFIELD, CA
RFPs SOLICITED: 63	RFPs RECEIVED: 4
	RFPs LOCAL: 32
	NO RFPs: 0

NOTE: The information contained in this rfp tabulation is for information only and does not constitute actual award/execution of contract.

APPROVED: Is/

DATE: 02/09/2012

MV TRANSIT
4620 WESTAMERICA DR
FAIRFIELD, CA 94534
ATTN: JOE ESCOBEDO, JR

TECTRANS, INC
6053 W. CENTURY BOULEVARD,
9TH FLOOR
LOS ANGELES, CA 90045
ATTN: DWIGHT BRASHEAR

COACH AMERICA
8150 NORTH CENTRAL EXPRESSWAY, SUITE
M1000
DALLAS, TX 75206
ATTN: LAURA J HENDRICKS

FORSYTHE TRANSPORTATION
310 W SCOTT ST
GAINEVILLE, TX 76240
ATTN: WILLIAM P. FORSYTHE

COACH AMERICA
950 MCCARTY DRIVE
HOUSTON, TX 77029
ATTN: GREG ROGERS

VEOLIA TRANSPORTATION
720 E BUTTERFIELD RD,
SUITE 300
LOMBARD, IL 60148
ATTN RICHARD ALEXANDER

VEOLIA TRANSPORTATION
120 N. 44TH ST STE 330
PHOENIX, AZ 85034-1827
ATTN: RON BROOKS

FIRST TRANSIT, INC
600 VINE ST, SUITE 1400
CINCINNATI, OH 45202
ATTN: RICK DUNNING

MCDONALD TRANSIT ASSOCIATES, INC
3800 SANDSHELL DRIVE, STE 175
FORT WORTH, TX 76137
ATTN: ROBERT BABBITT

MOBILITY TRANSIT SERVICE, LLC
1635 MEATHE DRIVE
WEST PALM BEACH, FL 33411
ATTN: KEVIN J ADAMS

MOBILITY TRANSIT SERVICES, LLC
1800 HICKORY GLEN ROAD
KNOXVILLE, TN 37932
ATTN: RYAN ADAMS

FIRST TRANSIT - TRANSPORTATION MGMT
SVCS
600 VINE ST, SUITE 1400
CINCINNATI, OH 45202
ATTN: TOM IRVIN

GOODWILL STAFFING SOLUTIONS
9611 ACER AVENUE
EL PASO, TX 79925
ATTN: ARLENE ALARCON

ALL ABOARD AMERICA
4601 TITANIC AVE
EL PASO, TX 79904

THE JOB CONNECTION, INC
8855 VISCOUNT, SUITE E
EL PASO, TX 79925
ATTN: MONICA MORENO

WORKFORCE SOLUTIONS-UPPER RIO
GRANDE WORKFORCE DEVELOPMENT
BOARD
221 N KANSAS, STE 1000
EL PASO, TX 79901

AMERICAN LOGISTICS COMPANY
520 W. DYER STREET
SANTA ANA, CA 92707
ATTN: MEGAN BRORSON

PROFESSIONAL TRANSIT MGMNT
6405 BRANCH HILL-GUINEA PKE, STE 203
LOVELAND, OH 45140

LULAC-PROJECT AMISTAD
1359 LOMALAND SUITE 400
EL PASO, TX 79935
ATTN: VINCE HUERTA

RM PERSONNELL, INC.
4707 MONTANA AVE., STE 100
EL PASO, TX 79903

MV TRANSPORTATION INC
4620 W AMERICA DR
FAIRFIELD, CA 94534

SUN CITY CAB CO
2930 MAGOFFIN AVENUE
EL PASO, TX 79905

STAR SHUTTLE
1135 GUNTER, SUITE 102
AUSTIN, TX 78702
ATTN: AUSTIN WALKER

VEOLIA
5316 ED BLUESTEIN BLVD
AUSTIN, TX 78723
ATTN: JOEY MCKELVEY

FIRST GROUP
2355 N 60TH ST
MILWAUKEE, WI 53210
ATTN: MORGAN MCCLELLAND

FIRST TRANSIT
3007 WHITE ROCK DR
AUSTIN, TX 78757
ATTN: CHUCK BARNES

FIRST TRANSIT
43 CHAMPION RUN
SAN ANTONIO, TX 78258
ATTN: RICK PULIDO

MOBILITY
1535 FENWICK STREET
AUGUSTA, GA 30904
ATTN: MICHAEL ROSSON

TURISMO EXPRESS
1506 BROWN ST
EL PASO, TX 79902

LEFLEUR TRANSPORTATION
1834 FERGUSON LN #100
AUSTIN, TX 78754
ATTN: JACQUI DE LOS SANTOS

LEFLEUR TRANSPORTATION
1834 FERGUSON LN #100
AUSTIN, TX 78754
ATTN: DARIUS MCLAUGHLIN

MV TRANSPORTATION
4620 WESTAMERICA DR
FAIRFIELD, CA
ATTN: WESLEY ADAMS

MV TRANSPORTATION
4620 WESTAMERICA DR
FAIRFIELD, CA
ATTN: BRYAN IRELAND

MV TRANSPORTATION
4620 WESTAMERICA DR
FAIRFIELD, CA
ATTN: DANA SMITH

MV TRANSPORTATION
4620 WESTAMERICA DR
FAIRFIELD, CA
ATTN: BRENDA J FERNANDEZ

TECTRANS
6053 W CENTURY BLVD
LOS ANGELES, CA 90045
ATTN: DANIEL MORENO

TRAILWAYS BUS SYSTEM
200 W SAN ANTONIO AVE
EL PASO, TX 79901

PROFESSIONAL BUS SERVICE
3800 N MESA ST
EL PASO, TX 79902

EL PASO-LOS ANGELES LIMOUSINE
720 S OREGON ST
EL PASO, TX 79901

EL PASO-LOS ANGELES LIMOUSINE
901 S STANTON ST
EL PASO, TX 79901

RUIS TORRES BUS GROUP CORP
8825 N LOOP DR
EL PASO, TX 79907

RUIS TORRES BUS GROUP CORP
8825 N LOOP DR
EL PASO, TX 79907

SILVER LINE BUSES INC
7500 VISCOUNT BLVD STE C45
EL PASO, TX 79925

TORNADO BUS CO
307 S SANTA FE ST
EL PASO, TX 79901

GREYHOUND LINES
200 W SAN ANTONIO AVE
EL PASO, TX 79901

AUTOBUSES LOS PAIDANOS INC
201 MONTESTRUC CT
EL PASO, TX 79901

CENTRAL DE AUTOBUSES
212 W PAISANO DR
EL PASO, TX 79901

EL PASO-CITY GOVERNMENT MASS
700 SAN FRANCISCO AVE #A
EL PASO, TX 79901

SUN TRAVEL INC
3100 N MESA ST, STE B
EL PASO, TX 79902

SHALOM TRANSPORT LLC
PO BOX 27034
EL PASO, TX 79925

SUNWEST CHARTERS
6621 DONIPHAN DR STE M
CANUTILLO, TX 79835

AMERICANOS USA LLC
1007 S SANTA FE ST
EL PASO, TX 79901

AUTOBUSES LOS PAISANOS INC
325 S SANTA FE ST
EL PASO, TX 79901

AUTOBUSES LOS PAISANOS INC
6767 GATEWAY BLVE W
EL PASO, TX 79925

GREYHOUND LINES
201 W MAIN DR
EL PASO, TX 79901

INDUSTRY MAGAZINES INDUSTRY MAGAZINES
<http://www.masstransitmag.com/magazine/mass/classifieds>

ssteadman@masstransitmag.com

METRO
<http://www.metro-magazine.com/ClassifiedAdvertising.aspx>

THE TRANSIT WIRE
<http://www.thetransitwire.com/>

TRANSIT NEWS WIRE
<http://www.transitnews.net/customer-service.cfm>

VEOLIA TRANSPORTATION
8757 GEORGIA AVE STE 1300
SILVER SPRING, MARYLAND 20910
ATTN: RONALD J HARTMAN
(RCVD PHONE CALL 01-10 TO REMOVE)

RAPIDO CHIHUAHUA
8015 AMAMEDA AVE
EL PASO, TX 79915
(VACANT, UNABLE TO FORWARD)

DRIVERS LOGISTICS
7501 LOCKHEED DR. STE D
EL PASO, TX 79925
(NOT DELIVERABLE AS ADDRESSED)
(UNABLE TO FORWARD)

MOBILITY
1850 SE 17TH ST
FT. LAUDERDALE, FL
ATTN: DEVIN ADAMS
(NOT DELIVERABLE AS ADDRESSED - UTF)

FIRST TRANSIT INC
3103 N MESA ST #B
EL PASO, TX 79902
(NO SUCH NUMBER - UNABLE TO FORWARD)

DRIVERS LOGISTICS
7157 MERCHANT AVE
EL PASO, TX 79915
(SEE NEW ADDRESS ABOVE)

VEOLIA TRANSPORTATION
1414 WEST BROADWAY, SUITE 232
TEMPE, AZ 85282
ATTN: RON BROOKS
(SEE NEW ADDRESS ABOVE)

SUNSET CHARTERS
12309 ROJAS DR
EL PASO, TX 79928
(INSUFFICIENT ADDRESS - UTF)

A & s FUN TOURS
101 ELSWORTH DR
EL PASO, TX 79928
(NO MAIL RECEPTACLE - UTF)

SHALOM TRANSPORT
1033 HUMBLE PL
EL PASO, TX 79915
(SEE NEW ADDRESS ABOVE)

MV TRANSPORTATION INC
360 CAMPUS LANE, STE 201
FAIRFIELD, CA 94534
(SEE NEW ADDRESS ABOVE)

RAPIDO CHIHUAHUA
301 E PAISANO DR
EL PASO, TX 79901
(VACANT - UNABLE TO FORWARD)

STATE OF TEXAS)
)
)
)
)
COUNTY OF EL PASO)

SUN METRO MASS TRANSIT
AGREEMENT FOR LIFT
PARATRANSIT SERVICES
WITH MV CONTRACT
TRANSPORTATION, INC.

This Mass Transit Agreement for Lift Paratransit Services (this "Agreement") is entered into this 15th day of May, 2012 by and between the **Mass Transit Department Board of the City of El Paso ("Sun Metro")** and **MV Contract Transportation, Inc.** a California Corporation (the "Company" or "MV").

RECITALS

WHEREAS, the Mass Transit Department is a department of the City of El Paso ("City") and is governed by the Mass Transit Department Board (also sometimes referred to herein as the "**Sun Metro Board**") pursuant to Chapter 453 of the Texas Transportation Code;

WHEREAS, the City solicited proposals for the services of a Transit Service Contractor for Sun Metro LIFT paratransit services through a request for proposals ("**RFP**") No. 2012-040R; and

WHEREAS, the City has awarded Option 1-Transit Management for Fixed Route Transit of RFP 2012-040R, to First Transit, Inc. The Company will work in partnership with First Transit, Inc. to ensure consistent policies and practices in the best interest of the City of El Paso and Sun Metro and to provide for seamless service to the customer.

WHEREAS, LIFT is the Americans with Disabilities Act (ADA) complementary paratransit service to the City's fixed route system, as required by the Federal Transit Administration rules implementing ADA.

WHEREAS, LIFT service provides traditional pre-scheduled, curb to curb shared ride services.

WHEREAS, based on Option 3-Transit Agreement for LIFT Paratransit Services of RFP 2012-040R, Sun Metro desires to engage the Company to provide the LIFT transit operation, LIFT facility and vehicle maintenance, call center services, ADA Paratransit service eligibility certification for the City's LIFT program and transportation for the Veteran's Transportation and Community Living Initiative for El Paso and West Texas (VTCLI); and

WHEREAS, the Company possesses the credentials, experience, and expertise to perform said LIFT paratransit services for Sun Metro.

CITY CLERK DEPT.
2012 MAY 14 PM 6:01

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION I. TERM. The effective date of this Agreement is May __, 2012 the date City Council's approval ("Effective Date"). The Transition Period of this Agreement will commence on May __, 2012 through November 10, 2012 ("Transition Period") and the Full LIFT Service period date commences on November 11, 2012 ("Service Commencement Date"). The term of the Full LIFT Service period will remain in effect thereafter for five (5) years and twenty (20) days through November 30, 2017. The term of this Agreement may be extended for one (1) additional two-year period at the mutual agreement of the parties, and provided that the funds for the extended term are appropriated and an operating budget is approved by Sun Metro and the Company has established a satisfactory record of performance solely as determined by the Sun Metro Board.

SECTION II. OTHER DOCUMENTS; CONFLICT. The following documents comprise this Agreement:

- A. City's Solicitation of Offers No. 2012-040R ("**Solicitation**").
- B. MV's Management and Operation Transit and LIFT System Cost and Technical Proposal and MV's Cost and Technical Best and Final Offer ("**Proposal**").
- C. This Supplemental Agreement.

Furthermore, each party agrees that it shall comply with the rights and obligations of such party set forth in the Facility License Agreement ("**License**"), attached herein as Section XIII as if the language of the respective agreement was set forth herein.

The Solicitation, and the Proposal are incorporated herein and made part of this Agreement for all purposes; provided, however, that in case of conflict in the language of the Solicitation, the Proposal, and this Agreement, the terms and conditions of this Agreement shall control where they conflict with the Solicitation and Proposal, and the terms and conditions of the Solicitation shall control where they conflict with the Proposal.

SECTION III. SCOPE OF SERVICES. Unless such provisions are expressly revised by this Agreement, the Company hereby agrees to perform the requested professional LIFT paratransit services beginning on the Service Commencement Date in accordance with the City's **Solicitation**, attached hereto as **Exhibit B** and incorporated herein by reference pursuant to the terms and conditions set forth in Part 5 (Contract Clauses) of such Solicitation, attached hereto as **Exhibit B-1**, and the **Proposal** submitted by the Company in response to the Solicitation, attached hereto as **Exhibit A** all which exhibits are incorporated herein by reference. The scope of services identified within the Solicitation and Proposal and clarified by this Agreement shall be referred to collectively as the "**LIFT Paratransit Services.**"

The Company will provide LIFT paratransit services, including but not limited to, transit operation and management, LIFT facility and vehicle maintenance, call center services, American Disabilities Act (ADA) Paratransit service eligibility certification for the City's LIFT program and implementation of Veterans Transportation and Community Living Initiative program (VTCLI). The Company shall be responsible for providing supplemental service when needed to meet peak demands, late night service or back up service.

The Company will be responsible for the creation and operation of a fully functioning paratransit call center to provide trip reservation, "Where Is My Ride" and Dispatch services using the City provided software as described under *Attachment B-3*, "Scheduling and Dispatching Software and Hardware". This City software and hardware will be provided by the City for the use of the Company. The Dispatch staff is responsible for supervising the on time delivery of LIFT services and ensuring productivity of drivers and vehicles. The Contractor is responsible for the eligibility certification for all paratransit passengers with disabilities meeting the requirements of the ADA. The Company will design and implement a passenger eligibility certification process based on in-person interviews and physical and functional assessments of paratransit passengers.

The Company shall also be responsible for coordinating with the coalition of project partners to implement and operate a one-call/one click system for the VTCLI program. The purpose of the VTCLI program is to improve transportation choices and job access for military families. The project partners include a Veteran's Administration medical center, Fort Bliss, Veterans Service Organizations. The Company will host and operate a one-call /one-click system. The Company shall train LIFT call center call-takers to be able to route different call to various transportation providers for the one-call/one -click system, and when appropriate, to schedule trips by appropriate funding source.

SECTION IV. PERFORMANCE REQUIREMENTS. The Company shall at all times render safe, on-time, and courteous LIFT services in accordance with all applicable laws, ordinances, regulations, and the Performance Standards set forth in Section 25 of *Exhibit B*. The City will be responsible for monitoring the Company's performance based on these standards. The Company shall follow the Performance Requirements set forth in Section 4 of *Exhibit B*.

SECTION V. REPRESENTATIONS OF THE COMPANY. The Company represents, warrants, and agrees as follows:

- A. It will comply with all applicable federal, state, and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and the El Paso City Code, now existing or as may be amended, in the performance of its duties under this Agreement. Specifically, the Company will comply with the American with Disability Act (ADA) and the Federal Transit Administration (FTA) regulations. The Company understands some or all services may be paid using FTA funds. MV represents and warrants that it is familiar with FTA regulations and specifically agrees to comply with all FTA regulations in delivery of patron services and in expenditures which will be reimbursed by the City.

- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Company warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required professional licenses during the term of this Agreement. If the Company receives notice from a licensing authority of a suspension or revocation of a license of the Company's employee(s), agent(s) or subcontractor(s), the Company shall immediately remove such employee, agent or subcontractor from performing any further services under this Agreement until such license is reinstated and in good standing and within 72 hours, notify Sun Metro of such actions. If the Company fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this Agreement whose license has expired or been revoked or suspended, Sun Metro shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Company.
- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee except bona fide employees of bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business. For breach or violation of this warranty, Sun Metro shall have the right, in addition to any other right or rights, to terminate this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

SECTION VI. COMPENSATION AND METHOD OF PAYMENT. The Company shall be paid in accordance with the cost proposal terms set forth in *Exhibit A-1*, which is attached hereto and incorporated herein by reference. The compensation for the services to be provided under this Agreement shall not exceed \$37,874,955.00, as approved by City Council. The Company will be paid based on the fixed costs per month and variable costs per revenue hour unit prices for each of the five (5) base years of this Agreement. Unless changed by the City, a revenue hour is from first passenger pick-up to last passenger drop-off for each vehicle schedule each day. The City will designate the revenue hours of operation to be performed by the Company every year based on previous year experience. The Company's fixed plus variable costs contain all the costs of the Company in providing LIFT services under this Agreement, including compensation and benefits and operating expenses.

The variable costs are based on revenue hours designated by the City per contract year in *Exhibit A-1*. The rates for the fixed and variable costs per revenue hours for the revenue hours for each contract year remain the same if the revenue hours specified vary within +/- 10%. A different rate for fixed and variable costs per revenue hours applies when there is an increase or decrease of 10% to 20% of the specified revenue hours. The Company shall also apply the fee set forth in *Exhibit A-1* for each contract year for each additional call taker is needed to meet call demands. Each year a contingency amount of 10% based on revenue hours shall be established for

additional hours of service or additional call taker labor hours. The contingency amount will be allocated by Sun Metro City each year during the City's annual budget process. Sun Metro will budget for LIFT services base on the projected revenue hours and the budget will increase or decrease based on LIFT demand. An amendment to the budget shall be necessary if the need to increase MV payment occurs during the middle of the City's fiscal year.

The Company hereby agrees that at no time will the Company make a claim against Sun Metro or the City for more than the rates provided under the terms of this Agreement. The limitations set forth in this paragraph shall not apply to those claims that otherwise would be covered by Sun Metro insurance coverage, as set forth in Section XVI of this Agreement. Unless a prompt payment discount is offered and accepted by the City, payments will be made to the Company within thirty (30) days following acceptance by the City of MV services pursuant to the Prompt Payment Act. The City shall receive a properly prepared monthly invoice by the Company according to *Exhibit A-1*.

SECTION VII. MV PERSONNEL. At the effective date of this Agreement, the Company shall employ the following as personnel: (1) Key Management Staff ("MV Key Personnel"), (2) Operations Staff, and (3) Call Center/ADA Eligibility Staff (collectively, the "MV Staff"). The job descriptions and responsibilities are set forth in the LIFT Paratransit Services. MV's Organizational Structure is attached hereto as *Exhibit A-2*.

- A. **MV KEY PERSONNEL.** The Company will employ the positions of LIFT General Manager and LIFT Call Center Manager as MV Key Personnel. The Company shall assign individuals to these positions with the consent of the City Manager. Consent shall not be unreasonably withheld. The individuals assigned by the Company shall be qualified to meet the City's needs. MV Key Personnel will serve at the expense of the Company and shall provide the LIFT paratransit services for and on behalf of Sun Metro. MV Key Personnel must spend 100% of time assigned to this LIFT project and must be on-site full time.

The Company shall not remove or reassign the LIFT General Manager or the LIFT Call Center Manager, whether in acting or permanent capacity at any time during the term of this Agreement without prior written notice to the City's City Manager. The City of El Paso reserves the right to review the qualifications and experience for any individual named to the positions of LIFT General Manager and LIFT Call Center Manager.

The parties agree that MV Key Personnel are vital to the proper function of the LIFT Paratransit Services of this Agreement. The Company will fill vacated positions within 45 calendar days of the position becoming open for all MV Key Personnel. Failure to do so will result in liquidated damages per day beyond 45 days per each vacated position for the cost to the City to temporarily fill the leadership role with a replacement from City staff. The liquidated damages will be \$250.00 per day per each vacated position unless the City and Company agree to permanently fill the vacated position with a full time City employee.

The Company may propose additional Key Personnel to the Agreement. The Council reserves the right to approve such additions. The additional Key Personnel shall become MV Personnel for all purposes under this Agreement and shall be an additional cost to MV.

- B. OPERATIONS STAFF. The Company shall employ supervisors for Operations and Maintenance who are dedicated solely this Agreement throughout the term of the Agreement. *Exhibit A-2* identifies the supervisors as Operations Staff and the positions and number of employees under the supervision of the Operations Manager at the Service Commencement Date. The positions and number of are: one (1) full time Administrative Manager, one (1) full time Administrative Clerk, one (1) full time Trainer, (3.4) Transit Supervisors, and seventy two (72) full time and Operators and eighteen (18) part time Operators. The positions and number of employees under the supervision of the Maintenance Shop Manager are: one (1) full time Shop Foreman, one (1) full time Facility Maintenance Supervisor, five full time (5) Mechanics, and (5.9) full time Fleet Service Assistants. With the consent of the City Manager or designee, the Company may revise the number of employees based on evaluations and performance measures. Should the number of operation staff increase during any calendar year, it will be at MV's cost.

The Company shall give to employees of the City whose positions are displaced as a result of the labor structure change the right of first refusal when filling equivalent positions in the Company's staffing plan, with the exception of positions identified as MV Key Personnel. Displaced Sun Metro Employees hired by the Company shall become MV Personnel. Employment requirements for Sun Metro Employees are set forth in *Exhibit C* and benefits provided by Company set forth in *Exhibit A-3*.

- C. CALL CENTER/ADA ELIGIBILITY STAFF. Under the supervision of the LIFT Call Center Manager shall be the following position and number of employees at the Service Commencement Date: five (5) full time Dispatchers, (4.4) full time Reservationists, two full time (2) Schedulers, and one full time (1) Eligibility Clerk. The responsibilities are set forth in Section III of this Agreement.

The Company shall give to employees of the City whose positions are displaced as a result of the labor structure change the right of first refusal when filling equivalent positions in the Company's staffing plan, with the exception of positions identified as MV Key Personnel. Displaced Sun Metro Employees hired by the Company shall become MV Personnel. Employment requirements for Sun Metro Employees are set forth in *Exhibit C* and benefits provided by Company set forth in *Exhibit A-3*.

SECTION VIII. INDEPENDENT CONTRACTOR. The Company agrees to be responsible for its own acts and omissions and those of its subordinates, employees (MV Personnel, as described in Section VII) and any and all subcontractors, if any, in the performance of any material services under this Agreement. The Company will be the employer of all MV Personnel. The Company shall be solely responsible for all matters relating to wages, hours of work, and

working conditions and payment of MV Personnel, including but not limited to, compliance with all social security, all payroll taxes and withholdings, unemployment compensation and all other requirements relating to such matters.

SECTION IX. SUBCONTRACTORS. The Company may subcontract to supplement service when needed to meet peak demands, late night service, or back up service. Subcontractors may be utilized to provide specialized service as approved by the City. The Company will manage and control all subcontracted services and shall be responsible to the City for the quality of the services. The City will provide a list of subcontractors if requested by the Company. The Company shall use such subcontractors at its discretion.

The City Manager shall approve a scope of services for any work or services that will be subcontracted hereunder. The Company shall subcontract only by written agreement and, unless specific waiver is granted in writing by the City Manager, MV's shall incorporate each and every material provision of this Agreement. Compliance by subcontractors with this Agreement shall be the Company's responsibility. Despite the City Manager's approval of a subcontract or subcontractor, Sun Metro shall in no event be obligated to any third party, including any subcontract of the Company, for performance of work or services.

The Company and subcontractors agrees shall comply with all applicable procurement laws of the State of Texas, including, but not limited to, the Texas Local Government Code Chapter 252, Municipal Purchasing Act for any subcontracts for Services, Goods, Equipment or Material, or Professional Services over \$50,000 and any applicable state or federal laws or regulations. The Company shall coordinate with the City's Purchasing Manager to ensure that selection of any such subcontractor complies with all statutory requirements.

The Company shall identify and provide qualifications of any subcontractor who will perform services under this Agreement and provide a written scope of services to the City Manager and City's Purchasing Manager at least fifteen (15) days prior to the effective date of the proposed subcontract. All subcontractors, however, will be approved by the City Manager in writing, and such consent shall not be unreasonably withheld. Notwithstanding the City Manager's approval of a subcontract or subcontractor, Sun Metro shall in no event be obligated to any third party, including any subcontract of the Company, for performance of work or services.

SECTION X. TRANSITION. The Transition Plan and Implementation Schedule of *Exhibit A-4* shall be followed to transition the LIFT services responsibilities under this Agreement to the Company. The Company shall appoint a Transition Manager to oversee the Transition Plan and Schedule are followed. Following the Transition Period, the Company will assume full responsibility of providing the LIFT services under this Agreement.

All cost and expenses incurred by the Company for "Transit Initiation Services" shall be billed directly to the City as a separate line item on Company's first monthly invoice to the City as a one-time reimbursement expense which shall be a lump sum of the amount of \$312,959.33 and the Company shall not be entitled to any further compensation for the Transitions Initiation Services.

SECTION XI. COORDINATION WITH FIRST TRANSIT, INC. The MV will work with the First Transit, Inc. to ensure coordination for fixed route and paratransit services. The scope of coordination will include but is not limited to:

- A. Coordination of fixed-route and ADA complementary paratransit services to ensure safe, convenient and comfortable transit for all passengers while also complying with the ADA and related FTA regulations.
- B. Monitoring transit services to ensure at all times the safety and security of Sun Metro passengers regardless of the type of service.
- C. Assistance with any vehicle or passenger incident if requested.
- D. Coordination of communications about transit services via the dispatch centers for fixed-route and LIFT.
- E. Implementation of the Veterans Transportation and Community Living Initiative (VTCLI) program.
- F. Other duties as requested by City Manager or her designee.

MV Transportation will also cooperate with First Transit, Inc to facilitate the following First Transit, Inc. responsibilities:

- A. Capital project planning and implementation.
- B. Grants management and administration.
- C. Procurement for technology upgrades including software, hardware, and consultant services when required.

SECTION XII. CITY PROPERTY AND RESPONSIBILITIES

- A. **TITLE TO PROPERTY.** LIFT facilities licensed for the Company to use and all equipment and motor vehicles provided by the City for the operation of LIFT services shall remain the property of the City. All property of any type either real, personal, or mixed hereinafter acquired and reasonably necessary for performance of operations shall be acquired at Sun Metro's or the City's expense and shall become the property of the City.
- B. **EQUIPMENT AND SERVICES.** The City shall provide furniture, major shop equipment, telephone numbers and telephone system, and scheduling and dispatching software and hardware as listed in the inventory lists in **Attachments B-1 and B-3 of Exhibit B**. MV is the custodian of the City property provided and shall appoint a primary and back up individuals from MV Personnel to be responsible for following the City's "Capital Management Asset Manual". The

LIFT Facility shall be properly maintained by the Company through regular inspection schedules and preventive maintenance. **Attachments B-16, 17, and 19 of Exhibit B** provide a vehicle inspection schedule, preventative maintenance inspection form, and LIFT facility maintenance inspection schedule. Any damages shall be reported to the City at the time they occur, as described in Section 21.1 of the *Exhibit B*.

- C. **VEHICLES.** The City shall provide the "Revenue Vehicles" for customer LIFT services as described in **Attachment B-11 of Exhibit B**. These furnished Revenue Vehicles shall be operated and maintained in a clean, safe, and reliable condition at all times in accordance to the Vehicle Acceptance Agreement Standards, of all applicable Federal, State, Original Equipment Manufacturers (OEM), and Section 11.1 of the *Exhibit B* standards. The City will provide to the Company the fuel required for the Revenue Vehicles to provide the LIFT services. The Company shall be responsible for providing fuel consumption records as requested by the City for all Revenue Vehicles. The Company shall provide and maintain street supervisor vehicles and maintenance trucks (non-revenue vehicles) to meet the street supervisor and vehicle maintenance responsibilities as described in **Attachment B-12 of Exhibit B**. Inspection of Revenue Vehicles prior to the Service Commencement Date and upon termination of this Agreement shall follow the City revised Vehicle Acceptance Agreement Standards.

Company's pricing is based in part on the City's representation that it intends to replace twenty-five (25) 2007 model E-450 Superior Cutaways ("Cutaways") by the fourth quarter of calendar year 2013. In the event the City does not replace the Cutaways by the end of the fourth quarter of calendar year 2013, the City and Company shall negotiate in good faith an equitable adjustment to Company's rates. If necessary, the newly negotiated rates will be applied retroactively to the first day of the first quarter of calendar year 2014 and remain in effect until such time as the City replaces the Cutaways. The purchase of the Cutaways shall be subject to City Council approval.

Upon termination of this Agreement, the Company shall be responsible for returning all City vehicles. The returned vehicles shall be in fully serviceable conditions, normal wear and tear excepted. Company's failure to take preventive measures, misuse, or neglect will not be considered as reasonable wear and tear. In the event a final inspection of the vehicles reveals defects beyond normal wear and tear, MV will be responsible for repairs or will authorize the City to repair the vehicles at the applicable rate per hour labor, plus parts and materials.

- D. **DOCUMENTS.** All documents, records, reports, and data, whether in hard copies or in electronic form, related to the performance of services, (the "**Documents**") under this Agreement shall remain at all times the property of the City, subject to Company's right of possession and use during the term of the Agreement. The City shall retain all ownership and property interests in any and all Documents, performed by the Company under this Agreement, including any copyright or

other interest that may vest in the Company for work performed under this Agreement and such interest will be immediately transferred to the City. All materials created pursuant to this Agreement shall become the property of, and be delivered to, the City upon the termination of this Agreement, whether terminated by cancellation, expiration or otherwise. The Company shall retain no rights to any of the work performed by the Company for any purpose.

- E. REVENUES. The Company shall be responsible for ensuring all fares are collected and properly accounted for and adhere to all corresponding City guidelines, to include but limited to record retention policies. The Company shall follow the collection process as set forth in Section 14.3 of *Exhibit B*. The Company will be responsible for ensuring that correct fares are paid utilizing City approved fare media such as passes and cash. The Company shall also be responsible for insuring fare/tickets are collected and properly processed.

The Company's employees/drivers will be responsible for collecting payment from systems riders and ensuring cash is deposited in fare box. On every Tuesday and Friday mornings before 6:30 a.m., the Company's designated staff will remove the fare boxes from the units and will place the fare boxes inside the "money room" located at 5081 Fred Wilson, El Paso Texas 79906. The Company's designated staff will also replace the units' fare boxes with the empty ones remaining in the money room. Sun Metro will be responsible for opening the fare boxes, counting the currency, and preparing a deposit bag for the armored car service. The deposit bag will be delivered to the Union Depot money room for final preparation of bank deposit. The City will be notified of the person designated to handle the monies and the City reserves the right to require the Company to provide fidelity bonds for such employees.

SECTION XIII. LICENSE FOR USE OF CITY FACILITIES

- A. The City hereby grants Company, a non-exclusive license to enter City property to occupy City Facility for the sole purpose of providing the LIFT paratransit services which include but are not limited to the LIFT transit operation, LIFT facility and vehicle maintenance, and call center services. Licensee is also granted the right to the non-exclusive use of the bus parking lot and bus yard for the LIFT revenue and non-revenue vehicles. The City reserves an office in City Facility for Sun Metro's use as set forth in the License.
- B. The use of the City Facility constitutes a public transportation facility within the scope of Texas Tax Code Section 25.07(b)(3) and will ensure the safe and efficient operation of the LIFT paratransit transportation services. City Facility is the property of the City of El Paso and will be used for the public purpose of providing mass transit and paratransit services for the citizens of the municipality.
- C. The Licensee shall be responsible for all public utilities and building services of the City Facility for the operation of the LIFT paratransit services, including but

not limited to, water, electricity, telephone, and gas, heating, air conditioning, and janitorial and security services. The City shall provide furniture, major shop equipment, telephone numbers and telephone system, and scheduling and dispatching software and hardware. In the event, City Facility needs any capital improvements, City shall pay for such improvements subject to annual budget appropriation.

- D. The City Facility will be subject to inspections as set forth in Section XVI of this Agreement.

SECTION XIV. OPERATING EXPENSES. MV shall be responsible to pay for all of the operating expenses associated with the operation of the LIFT services. As used herein, the term "operating expenses" of the LIFT Paratransit Services shall mean and include, but not be limited to:

- A. MV Personnel Operating Expenses: all wages, fringe benefits, and pension benefits.
- B. Taxes: all payroll, social security, any real property, and all other taxes pertaining to the operation of the LIFT services.
- C. Insurance: insurance premiums and deductibles as required in Section XVII of this Agreement.
- D. LIFT Facility Expenses: utilities, facility maintenance expenses, security for LIFT facility by providing at minimum one security guard to be present 24/7 at the main entrance for vehicle access, janitorial services, office equipment and supplies.
- E. Vehicle Expenses: the Company will also be responsible for the tools, equipment, parts, services, and repairs necessary to perform daily, routine, preventative and major maintenance of the City's vehicles.
- F. Other Expenses: the Company shall also be responsible for uninsured losses, judgments, settlements, awards and all other charges, costs and expenses pertaining to the operation of the LIFT Paratransit Services. All operating expenses shall be an obligation of, and paid by the Company.

SECTION XV. CONFIDENTIAL WORK. The Company recognizes that all materials to be prepared hereunder and all data received by the Company shall be kept in strictest confidence. The Company shall not divulge such confidential information except as approved in writing by the City Manager or as otherwise required by law.

The Company has or shall establish a method to secure the confidentiality of records or information that the Company may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting Sun

Metro, the City Manager or their authorized representatives, right of access to records or other information under this Agreement.

If the Company receives inquiries regarding documents within its possession, pursuant to this Agreement, the Company shall immediately forward such request to Sun Metro for disposition and shall cooperate with Sun Metro in providing the appropriate documents. The request shall be forwarded as such:

Sun Metro
ATTN: Director of Sun Metro
700 West San Francisco Avenue
El Paso, Texas 79901

With copy to:
ATTN: Julio Perez
5081 Fred Wilson
El Paso Texas 79906

SECTION XVI. INSPECTIONS & AUDITS. Sun Metro shall have the right to perform, or cause to be performed: (1) audits of the books and records of the Company; (2) inspection of vehicles at the LIFT facility, or at another site by City management personnel, any time during the Agreement period, other than when a vehicle is needed to perform service; and (3) inspections of all places where work is undertaken in connection with this Agreement. The Company shall be required to keep such books and records available for such purpose for at least five (5) years after its performance under this Agreement ceases. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

SECTION XVII. INSURANCE REQUIREMENTS. With no intent to limit the Company's liability or the indemnification provisions set forth hereinafter, the Company shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Sun Metro shall be provided with certificates of insurance evidencing the required insurance prior to the Effective Date of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

- A. **LIABILITY INSURANCE.** For the duration of this Agreement and any extension thereof, the Company shall carry, in a solvent company authorized to do business in the State of Texas, comprehensive public liability insurance to protect the general public and the City in the minimum amounts of Ten Million Dollars (\$10,000,000.00) per occurrence for bodily injury or wrongful death and Ten Million Dollars (\$10,000,000.00) per occurrence, Ten Million Dollars (\$10,000,000.00) aggregate for property damage. City and its officers, official employees, agents, representative, and volunteers (collectively "City Personnel") shall be named as additional insureds.
- B. **RISK MANAGEMENT INSURANCE.** The Company shall purchase and maintain in effect during the term of this Agreement and any extension period

thereof, insurance in the types and limits of liability as stated below. Such insurance shall protect the Company from claims that may arise out of or result from the Company's operations, whether such operations are performed by the Company or by anyone for whose acts any of them may be liable. The insurance companies must have a minimum A.M. Best Rating of "B+" and be licensed or approved by the State of Texas and acceptable to Sun Metro.

The Company shall furnish to the City's Purchasing Manager (as Sun Metro's representative) a certificate of insurance verifying such coverage and identifying Sun Metro and the City and their officers, agents, employees, and elected representatives as additional insureds as pertains to this Agreement.

1. Auto Liability Policy. The Company shall provide Automobile liability in an amount not less than Ten Million (\$10,000,000.00) per accident/occurrence, Ten Million Dollars (\$10,000,000.00) for property damage per accident/occurrence.
 2. Garage Keeper's Liability Insurance. The Company shall provide insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per accident garage operations and Ten Million Dollars (\$10,000,000.00) in the aggregate/ garage operations.
 3. Garage Comprehensive Coverage. The Company shall provide insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per accident garage operations and Ten Million Dollars (\$10,000,000.00) in the aggregate/ garage operations.
 4. Worker's Compensation. A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work. Employer's Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000.00).
 5. Property Damage Insurance. The Company shall provide insurance in an amount not less than Four Million Dollars \$4,000,000.00 for coverage on the facility and an amount of Five Hundred Thousand Dollars \$500,000 to cover the contents in the facility.
- C. FORM OF POLICIES. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager. Sun Metro prefers that the general liability and auto liability coverages be provided by either the same insurance carrier or the same insurance group.
- D. ISSUERS OF POLICIES. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be

responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.

- E. INSURED PARTIES. Each policy, except those for Workers' Compensation and Employer's Liability, must name the Mass Transit Department Board and the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- F. DEDUCTIBLES. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. The Company shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against Sun Metro, the Mass Transit Department Board, and/or the City of El Paso, their officers, agents or employees.
- G. MATERIAL CHANGE IN POLICY(IES). Prior to any material change in any policy required herein, Sun Metro will be given sixty (60) days advance written notice by registered mail. Further, Sun Metro will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- H. CANCELLATION. Each policy must expressly state that it may not be canceled or non-renewed unless sixty (60) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager (as Sun Metro's representative) by the insurance company. The Company shall also give written notice to the City's Purchasing Manager within fifteen (15) days of the date upon which total claims by any party against the Company reduce the aggregate amount of coverage below the amounts required by this Agreement.
- I. SUBROGATION. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against Sun Metro and/or the City, their elected and appointed officials, officers, agents or employees.
- J. ENDORSEMENT OF PRIMARY INSURANCE. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.
- K. LIABILITY FOR PREMIUM. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish

that the issuer is entitled to look only to the Company for any further premium payment and has no right to recover any premiums from Sun Metro or the City.

- L. **DELIVERY OF POLICIES.** The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Company with the City's Purchasing Manager prior to beginning work under this Agreement, and thereafter before the beginning of each subsequent year of the term of this Agreement. Notices and Certificates required by this clause shall be provided to:

City of El Paso
Financial Services Department – Purchasing Division
Attn: Purchasing Manager
2 Civic Center Plaza
El Paso, Texas 79901

Notwithstanding the termination notice provisions in this Agreement, the failure of the Company to provide the City's Purchasing Manager with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of this Agreement, shall constitute a default on the part of the Company entitling Sun Metro, upon three (3) days written notice to the Company to terminate this Agreement. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Company, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Company to comply with this requirement shall constitute a default of the Company allowing Sun Metro, at its option, to terminate this Agreement as referenced above.

- M. **SUBCONTRACTORS.** The Company shall require any and all subcontractors performing work under this Agreement to carry insurance of the types and limits of liability, as the Company shall deem appropriate and acceptable to the City's Risk Manager.

SECTION XVIII. LEGAL COUNSEL. The Company shall be the responsible for handling all claims, demands, and law suits for any losses, damages, liability, and expenses (including without limitation personal injury and property damage claims) arising out of the operation LIFT services and maintenance of the LIFT equipment, whether or not such Claims are covered by insurance. The Company shall also be responsible for employment-related matters of MV Personnel.

SECTION XIX. LETTER OF CREDIT/PERFORMANCE BOND. The Company shall be required to furnish an annual Performance Bond or a Letter of Credit acceptable to the City in the amount equal to the annual value of the Agreement. The initial Performance Bond shall be

submitted to the City within fifteen (15) days after Notice of Award. Thereafter, the Performance Bond shall be due ninety (90) calendar days prior to the start of each year of this Agreement. The Notice to Proceed will not be issued until a properly executed bond is received and accepted by the City. Such sureties or guarantors must be satisfactory to Sun Metro and authorized to do business in the State of Texas and requires the appointment of a Texas Resident Agent. This Performance Bond or Letter of Credit shall be executed to secure fulfillment of all of the Company's obligations. The issuance of such guarantee for each subsequent term of the Agreement shall be subject to negotiations.

SECTION XX. PERFORMANCE STANDARDS. LIFT Paratransit Services provided by the Company are to be operated in a manner which maximizes service delivery quality while also maximizing productivity. Productivity must be balanced with service quality and reduced patron travel times and reasonable schedules that drivers can achieve safely. As such, the performance measures establish a range of performance for service delivery that rewards high achievement with incentives and deducts money for substandard performance with disincentives. The Company's performance will be determined on a monthly basis and incentives or disincentives shall be compensated monthly as an adjustment to the monthly compensation payment pursuant to Section VI of this Agreement. The monthly incentive if all performance goals are attained is \$4,800.00. Incentives and disincentives shall become effective no later than ninety (90) days after the effective date of the contract. The City shall measure the Company's performance based on the Performance Standards set forth in Section 25.1 of *Exhibit B*.

The Performance Standards are set for the first year of service and may be used for performance standards for subsequent years. All performance specifications will be strictly adhered to in order to provide the highest level of quality service possible. The City and Company will annually evaluate the performance requirements and will agree to any necessary adjustments to the performance standards, the number of performance standards, and the performance goal for each standard, in order to ensure continuous improvement.

SECTION XXI. LIQUIDATED DAMAGES. Liquidated damages will be assessed for Agreement deficiencies specified in Section 26.1 of *Exhibit B*. Liquidated damages shall be deducted from monies due, or which may thereafter become due, to the Company under this Agreement. Liquidated damages will not be assessed for deficiencies arising from causes beyond the control of the Company as determined by the City. The maximum amount of liquidated damages to which the Company is subject to under this Agreement is ten (10) percent of the contract value. In the event this Agreement has not been otherwise terminated, the Agreement shall be considered terminated for default when accumulated liquidated damages exceed ten (10) percent of the contract value at any time during the term of this Agreement.

SECTION XXII. DISPUTE RESOLUTION. The parties hereto agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Agreement. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, the parties shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, the parties hereby agree to consult and negotiate with each other in good faith. The parties further agree that should their efforts to resolve a dispute, claim, questions, or disagreement arising from this Agreement fail, that before either party files suit

against the other to enforce, or otherwise relating to, the terms of this Agreement, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Agreement by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof.

SECTION XXIII. CONTINUITY OF SERVICES. The Company recognizes that the services under this Agreement are vital to the City and must be continued without interruption and that upon Contact expiration, a successor, either the City or another Contractor, may continue them. The Company agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor. LIFT Paratransit Services shall continue as set forth in Section 22.1 of *Exhibit B*.

SECTION XXIV. TERMINATION OF AGREEMENT. In addition to those termination provisions otherwise provided herein, this Agreement may be terminated under any one of the following circumstances:

- A. **TERMINATION FOR CONVENIENCE:** This Agreement may be terminated by Sun Metro upon written notice, provided such notice specifies an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. The Company will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. If the Company has any property in its possession belonging to Sun Metro or the City, the Company will account for the same, and dispose of it in the manner Sun Metro directs.
- B. **TERMINATION FOR DEFAULT:** Either party may terminate its performance under this Agreement in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this Section XXIV. Default shall occur if a party fails to observe or perform any of its duties under this Agreement.
 - 1. If the Company defaults, Sun Metro shall deliver a written notice to the Company describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30th day following receipt of the notice. Sun Metro, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the Company cures such default, then the proposed termination shall be ineffective. If the Company fails to cure such default prior to the proposed date of termination, then Sun Metro may terminate its performance under this Agreement as of such date. The Company will only be paid for services accepted by Sun Metro at the time of termination that may include contract close out costs, and profit on work performed up to the time of termination. The Company will promptly submit any

termination claim to Sun Metro to be paid the Company. If the Company has any property in its possession belonging to Sun Metro or the City, the Company will account for the same, and dispose of it in the manner Sun Metro directs.

2. If Sun Metro defaults, the Company shall deliver a written notice to the City Manager (with copy to the City's Purchasing Manager and City Attorney) describing the default, such notice shall specify the provisions of the Agreement under which the Company considers Sun Metro to be in default and set forth a date of termination not sooner than 90 days following receipt of such notice. The Company at its sole option may extend the proposed date of termination to a later date. If Sun Metro fails to cure such default prior to the proposed date of termination, the Company may terminate its performance under this Agreement as of such date.

C. **EFFECTS OF TERMINATION:** All duties and obligations of Sun Metro and the Company shall cease upon termination or expiration of this Agreement, except that:

1. All files are property of the City and at Sun Metro's request will be delivered at no cost to Sun Metro or its designated recipient at the effective date of termination. Any Sun Metro funds held in any escrow account(s) shall be returned to Sun Metro within thirty (30) calendar days after the effective date of termination or expiration.
2. The Company shall release and make available to Sun Metro all records owned by the City, and shall cooperate fully to effect an orderly transfer of services and claim files.
3. All provisions of this Agreement that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Agreement, shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable. The Company will refund the City any and all profits made by the Company resulting from this Agreement during the final twelve (12) months during the period prior to the termination.
4. Upon termination or expiration of this Agreement, Sun Metro shall have option to:
 - a) Assume responsibility of all claims pending as of the effective date of the termination; or

- b) Require the Company to continue administering all pending claims as provided herein at the compensation provided in this Agreement. If Sun Metro or the City assumes responsibility for all claims, the Company agrees to do all things necessary to transfer administration of all claims to Sun Metro or the City.

SECTION XXV. NON-DISCRIMINATION. In connection with the carrying out of this Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, sexual preference, disability or national origin. The Company will take affirmative action to promote employment and treatment during employment, without regard to race, creed, color, sex, age, sexual preference, disability or national origin. Such action shall include, but not be limited to the following: employment and promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, other forms of compensation; and selection for training including apprenticeship. The applicable provisions of the Presidential Executive Order 11246 relating to Equal Employment Opportunity, as amended, are incorporated herein by reference.

SECTION XXVI. LOCATION OF PERFORMANCE. The Company shall perform the LIFT Paratransit Services in the city and county of El Paso, Texas or such other place(s) as may be necessary to fulfill the terms of this Agreement.

SECTION XXVII. SURVIVAL. The Company shall remain obligated to Sun Metro (and to the City to the extent set forth herein) under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

SECTION XXVIII. AMENDMENT & WAIVER. This Agreement may be amended by mutual consent of the parties. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of Sun Metro and the Company. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

SECTION XIX. LEGAL CONSTRUCTION. Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine. Any reference to the City Manager in this Agreement shall mean the City Manager of the City of El Paso or her designee.

SECTION XXX. NOTICES. Except as otherwise provided herein, any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to Sun Metro and the Company at the following addresses:

SUN METRO:
City of El Paso
Attention: City Manager
2 Civic Center Plaza – 10th Floor
El Paso, Texas 79901-1196

With copy to:
City of El Paso
Attention: Purchasing Manager
2 Civic Center Plaza – 7th Floor
El Paso, Texas 79901-1196

Sun Metro
Attention: Director of Sun Metro
700 West San Francisco Avenue
El Paso, Texas 79901

THE COMPANY:
MV Contract Transportation, Inc.
Attention: Eduardo Carrion, Vice President
4620 Westamerican Drive
Fairfield, CA 94534
Phone: (707) 863-8980
Fax: (707) 863-8944

SECTION XXXI. ADDITIONAL FEDERAL CLAUSES. “Part 5 Contract Clauses Federal Funding Requirements” of the Solicitation shall be and are hereby incorporated into this Agreement without modification. The Company agrees to comply with these additional federal clauses throughout the duration of this Agreement or any extension thereof.

SECTION XXXII. ENTIRE AGREEMENT. This Agreement and attached *Exhibits*, which are incorporated herein by reference, constitute the entire Agreement between the parties hereto. To the extent that the provisions in this Agreement modify or are inconsistent with provisions contained in the *Exhibits*, the provisions of this Agreement shall govern. There exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party’s involvement in the preparation or drafting of this Agreement.

[Signature page to follow]

STATE OF TEXAS)
)
)
)
COUNTY OF EL PASO)

SUN METRO MASS TRANSIT
AGREEMENT FOR LIFT
PARATRANSIT SERVICES
WITH MV CONTRACT
TRANSPORTATION, INC.

(Signature page)

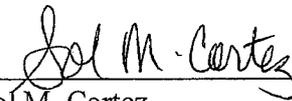
IN WITNESS WHEREOF, the parties have hereunto set their hands this 15th day of May, 2012.

CITY OF EL PASO



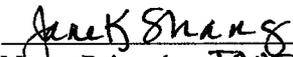
Joyce Wilson
City Manager

APPROVED AS TO FORM:



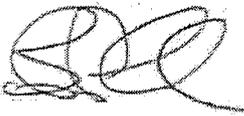
Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:



Name Printed: JADE K. SHAOG
Title: DEP. CITY MGR

MV CONTRACT TRANSPORTATION INC.



Brad Cornelsen
CFO

CITY CLERK DEPT.
2012 MAY 14 PM 6:01

STATE OF TEXAS)
)
)
)
COUNTY OF EL PASO)

SUN METRO MASS TRANSIT
AGREEMENT FOR LIFT
PARATRANSIT SERVICES
WITH MV CONTRACT
TRANSPORTATION, INC.

(Signature page)

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of May, 2012.

CITY OF EL PASO

Joyce Wilson
City Manager

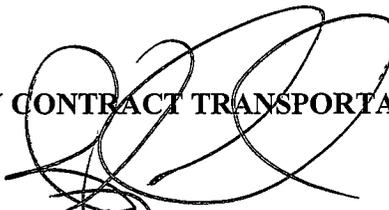
APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sol M. Cortez
Assistant City Attorney

Name Printed: _____
Title: _____

MV CONTRACT TRANSPORTATION INC.



Brad Cornelsen
CFO

EXHIBIT A

MV CONTRACT TRANSPORTATION, INC.

Proposal to Provide LIFT Paratransit Services

**(MV's Management and Operation Transit and Lift System Cost and Technical Proposal
and MV's Cost and Technical Best and Final Offer)**

RFP 2012-040R

EXHIBIT A-1

MV CONTRACT TRANSPORTATION INC.

**COST PROPOSAL
(MV'S BEST AND FINAL COST PROPOSAL)**

EXHIBIT A-2

MV CONTRACT TRANSPORTATION, INC.

**ORGANIZATIONAL CHART
(MV'S BEST AND FINAL TECHNICAL PROPOSAL)**

EXHIBIT A-3

MV CONTRACT TRANSPORTATION, INC.

EMPLOYEES INSURANCE AND JOB BENEFITS

(MV'S BEST AND FINAL TECHNICAL PROPOSAL)

EXHIBIT A-4

MV CONTRACT TRANSPORTATION, INC.

**TRANSITION PLAN AND SCHEDULE
(MV'S BEST AND FINAL TECHNICAL PROPOSAL)**

EXHIBIT B
CITY OF EL PASO, TEXAS
RFP 2012-040R
REQUEST FOR PROPOSALS
FOR
LIFT PARATRANSIT SERVICES
(Solicitation)

EXHIBIT B-1

CITY OF EL PASO, TEXAS

Contract Clauses

RFP 2012-040R

EXHIBIT C

MV CONTRACT TRANSPORTATION, INC.

**BENEFITS PROVIDED FOR DISPLACED EL PASO EMPLOYEES
HIRED
RFP 2012-040R**

**PERFORMANCE BOND
Annual Form**

**Travelers Casualty and Surety Company of America
Hartford, CT 06183**

Bond No. 105235615

KNOW ALL BY THESE PRESENTS, That we First Transit, Inc. 5989, as Principal, and Travelers Casualty and Surety Company of America, of Connecticut, authorized to do business in the State of TX, as Surety, are held and firmly bound unto City of El Paso, Texas, as Obligee, in the maximum penal sum of One Hundred Thousand Dollars and 00/100 Dollars (100,000.00), lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by this Bond.

WHEREAS, the Principal has entered, or is about to enter, into a written agreement with the Obligee to perform in accordance with the terms and conditions of the RFP 2008-114R - Sun Metro Transit Management Services, (hereinafter referred to as the Contract), said Contract is hereby referred to and made a part hereof;

NOW, THEREFORE, the condition of this obligation is such that if the above named Principal, its successors and assigns, shall well and truly perform its obligations as set forth in the above mentioned Contract, then this Bond shall be void; otherwise to remain in full force and effect pursuant to its terms.

Notwithstanding anything to the contrary in the Contract, the Bond is subject to the following express conditions:

1. Whereas, the Obligee has agreed to accept this Bond, this Bond shall be effective for the definite period of May 12, 2012 to May 12, 2013. The Bond may be extended, at the sole option of the Surety, by continuation certificate for additional periods from the expiry date hereof. However, neither: (a) the Surety's decision not to issue a continuation certificate, nor (b) the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew this Bond, shall itself constitute a loss to the Obligee recoverable under this Bond or any extension thereof.
2. The above referenced Contract has a term ending May 12, 2013. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, this Bond shall not be extended beyond May 12, 2013, unless earlier nonrenewed pursuant to paragraph 1 above.
3. No claim, action, suit or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety on this instrument unless such claim, action, suit or proceeding is brought or instituted upon the Surety within one year from termination or expiration of the bond term.
4. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, the liability of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set forth above, or as amended by rider.
5. Any notice, demand, certification or request for payment, made under this Bond shall be made in writing to the Surety at the address specified below. Any demand or request for payment must be made prior to the expiry date of this Bond.

Surety Address: Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
Attn: Bond Claim

6. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in this Bond and as described in the underlying Contract, then the terms of this Bond shall prevail.

SIGNED, SEALED AND DATED this 3rd day of May, 2012.



First Transit, Inc. 5989

By: [Signature]
Karen Socha Attorney-in-Fact, Principal

Travelers Casualty and Surety Company of America

By: [Signature]
Harold Miller Jr. Attorney-in-Fact

SURETY ACKNOWLEDGMENT (ATTY-IN-FACT)

State of Illinois }
County of DuPage } ss:

On this 3rd day of May in the year two thousand twelve, before me, Sharon A. Foulk, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Harold Miller, Jr., known to me to be the duly authorized Attorney-in-fact of the Travelers Casualty and Surety Company of America and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company, and the said Harold Miller, Jr. duly acknowledged to me that he subscribed the name of the Travelers Casualty and Surety Company of America thereto as Surety and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

My Commission Expires
12/08/14

Sharon A. Foulk
Notary Public in and for Sharon A. Foulk
County, State of DuPage, Illinois



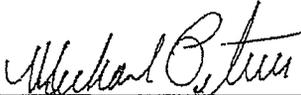
Exhibit A
Special Power of Attorney

KNOW ALL MEN BY THESE PRESENTS that FIRSTGROUP AMERICA, INC., FIRST TRANSIT, INC., FIRST STUDENT, INC., FIRST SERVICES, INC., FIRST VEHICLE SERVICES, INC., LAIDLAW TRANSIT, INC., LAIDLAW TRANSIT SERVICES, INC., LAIDLAW TRANSIT, LTD, AUTOBUS TRANSCO (1988), INC., ALLIED BUS SALES, INC., SAFERIDE SERVICES, INC. AND SUTRANS, INC. has made, continued and appointed and by these presents does make, constitute and appoint Bill Krumm, Jon Schroeder, Sharon Foulk and Karen Socha as its true and lawful attorneys in fact with full power to execute, seal and deliver on its behalf surety bonds and other documents of similar character issued in the course of its business and to bind the Company thereby as if such writings had been duly executed and acknowledged by its officers.

IN WITNESS WHEREOF, FirstGroup America, Inc., First Transit, Inc., First Student, Inc., First Services, Inc., First Vehicle Services, Inc., Laidlaw Transit, Inc., Laidlaw Transit Services, Inc., Laidlaw Transit, Ltd., Autobus Transco (1988), Inc., Allied Bus Sales, Inc., SafeRide Services, Inc., and SuTrans, Inc. has caused its name to be subscribed by Christian Gartner, Senior Vice President Finance, and its corporate seal to be affixed and attested by its Assistant Secretary on this 6th day of August, 2010.

Attest:

FirstGroup America, Inc.

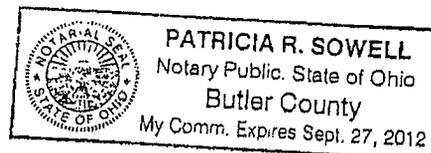

By: Michael Petrucci
Assistant Secretary


By: Christian Gartner
Senior Vice President, Finance

STATE OF OHIO
COUNTY OF HAMILTON

On this 6th day of August, 2010, personally appeared before me, a Notary Public for the State of Ohio, Christian Gartner, Senior Vice President, Finance of FirstGroup America, Inc., First Transit, Inc., First Student, Inc., First Vehicle Services, Inc., First Services, Inc., Laidlaw Transit, Inc., Laidlaw Transit Services, Inc., Laidlaw Transit, Ltd., Autobus Transco (1988), Inc., Allied Bus Sales, Inc., SafeRide Services, Inc. and SuTrans, Inc., who acknowledged that the foregoing is his free and voluntary act and deed on behalf of said corporation.


Notary Public, State of Ohio
My Commission Expires: 9/27/12





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. 105235615

Principal: First Transit, Inc. 5989

OR

Project Description: RFP 2008-114R - Sun Metro Transit Management Services

Obligee: City of El Paso, Texas

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Harold Miller Jr. of the City of Itasca, State of IL, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 25th day of April, 2011.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 25th day of April, 2011, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

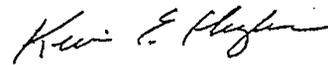
FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 3rd day of May, 2012.



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

budget is approved by Mass Transit Board and the Company has established a satisfactory record of performance solely as determined by the Sun Metro Board.

SECTION II. OTHER DOCUMENTS; CONFLICT. The following documents comprise this Agreement:

- A. City's Solicitation of Offers No. 2012-040R ("**Solicitation**");
- B. Company's Management and Operation Transit and LIFT System Cost and Technical Proposal and Company's Cost and Technical Best and Final Offer ("**Proposal**");
- C. This Supplemental Agreement.

The Solicitation, and the Proposal are incorporated herein and made part of this Agreement for all purposes; provided, however, that in case of conflict in the language of the Solicitation, the Proposal, and this Agreement, the terms and conditions of this Agreement shall control where they conflict with the Solicitation and Proposal, and the terms and conditions of the Solicitation shall control where they conflict with the Proposal.

SECTION III. SCOPE OF SERVICES. Unless such provisions are expressly revised by this Agreement, the Company hereby agrees to perform the requested professional transit management services in accordance with the City's *Solicitation*, attached hereto as *Exhibit A* and incorporated herein by reference pursuant to the terms and conditions set forth in Part 5 (Contract Clauses) of such Solicitation and the *Proposal* submitted by the Company in response to the Solicitation, attached hereto as *Exhibit B* all which exhibits are incorporated herein by reference. The scope of services identified within the Solicitation and Proposal and clarified by this Agreement shall be referred to collectively as the "*Transit Management Services*."

The scope of responsibility includes but is not limited to, capital project planning and implementation, grants management and administration and procurement for technology upgrades, including software, hardware, and consultant services when required.

In the event of a change in the original proposed management staff as set forth in the Proposal, the Company shall notify the City of the qualifications of the person it has selected to replace any of the original proposed candidates; Sun Metro reserves the right to review the qualifications of such personnel the Company proposes to assign and determine whether they meet the City's needs. In the event the City Manager determines that a candidate for a particular position is unacceptable for any reason, the Company has fifteen (15) days to submit another candidate's qualifications. In no event shall vacancy remain for longer than 45 days, as set forth in *Exhibit A*.

SECTION IV. FIRST TRANSIT PERSONNEL. The Company will provide a three-person management team (*Key Management Staff*) at the commencement of this Agreement consisting of the following: a Director, an Assistant Director for Fixed Route Operations, an Assistant Director for Safety, Planning and Ridership. The Company shall also provide personnel (*Safety and Security*

Staff) to perform the safety, security and training function. The Key Management Staff and Safety and Security Staff shall collectively be "*First Transit Personnel*". The First Transit Personnel shall be appointed by the Company with the consent of the City Manager, which consent shall not be unreasonably withheld, to serve at the expense of the Company and shall provide the active management of the Mass Transit Department for and on behalf of Sun Metro. Incumbents in the positions of Assistant Director for Maintenance and Assistant Director for Administration and Finance will continue in the same position as an employee of the City of El Paso and will report to the Director of Mass Transit. The First Transit Personnel shall reside in the El Paso area permanently during the term of this agreement and their performance of Transit Management Services for Sun Metro shall be done on a full time basis. Sun Metro and the Company agree that First Transit Personnel assigned to Sun Metro shall not engage in any outside employment without the prior express written approval of the City Manager.

- A. **Key Management Staff**: The scope of responsibilities for the Key Management Staff are set forth in *Exhibits A and B*. At any time during the term of this Agreement, the Company will not remove or reassign any Director or Assistant Director or Manager, or appoint any new individual as Director or Assistant Director or Manager (whether in an acting or permanent capacity) without prior written notification to the City. The City reserves the right to review the qualifications and experience for any individual named by the Company to the positions of Director, Assistant Director, or Manager per the requirements of the Scope of Services. The Company may, following written notice and explanation to the City, remove any such individual for misconduct or cause pursuant to established personnel policies.

The parties agree that Key Management Staff are vital to the proper function of the Transit Management Services of this Agreement. For all Key Management Staff, Company will fill vacated positions within 45 calendar days of the position becoming open. Failure to do so will result in liquidated damages per day beyond 45 days per each vacated position for the cost to the City to temporarily fill the leadership role with a replacement from City staff. The liquidated damages will be \$250.00 per day per each vacated position, unless the City and Company agree to permanently fill the vacated position with a full time City employee.

The City reserves the right to request the Contractor to reassign an individual in a position of Director, Assistant Director or Manager of First Transit Personnel based on performance of assigned work under this agreement or failure to act in the best interests of Sun Metro or the City.

- B. **Safety and Security Staff**: The scope of responsibilities of the Safety and Security Staff are described in Exhibits A and B. The Company shall: (1) develop and implement a program to assess and ensure safety of transit operations and transit facilities; (2) develop implementation guidelines for bus safety, security and emergency preparedness; (3) train operators and operations staff, including transit supervisors; and (4) be responsible for fare enforcement. The Company shall provide the personnel (*Safety and Security Staff*) who will provide the functions of safety and security, training, and fare enforcement. The Safety and Security Staff

shall consist of a Safety Manager, Assistant Manager of Safety and Training, and two (2) Safety Technicians. The Safety and Security Staff shall report to the Assistant Director for Safety, Planning, and Ridership.

In addition, the Sun Metro Board, upon recommendation by the City Manager, may at its option at any time during the term of this Agreement, elect to have the Company provide additional management personnel ("*Additional Personnel*"), including but not limited to a Facility Manager and Maintenance Manager, whose duties and responsibilities shall be substantially those set forth in the Job Descriptions included in the Proposal or as may be revised with the express written approval of the City Manager as Sun Metro's representative. In the event that the Sun Metro Board elects to have the Company provide other management personnel recommended by the City Manager but not listed in the Proposal, the City Manager and the Company shall agree on an appropriate Job Description and salary range. Sun Metro shall pay to the Company the compensation for Additional Personnel as set forth in **Section V** herein and shall not exceed the total amount for Additional Personnel set forth in a written amendment to this agreement. Any additional Personnel assigned to Sun Metro under this Agreement shall become First Transit Personnel for all purposes under this Agreement.

SECTION V. CORPORATE SUPPORT AND TECHNICAL ASSISTANCE. The Company shall furnish, at no additional cost on-site or off-site corporate support and technical assistance, as may be reasonably required to assist the Company in the management of Sun Metro, required by *Section III* of this Agreement. At a minimum, the Company will provide Eighty (80) hours for each year of this Agreement as set forth in the Proposal of non-resident customer support staff assistance, such as supervisory training, assistance in preparation for the Federal Transit Authority's Triennial Review, safety assessment, and technical training as required. Sun Metro may request additional advisory and technical assistance other than the 80 hours (including, but not limited to, major types of transit service programs such as long-range transit study) as set forth below in *Section VII* of this Agreement.

SECTION VI. COMPENSATION AND METHOD OF PAYMENT. The Company shall be paid in accordance with the modified proposal terms set forth in *Exhibit C* which is attached hereto and incorporated herein by reference. The Company hereby agrees that at no time will the Company make a claim against Sun Metro or the City for more than the rates provided under the terms of this Agreement. The limitations set forth in this paragraph shall not apply to those claims that otherwise would be covered by Sun Metro insurance coverage, as set forth in **Section XIX** of this Agreement.

SECTION VII. SPECIAL SERVICES. Should alternate or additional services outside the requirements of *Section III and V* be requested of the Company by Sun Metro (the "*Special Services*"), said Special Services shall automatically become a part of this Agreement immediately upon approval of, and funding appropriated by, the Sun Metro Board and acceptance by the Company, without need of a formal contract amendment. Special Services include but are not limited to, the list of services of the Cost Proposal set forth as *Exhibit C-1*. Sun Metro shall pay to the Company the compensation for Special Services at the hourly rates set forth in *Exhibit C-1* and shall not exceed the total compensation amount for Special Services set forth therein. It is understood and agreed that Sun Metro will not be liable for any total

compensation for Special Services in excess of the amounts set forth in this Agreement without the prior approval of the Sun Metro Board. Said approval must be obtained prior to the Company commencing Special Services that will result in the cost overrun. Special Services are not within the scope of the day-to-day management services provided for herein. For each Special Service, the parties shall mutually agree upon the work task plan, the requirements, the total cost based on the requirements at the unit costs plus any necessary travel or direct expenses as the parties may agree for the applicable special service, and the special service tracking/reporting plan. The cost for special services, including all expenses, shall not exceed 10% of the total contract value.

The Company agrees to be responsible for its own acts and omissions and those of its subordinates, employees (excluding the First Transit Personnel, as defined in Section III) and any and all subcontractors, if any, in the performance of any Special Services under this Agreement.

SECTION VIII. SUBCONTRACTORS. The Company may subcontract with other competent entities to provide Special Services required to be performed under this Agreement. The City Manager shall approve a scope of services for any work or services that will be subcontracted hereunder. The Company shall subcontract only by written agreement and, unless specific waiver is granted in writing by the City Manager, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the Company's responsibility. Despite the City Manager's approval of a subcontract or subcontractor, Sun Metro shall in no event be obligated to any third party, including any subcontract of the Company, for performance of work or services.

The Company agrees that it will comply with all applicable procurement laws of the State of Texas, including, but not limited to, the Texas Local Government Code Chapter 252, Municipal Purchasing Act for any subcontracts for Services, Goods, Equipment or Material, or Professional Services over \$50,000 and any applicable state or federal laws or regulations. The Company shall coordinate with the City's Purchasing Manager to ensure that selection of any such subcontractor complies with all statutory requirements.

The Company shall identify any subcontractor who will perform services under this Agreement and provide a written scope of services to the City Manager and City's Purchasing Manager at least fifteen (15) days prior to the effective date of the proposed subcontract. All subcontractors, however, must be approved by the City Manager in writing, and such consent shall not be unreasonably withheld. Notwithstanding the City Manager's approval of a subcontract or subcontractor, Sun Metro shall in no event be obligated to any third party, including any subcontract of the Company, for performance of work or services.

SECTION IX. COORDINATION WITH MV TRANSPORTATION, INC.

First Transit, Inc. will work with MV Transportation, Inc. to ensure coordination for fixed route and paratransit services. The scope of coordination will include but not limited to:

- A. Coordination of fixed-route and ADA complementary paratransit services to ensure safe, convenient and comfortable transit for all passengers while also complying with the ADA and related FTA regulations; and

- B. Monitoring transit services to ensure at all times the safety and security of Sun Metro passengers regardless of the type of service; and
- C. Assistance with any vehicle or passenger incident if requested,
- D. Coordination of communications about transit services via the dispatch centers for fixed-route and LIFT; and
- E. Implementation of the Veterans Transportation and Community Living Initiative (VTCLI) program; and
- F. Other duties as requested by City Manager or her designee.

SECTION IX. PERFORMANCE STANDARDS. The City will measure the Company's standards based on the Performance Indicators listed in *Exhibit A*. All performance specifications will be strictly adhered to in order to provide the highest level of quality service possible. The Performance Indicators are to be used during the first year of service and may be used for subsequent years. The City and the Company evaluate the performance requirements annually and agree to any necessary adjustments to the performance standards. The City will review the Company's monthly performance and will apply monthly incentives and disincentives set forth in *Exhibit A*.

SECTION X. REPRESENTATIONS OF THE COMPANY. The Company represents, warrants, and agrees as follows:

- A. It will comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and the El Paso City Code, now existing or as may be amended, in the performance of its duties under this Agreement. Specifically, the Company will comply the Federal Transit Administration (FTA) regulations. The Company understands some or all services may be paid using FTA. The Company represents and warrants that it is familiar with FTA regulations and specifically agrees to comply with all FTA regulations in delivery of patron services and in expenditures which will be reimbursed by the City.
- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Company warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required professional licenses during the term of this Agreement. If the Company receives notice from a licensing authority of a suspension or revocation of a license of the Company's employee(s), agent(s) or subcontractor(s), the Company shall immediately remove such employee, agent or subcontractor from performing any further services under this Agreement until such license is reinstated and in good standing and within 72 hours, notify Sun Metro of such actions. If the Company fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this Agreement whose license has expired or been revoked or suspended, Sun Metro

shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Company.

- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee except bona fide employees of bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business. For breach or violation of this warranty, Sun Metro shall have the right, in addition to any other right or rights, to terminate this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

SECTION XI. CONFIDENTIAL WORK. The Company recognizes that all materials to be prepared hereunder and all data received by the Company shall be kept in strictest confidence. The Company shall not divulge such confidential information except as approved in writing by the City Manager or as otherwise required by law.

The Company has or shall establish a method to secure the confidentiality of records or information that the Company may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting Sun Metro, the City Manager or their authorized representatives, right of access to records or other information under this Agreement.

If the Company receives inquiries regarding documents within its possession, pursuant to this Agreement, the Company shall immediately forward such request to the City Attorney's office for disposition.

SECTION XII. INSPECTIONS & AUDITS. Sun Metro shall have the right to perform, or cause to be performed: (1) audits of the books and records of the Company; and (2) inspections of all places where work is undertaken in connection with this Agreement. The Company shall be required to keep such books and records available for such purpose for at least five (5) years after its performance under this Agreement ceases. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

SECTION XIII. OWNERSHIP. All documents, records, reports, and data related to the performance of services (the "*Documents*") under this Agreement shall remain at all times the property of the City, subject to Company's right of possession and use during the term of the Agreement. The City shall retain all ownership and property interests in any and all Documents, performed by the Company under this Agreement, including any copyright or other interest that may vest in the Company for work performed under this Agreement and such interest will be immediately transferred to the City. All materials created pursuant to this Agreement shall become the property of, and be delivered to, the City upon the termination of this Agreement, whether terminated by cancellation, expiration or otherwise. The Company shall retain no rights to any of the work performed by the Company for any purpose.

SECTION XIV. REVENUES. Any and all gross receipts and revenues derived from the operation of Sun Metro shall be and always remain the absolute property of the City, whether the revenue is from passengers or any other source. The City shall have exclusive control and management of all such revenue from its original receipt, including the collection, banking and accounting thereof.

SECTION XV. OPERATING EXPENSES. Sun Metro shall be responsible to pay for all of the operating expenses associated with the operation of the Mass Transit Department. As used herein, the term "operating expenses" of the Mass Transit Department shall mean and include, but not be limited to, all wages, fringe benefits, and pension benefits of all City personnel (excluding First Transit Personnel), all payroll, social security, property and all other taxes pertaining to the operation of the Mass Transit Department, all rentals, utilities, association dues, insurance premiums and deductibles, cost of fuel, supplies and parts, repairs, uninsured losses, judgments, settlements, awards and all other charges, costs and expenses pertaining to the operation of the Mass Transit Department. "Operating Expenses" shall not include any wages, fringe benefits, pension benefits, or payroll, social security or other taxes relating to Company's employment of First Transit Personnel or any legal costs, claims, demands, losses, judgments, settlements or other expense filed with respect to or arising from the Company's employment relationship with First Transit Personnel. It is also understood and agreed that the term "operating expenses" shall include all past, present, and future pension or profit sharing plan liability, including without limitation, liability for vested but unfunded or underfunded benefits, payable by Sun Metro, the City or their contractors. All operating expenses shall be an obligation of, and paid by, Sun Metro or the City.

In the event that a City employee is hired by the Company as Key Personnel or Safety and Security Staff, City shall be responsible for all operating expenses prior to the hiring date by the Company; thereafter, the Company shall be responsible for the operating expenses.

SECTION XVI. EQUIPMENT, FACILITIES, AND SERVICES. Sun Metro will furnish, at its expense and without cost to the Company, the use of all necessary office space, utilities, furniture, equipment, supplies, materials, communication services, legal services, postage, secretarial and clerical help, and such automobile transportation and related parking as may be reasonably necessary for the management of the Mass Transit Department. The Company is not responsible for the condition of the facilities and equipment at the inception of this Agreement, during occupancy and at termination of occupancy, unless such condition is solely caused by the gross negligence of First Transit Personnel.

SECTION XVII. EMPLOYER STATUS. The City will be the employer and retains full control over the employment and direct compensation and discharge of all Sun Metro employees, including any employees under contract to Sun Metro or the City (but excluding the First Transit Personnel, and all labor and other contractual obligations necessary for the operation of the Mass Transit Department. The City shall be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees including compliance with all social security, all payroll taxes and withholdings, unemployment compensation and all other requirements relating to such matters.

The Company shall be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees of First Transit Personnel, including, but not limited to, compliance with all social security, all payroll taxes and withholdings, unemployment compensation and all other requirements relating to such Company personnel matters.

SECTION XVIII. TITLE TO PROPERTY. All real estate, building, equipment, buses, motor vehicles and all materials and supplies reasonably necessary for the operation of Sun Metro shall be furnished by Sun Metro and/or the City and shall remain the property of the City. All property of any type either real, personal, or mixed hereinafter acquired and reasonably necessary for performance of operations shall be acquired at Sun Metro's or the City's expense and shall become the property of the City.

SECTION XIX. INSURANCE POLICIES. In the event that the Company, its parent, subsidiaries, affiliates, officers, directors, shareholders, agents, servants, employees and assigns should be named in a lawsuit or claim arising out of or related to the management or operation of the Mass Transit Department, which otherwise would be filed, including, but not limited to, any contractual, tort, employment or other matter against the City or Sun Metro (but not if such matter arises from the gross negligence of First Transit Personnel), such lawsuit and/or claim will be handled and paid for under the City's insurance coverage/policies.

SECTION XX. INSURANCE REQUIREMENTS. With no intent to limit the Company's liability or the indemnification provisions set forth hereinafter, the Company shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Sun Metro shall be provided with certificates of insurance evidencing the required insurance prior to the commencement of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. In the event of an occurrence, it is further agreed that any insurance maintained by Sun Metro and/or the City, their officers, agents and employees would apply in excess of and not contribute with insurance provided by this *Section XX*.

A. Liability Insurance

For the duration of this Agreement and any extension thereof, the Company shall carry, in a solvent company authorized to do business in the State of Texas, public liability insurance to protect the general public and the City in the minimum amounts of Ten Million Dollars (\$10,000,000.00) per occurrence and general aggregate for bodily injury or wrongful death and Ten Million Dollars (\$10,000,000.00) per occurrence and aggregate for property damage. Coverage should include employment practices liability.

B. Risk Management Insurance

The Company shall purchase and maintain in effect during the term of this Agreement and any extension period thereof, insurance in the types and limits of

liability as stated below. Such insurance shall protect the Company from claims that may arise out of or result from the Company's operations, whether such operations are performed by the Company or by anyone for whose acts any of them may be liable. The insurance companies must have a minimum A.M. Best Rating of "B+" and be licensed or approved by the State of Texas and acceptable to Sun Metro.

The Company shall furnish to the City's Purchasing Manager (as Sun Metro's representative) a certificate of insurance verifying such coverage and identifying Sun Metro and the City and their officers, agents, employees, and elected representatives as additional insureds as pertains to this Agreement.

1. A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.
 2. Employer's Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000.00).
 3. Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by First Transit Personnel or First Transit, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than Ten Million Dollars (\$10,000,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- C. Form of Policies. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager. Sun Metro prefers that the general liability and auto liability coverages be provided by either the same insurance carrier or the same insurance group.
- D. Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.
- E. Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must name the Mass Transit Department Board and the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

- F. Deductibles. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. The Company shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against Sun Metro, the Mass Transit Department Board, and/or the City of El Paso, their officers, agents or employees.
- G. Material Change in Policy(ies). Prior to any material change in any policy required herein, Sun Metro will be given sixty (60) days advance written notice by registered mail. Further, Sun Metro will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- H. Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager (as Sun Metro's representative) by the insurance company. The Company shall also give written notice to the City's Purchasing Manager within fifteen (15) days of the date upon which total claims by any party against the Company reduce the aggregate amount of coverage below the amounts required by this Agreement.
- I. Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against Sun Metro and/or the City, their elected and appointed officials, officers, agents or employees.
- J. Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.
- K. Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to the Company for any further premium payment and has no right to recover any premiums from Sun Metro or the City.
- L. Delivery of Policies. The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Company with the City's Purchasing Manager prior to beginning work under this Agreement, and thereafter before the beginning of each subsequent year of the term of this Agreement. Notices and Certificates required by this clause shall be provided to:

City of El Paso
Financial Services Department – Purchasing Division
Attn: Purchasing Manager
2 Civic Center Plaza
El Paso, Texas 79901

Notwithstanding the termination notice provisions in this Agreement, the failure of the Company to provide the City's Purchasing Manager with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of this Agreement, shall constitute a default on the part of the Company entitling Sun Metro, upon three (3) days written notice to the Company to terminate this Agreement. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Company, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Company to comply with this requirement shall constitute a default of the Company allowing Sun Metro, at its option, to terminate this Agreement as referenced above.

- M. Subcontractors. The Company shall require any and all subcontractors performing work under this Agreement to carry insurance of the types and limits of liability, as the Company shall deem appropriate and acceptable to the City's Risk Manager.

SECTION XXI. WAIVER OF SUBROGATION. The Company shall not be responsible for any and all liability for loss of or damage to the buses or other properties of the City during the term of this Agreement or any renewal or extension thereof.

SECTION XXII. LEGAL COUNSEL. It shall be the responsibility of Sun Metro to handle all legal matters of Sun Metro and the Mass Transit Department not covered by insurance (but not including employment-related matters of First Transit Personnel) and Sun Metro shall provide legal counsel for the benefit of the Mass Transit Department upon request from the Company relating to the operations of Sun Metro (but not the gross negligence of First Transit Personnel).

SECTION XXIII. DISPUTE RESOLUTION. The parties hereto agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Agreement. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, the parties shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, the parties hereby agree to consult and negotiate with each other in good faith. The parties further agree that should their efforts to resolve a dispute, claim, questions, or disagreement arising from this Agreement fail, that before either party files suit against the other to enforce, or otherwise relating to, the terms of this Agreement, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently

pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Agreement by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof.

SECTION XIV. TERMINATION OF AGREEMENT. In addition to those termination provisions otherwise provided herein, this Agreement may be terminated under any one of the following circumstances:

- A. **TERMINATION FOR CONVENIENCE:** This Agreement may be terminated by Sun Metro upon written notice, provided such notice specifies an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. The Company will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. If the Company has any property in its possession belonging to Sun Metro or the City, the Company will account for the same, and dispose of it in the manner Sun Metro directs.

- B. **TERMINATION FOR DEFAULT:** Either party may terminate its performance under this Agreement in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this *Section XXIII*. Default shall occur if a party fails to observe or perform any of its duties under this Agreement.
 - 1. If the Company defaults, Sun Metro shall deliver a written notice to the Company describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30th day following receipt of the notice. Sun Metro, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the Company cures such default, then the proposed termination shall be ineffective. If the Company fails to cure such default prior to the proposed date of termination, then Sun Metro may terminate its performance under this Agreement as of such date. The Company will only be paid for services accepted by Sun Metro at the time of termination that may include contract close out costs, and profit on work performed up to the time of termination. The Company will promptly submit any termination claim to Sun Metro to be paid the Company. If the Company has any property in its possession belonging to Sun Metro or the City, the Company will account for the same, and dispose of it in the manner Sun Metro directs.

 - 2. If Sun Metro defaults, the Company shall deliver a written notice to the City Manager (with copy to the City's Purchasing Manager and City Attorney) describing the default, such notice shall specify the provisions of the Agreement under which the Company considers Sun Metro to be in default and set forth a date of termination not sooner than 90 days

following receipt of such notice. The Company at its sole option may extend the proposed date of termination to a later date. If Sun Metro fails to cure such default prior to the proposed date of termination, the Company may terminate its performance under this Agreement as of such date.

C. **EFFECTS OF TERMINATION:** All duties and obligations of Sun Metro and the Company shall cease upon termination or expiration of this Agreement, except that:

1. All files are property of the City and at Sun Metro's request will be delivered at no cost to Sun Metro or its designated recipient at the effective date of termination. Any Sun Metro funds held in any escrow account(s) shall be returned to Sun Metro within thirty (30) calendar days after the effective date of termination or expiration.
2. The Company shall release and make available to Sun Metro all records owned by the City, and shall cooperate fully to effect an orderly transfer of services and claim files.
3. All provisions of this Agreement that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Agreement shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable.
4. Upon termination or expiration of this Agreement, Sun Metro shall have option to:
 - (i) Assume responsibility of all claims pending as of the effective date of the termination; or
 - (ii) Require the Company to continue administering all pending claims as provided herein at the compensation provided in this Agreement. If Sun Metro or the City assumes responsibility for all claims, the Company agrees to do all things necessary to transfer administration of all claims to Sun Metro or the City.

SECTION XXV. NON-DISCRIMINATION. In connection with the carrying out of this Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, sexual preference, disability or national origin. The Company will take affirmative action to promote employment and treatment during employment, without regard to race, creed, color, sex, age, sexual preference, disability or national origin. Such action shall include, but not be limited to the following: employment and promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, other forms of compensation; and selection for training including apprenticeship.

The applicable provisions of the Presidential Executive Order 11246 relating to Equal Employment Opportunity, as amended, are incorporated herein by reference.

SECTION XXVI. ADDITIONAL REMEDIES. If Sun Metro terminates this Agreement because of the Company's failure to perform the services as required herein, Sun Metro shall have the right to obtain like services from another vendor in substitution for those due from the Company. The cost of substitute services shall be determined by informal or formal procurement procedures as required by Federal, State, and Local Law. Sun Metro may recover the difference between the cost of the substitute services and the contract price from Company as damages. Sun Metro may deduct the damages from Company's account for services rendered prior to the termination or services rendered by Company pursuant to a different contract or pursue any other lawful means of recovery. The failure of Sun Metro to obtain substitute services and charge the Company under this clause is not a bar to any other remedy available for default.

SECTION XXVII. RIGHT TO ASSURANCE. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said first party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within ten (10) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement, terminate its performance, and pursue whatever course of action it deems appropriate under the circumstances and in accordance with the terms of this Agreement.

SECTION XXVII. LOCATION OF PERFORMANCE. The Company shall perform the Transit Management Services in the city and county of El Paso, Texas or such other place(s) as may be necessary to fulfill the terms of this Agreement.

SECTION XXVIII. SURVIVAL. The Company shall remain obligated to Sun Metro (and to the City to the extent set forth herein) under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

SECTION XXIX. AMENDMENT & WAIVER. This Agreement may be amended by mutual consent of the parties. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of Sun Metro and the Company. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

SECTION XXX. LEGAL CONSTRUCTION. Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine. Any reference to the City Manager in this Agreement shall mean the City Manager of the City of El Paso or her designee.

SECTION XXXI. NOTICES. Except as otherwise provided herein, any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to Sun Metro and the Company at the following addresses:

SUN METRO:

City of El Paso
Attention: City Manager
2 Civic Center Plaza – 10th Floor
El Paso, Texas 79901-1196

With copy to:

City of El Paso
Attention: Purchasing Manager
2 Civic Center Plaza – 7th Floor
El Paso, Texas 79901-1196

THE COMPANY:

First Transit
Attention: Rick Dunning, Senior Vice President
600 Vine Street
Suite 1400
Cincinnati, OH 45202
Phone: (513) 684-8734
Fax: (513) 684-8852
Email: rick.dunning@firstgroupamerica.com

SECTION XXXII. ADDITIONAL FEDERAL CLAUSES. “Part 5 Contract Clauses Federal Funding Requirements” of the Solicitation shall be and are hereby incorporated into this Agreement without modification. The Company agrees to comply with these additional federal clauses throughout the duration of this Agreement or any extension thereof.

SECTION XXXIII. ENTIRE AGREEMENT. This Agreement and attached *Exhibit A* (the Solicitation, including, but not limited to, Part 5 Contract Clauses), *Exhibit B* (the Proposal) and *Exhibit C* (the modified Cost of Services), which are incorporated herein by reference, constitute the entire Agreement between the parties hereto. To the extent that the provisions in this Agreement modify or are inconsistent with provisions contained in *Exhibits A, B, or C*, the provisions of this Agreement shall govern. There exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party’s involvement in the preparation or drafting of this Agreement.

[Signature page to follow]

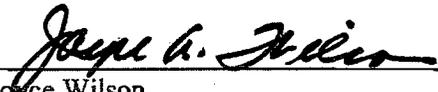
STATE OF TEXAS)
)
)
)
COUNTY OF EL PASO)

SUN METRO MASS TRANSIT
MANAGEMENT SERVICES AGREEMENT
WITH FIRST TRANSIT INC.

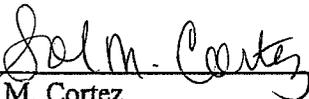
(Signature page)

IN WITNESS WHEREOF, the parties have hereunto set their hands this 15th day of May, 2012.

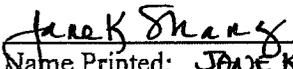
CITY OF EL PASO


Joyce Wilson
City Manager

APPROVED AS TO FORM:


Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:


Name Printed: JAKE K SHANG
Title: DEP CITY MGR

FIRST TRANSIT, INC.


Rick Dunning
Senior Vice President

5/10/12

CITY CLERK DEPT.
2012 MAY 14 PM 6:01

EXHIBIT A
CITY OF EL PASO, TEXAS
RFP 2012-040R
REQUEST FOR PROPOSALS
FOR
MASS TRANSIT MANAGEMENT SERVICES

EXHIBIT B

First Transit

Proposal to Provide Mass Transit Management Services

RFP 2012-040R

EXHIBIT C

MASS TRANSIT MANAGEMENT SERVICES

COST OF SERVICES

(As modified from Section E of the Proposal in Exhibit A)