AGREEMENT
BETWEEN

CITY OF MOORHEAD
And
FIRST TRANSIT

This agreement is made and entered into effective the 1st day of January 2016, by and between the CITY OF MOORHEAD, MINNESOTA, hereinafter referred to as "CITY" and First Transit, hereinafter referred to as 'CONTRACTOR'.

WITNESSETH

WHEREAS, the CITY has determined that it requires management, supervisory and operational services for its fixed route and paratransit system; and

WHEREAS, CONTRACTOR has represented that it has the necessary expertise and personnel and is qualified to perform such services;

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE 1 - COMPLETE AGREEMENT

1.1 This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between the City and the Contractor and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. City's failure to insist in one or more instances upon performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of City's right to such performance by the Contractor.

ARTICLE 2 - CITY AND CONTRACTOR DESIGNEES

2.1 The City Manager, or his Designee, shall have the authority to act for and exercise any of the rights of City as set forth in the herein Agreement, subsequent to the authorization by the City Council of the City.

2.2 The Vice President of Contractor or his/her Designee, shall have the authority to act and exercise any of the right of Contractor as set forth in the herein Agreement.

ARTICLE 3 - EMPLOYMENT OF THE CONTRACTOR

3.1 City hereby engages the Contractor and the Contractor agrees to perform the services, hereinafter described in the connection with the supervision, management, and operation of the Fargo Moorhead Metro Area Transit System (MATBUS).

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ARTICLE 4 - CONTRACTOR'S EMPLOYEES

4.1 The personnel performing services under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of City. Contractor shall pay all wages, salaries and other amounts due its employees in connection with the Agreement and shall be responsible for social security, income tax withholding, unemployment compensation, worker compensation insurance and similar matters.

4.2 City shall not interfere in the normal day to day management of Contractor's employees nor attempt to directly discipline Contractor employees. City reserves the right to interview any and all Contractor employees. City shall have the right to demand, upon written notice to Contractor, the removal of any employee from providing service on the City's transportation system and Contractor shall comply with said written requests.

4.3 Contractor shall compensate drivers used to deliver services under this Agreement wages and fringe benefits as stipulated in Appendix 15 to this Agreement. Contractor shall not modify wages and health benefits paid to said employees without prior notification to the City, with the understanding that said wages and health benefits outlined in Appendix 15 are minimums and any resulting modifications will not be less than those outlined in Appendix 15.

4.4 During the term of this contract, neither party shall hire any employee or former employee of the other party without written permission of that other party. The term "former employee" shall mean any person employed during the previous twelve (12) months.

ARTICLE 5 - SCOPE OF WORK

5.1 Contractor shall provide services in accordance with Attachment A to this Agreement attached hereto and by reference incorporated herein, during the entire term of the Agreement.

ARTICLE 6 - CHANGES IN SCOPE OF WORK: AMENDMENT

6.1 It is understood and agreed by City and Contractor that it may be necessary, from time to time during the term of this Agreement, to modify its provisions or to revise the scope and/or extent of MATBUS operations. In each such instance, City and Contractor shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced in writing and when appropriately executed by both parties, shall constitute an amendment to this Agreement. Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all the other applicable provisions of the Agreement, and

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shall be attached to the Agreement. Until an amendment has been approved in the foregoing manner, it shall have no force or effect.

6.2 During a national, State, or Locally declared emergency, City shall have the right to issue verbal and/or written instructions to Contractor for Contractor to operate emergency transportation services as may be required by City. In such event, Contractor will supply such services to the extent possible. City and Contractor agree to meet, after the conclusion of said emergency, to negotiate compensation for such services provided during the emergency.

ARTICLE 7 - INSURANCE

7.1 The City shall provide casualty insurance on the buses and equipment it deems necessary and Contractor shall have no responsibility to provide such coverage. City shall provide self-insurance or otherwise, liability insurance coverage, limited, however, to the minimum amount of $1.5 Million per claim or the statutory amount or amounts established by the State of North Dakota/State of Minnesota laws governing municipal liability, whichever is greater. Any applicable insurance deductibles for City-provided insurance shall also be paid by the respective city. The City insurance shall be primary. The Contractor shall be listed as an insured on the Cities' casualty insurance for the buses and equipment. Coverage by the League of Minnesota Cities Insurance Trust is deemed to satisfy this provision.

7.2 The Contractor shall be required to obtain and keep in force during the terms of operation covered by this proposal Employment Practices Liability Insurance, North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance, applicable Unemployment Insurance, and the Performance Bond, all as provided more fully below. Certificates evidencing the required insurance will be furnished to the Cities prior to commencing any work under this contract. If the Contractor does not currently meet the requirements listed below, the Contractor shall submit a letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.

7.3 The Contractor shall be required to obtain and keep in force during the terms of operation covered by this contract an Employment Practices Liability Insurance (EPLI) policy in the minimum amount of $1.5 Million per person and in the aggregate. EPLI is intended to cover liability for actions of the driver other than operating the vehicle, such as sexual harassment, discrimination, or other non-driving risks associated with employment. The Cities must be listed as additional insured on the Contractor's EPLI policy. Contractor maintains a self-insurance program that includes coverage for such EPLI risks, which self-insurance program and the funding for such program is hereby deemed to satisfy this coverage requirement.

7.4 North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance at the limits established by the States of North Dakota and Minnesota.

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7.5 Insurance deductibles, if any, shall be identified. All deductible payments are the responsibility of the party providing the insurance policy.

7.6 Each policy of insurance shall contain the following clauses: "It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the City shall have received written notice of such cancellation or reduction by certified mail."

7.7 Contractor will provide the City documentation proving insurance coverage, in the form of a Certificate of Insurance, within 30 days of notice of contract award or 10 days before commencing transportation service, whichever occurs first.

7.8 Contractor shall provide a bond for 100% of the annual contract cost for the City. The bond will be renewed on an annual basis for the term of the contract. The cost for the bond amount will be reimbursed by the City annually.

7.9 The Cities of Fargo and Moorhead shall be named as additional insured on all liability policies of Contractor.

ARTICLE 8 - PAYMENT

CITY agrees to pay CONTRACTOR for the performance of services set forth in this Agreement as follows:

8.1 On or before the 10th day of each month CONTRACTOR shall submit an invoice to CITY, itemizing CONTRACTOR'S full and complete performance thereunder for the previous monthly period. Invoices shall contain a record of the number of vehicle service hours provided during the month for which services were provided. Invoices will be separate for fixed route services and paratransit services. The fixed route invoice will list separate line items for Monday-Friday service hours, Saturday service hours, special service hours (if applicable), the hourly rate, dispatch services, management fees, safety bonuses and the total due. The paratransit invoice will list total service hours provided for the month, the hourly rate, management fees, and the total due.

8.2 All payments by CITY shall be made in arrears after the service has been provided. CITY shall pay CONTRACTOR invoice within thirty (30) days following receipt of such invoice. If CITY disputes any item on an invoice for a reasonable cause, CITY may deduct that disputed item from the payments, but shall not delay payment for the undisputed portion. CITY shall document the amounts and reasons for such deletions to CONTRACTOR within fifteen (15) working days after receipt of invoice. CONTRACTOR and CITY shall meet to resolve disputed amount within ten (10) working days following CITY'S notice to CONTRACTOR. If CITY and CONTRACTOR are unable to resolve dispute through negotiation, CITY and CONTRACTOR agree to resolve dispute in accordance with Article 12 herein.

8.3 CITY shall pay CONTRACTOR the following for services provided during the term of this Agreement:

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8.3.1 A rate per vehicle service hour for fixed route as follows:
January 1, 2016 through December 31, 2016: $23.66
January 1, 2017 through December 31, 2017: $24.03
January 1, 2018 through December 31, 2018: $24.68

8.3.2 A fixed monthly rate for management services as follows:
January 1, 2016 through December 31, 2016: $11,853.12
January 1, 2017 through December 31, 2017: $11,828.54
January 1, 2018 through December 31, 2018: $12,107.13

8.3.3 Reimbursement of actual annual rate for the performance bond estimated as follows:

January 1, 2016 through December 31, 2016: $ 2,949
January 1, 2017 through December 31, 2017: $ 3,061
January 1, 2018 through December 31, 2018: $ 3,206

The actual annual performance bond cost will be billed to the City on the January invoice of each year, and include the original bond and proof of payment by the CONTRACTOR.

8.3.4 Reimbursement of actual safety bonuses paid by the Contractor monthly and quarterly. Annual cost is estimated to be $13,502 for fixed route service.

The term "Vehicle/Bus Service Hour" as used in Section 8.3, shall mean the hours service is available for passenger service, from the first stop of each day to the last stop for each vehicle. Routes shall be operated according to timetables established by CITY.

ARTICLE 9 – OPERATING REVENUES

9.1 All fixed routes operating revenues collected by CONTRACTOR are the property of CITY. All paratransit operating revenues collected by CONTRACTOR are the property of CITY. All cash fares and sales from coupon books are property of the CITY. CITY shall empty fare boxes and keep all fares on the fixed and paratransit routes.

ARTICLE 10 – FORCE MAJEURE

10.1 Neither party is responsible for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither party is entitled to terminate this Agreement under in such circumstances. If a party asserts Force Majeure as an excuse for failure

to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event.

ARTICLE 11 – TERM OF AGREEMENT

This Agreement shall become effective January 1, 2016 and shall continue in full force and effect through December 31, 2018 unless earlier terminated as herein provided. This agreement may be renewed for two additional one-year periods at a rate mutually agreed upon between the CITY and the CONTRACTOR, said rate not to exceed the preceding year's price plus increases demonstrated by the Consumer Price Index for that same period.

ARTICLE 12 – TERMINATION

12.1 The CITY reserves the right to terminate this Agreement for cause by written notice to the CONTRACTOR. Cause for termination will be documented failure(s) of the CONTRACTOR to provide services in the quantity and/or quality required by the Agreement. Notice of such intent to terminate the Agreement will be provided to CONTRACTOTR. CONTRACTOR will, within ten (10) days, correct the failure or present the CITY with a plan to correct the failure. In the event CONTRACTOR does not correct failure or complete its plan to correct failure, then CITY may terminate this Agreement by notifying CONTRACTOR of date of termination. Notice of such termination will be given with sufficient time to allow for the orderly withdrawal of the CONTRACTOR without additional harm to the participants or CITY. Said termination shall not diminish CITY'S rights under law or equity.

12.2 The CITY may terminate or reduce the amount of service to be rendered if there is, in the opinion of the City Commission, a significant increase in local costs; or, in the opinion of the City Commission, insufficient state or federal funding available for the service, thereby terminating this Agreement or reducing the compensation to be paid under this contract. In such event the CITY will notify CONTRACTOR in writing ninety (90) days in advance of the date such actions are to be implemented.

12.3 In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to CONTRACTOR, of any kind, after the date of termination. CONTRACTOR shall deliver all records, equipment, and materials owned by CITY to the CITY within twenty-four (24) hours of the date of termination.

ARTICLE 13 – GENERAL PROVISIONS

Applicable State and Local Clauses:

13.1. Disclaimer of Liability/Hold Harmless

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Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability arising out of Contractor's performance under this contract or attempted performance of the provisions hereof, excepting any and all claims demands, damages, costs, expenses, judgments, or liability arising out of Contractor's operation of motor vehicles owned by City and excepting any and all claims, demands, costs, expenses, judgments, or liability arising out of Contractor's operation and occupation of the Ground Transportation Center and/or the Metro Transit Garage owned by City. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting from the gross negligence or willful misconduct of City.

City shall defend, indemnify and save harmless the Contractor, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability, up to a maximum amount, including attorney fees and other costs of defense, of $1.5 Million per claim, arising out of Contractor's operation of motor vehicles owned by City and from any and all claims, demands, costs, expenses, judgments, or liability arising out of Contractor's operation and occupation of the Ground Transportation Center and/or the Metro Transit Garage owned by City, up to a maximum amount, including attorney fees and other costs of defense, of $1.5 Million per claim. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting from the gross negligence or willful misconduct of Contractor and from acts or failures to act of Contractor relating to things other than the Contractor's operating of motor vehicles owned by City. Nothing herein shall be deemed a waiver by the City of the limitations on liability set forth in Minnesota Statutes, Section 466,04, and the City's obligation to indemnify, hold harmless and defend Contractor shall be limited by the limitations on liability set forth in Minnesota Statutes Section 466.04, less any amounts which the City is required to pay on its own account, or on account of the City's officers, agents or employees.

13.2. Law Governing

This Agreement has been made and entered into under the laws of the State of Minnesota, and said laws will control its interpretation.

13.3. Subletting of Contract

The contract shall not be sublet except with the written consent of the City. No such consent shall be construed as making the City a party to such subcontract, or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under his contract, and all transactions with the City must be through the General Contractor.

13.4. Assignment/Transfer of Interests

There shall be no assignment/transfer of interests or delegation of Contractor's rights, duties or responsibilities of Contractor under the contract without the prior written approval of the City.

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13.5. Severability

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

13.6. Regulatory Requirements

The Contractor shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits) for the provision of the transit services.

The Contractor shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.

13.7. Responsible Firms

Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.

13.8. Publication, Reproduction and Use of Material

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The and Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under any contract.

Applicable Federal Clauses:

13.9. No Government Obligation to Third Parties

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

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

13.10. Program Fraud & False or Fraudulent Statements & Related Acts

13.10.1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, Program Fraud Civil Remedies, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining

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to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

13.11. Access To Records

13.11.1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

13.11.2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

13.11.3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution

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of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

13.11.4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purpose of conducting an audit and inspection.

13.11.5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

13.11.6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of the litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

13.12. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 2010) between City and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13.13. Civil Rights Requirements (EEO, Title VI & ADA)

The following requirements apply to the underlying contract:

13.13.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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13.13.2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

13.13.2.1. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of labor, 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity, as amended by Executive Order No. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementation requirements FTA may issue.

13.13.2.2. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

13.13.2.3. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

13.13.3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13.14. Termination Provisions

13.14.1. The City reserves the right to cancel any contract for cause by written notices to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the City.

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13.14.2. The City may cancel or reduce the amount of service to be rendered if there is, in the opinion of the Moorhead City Council, a significant increase in local costs; or, in the opinion of the Moorhead City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the City will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

Contractor is hereby notified that the MATBUS system pursuant to this Agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the City shall pay the agreed rate only for services delivered up to the date of termination. The City has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the City within 24 hours of the date of termination.

13.15. Disadvantaged Business Enterprise

In connection with the performance of this service, the Contractor will cooperate with the Cities of Fargo and Moorhead in the utilization of disadvantaged business enterprises (DBE) including women-owned business enterprises and small businesses enterprises (SBE) for the duration of the contract and will use its best efforts to insure that DBE and SBE have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with DBE and/or SBE, the Contractor agrees to take affirmative action to identify disadvantaged business and small business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any DBE goals established by Fargo/Moorhead for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the Cities with the necessary certification and records for reporting purposes. The majority of the contract is labor, which is not a contracting opportunity.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Cities deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance, as applicable.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Cities. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days

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after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Cities whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Cities.

Outreach: The Contractor will work to identify potential DBEs and SBEs and check applicable directories. If a DBE/SBE provides goods or services that are applicable to the project, the Contractor will check the listing of eligible DBEs/SBEs and notify the DBE/SBE of the contracting opportunity and given a chance to bid on the project. SBEs are defined according to number of employees and gross receipts, and thresholds are determined by the Small Business Administration according to industry type.

13.16. Incorporation of FTA Terms

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

13.17. Debarred, Suspended, or Ineligible Contractors

The Contractor certifies that his/her firm is not included on the U.S. Comptroller General's or General Services Administration's Consolidated List of Persons or Firms Currently Debarred or Suspended for Violations of Various Public Contracts Incorporating Labor Standards (refer to Appendix 3).

13.18. Buy America

The Contractor shall comply with applicable Buy America requirements set forth under the requirements of Section 165(a) of the Surface Transportation Act of 1982 and the applicable regulations in 49 CFR Part 661, as amended (refer to Appendix 2.)

13.19. Breach of Contract and Dispute Resolution

13.19.1. Disputes will be presented in writing to the appropriate City personnel, the Moorhead Transit Manager. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of

the Moorhead City Manager's decision to the Moorhead City Council – it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing. The decision of the Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

13.19.2. Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

13.19.3. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

13.19.4. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

13.20. Lobbying Restrictions (refer to Appendix 4)

The Contractor certifies that:

13.20.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13.20.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

13.20.3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients shall certify and disclose accordingly.

13.21. Clean Air

13.21.1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

13.22. Clean Water

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

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

13.23. Contract Work Hours & Safety Standards Act

13.23.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate no less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

13.23.2. Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has founded under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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13.23.3. All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.

13.24. Transit Employee Protective Arrangements

General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.

13.25. Charter Service Operations

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 40 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental", i.e., it must not interfere with or detract from the provision of mass transportation.

13.26. Drug & Alcohol Testing

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 40 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Minnesota, or the City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 40 and 655 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 40 and 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City Transit Administrator Manager and Safety Coordinator. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees to provide to the City all necessary documentation for a compliant drug and alcohol testing program.

13.27. Cargo Preference

46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on shipment of foreign made goods. Requirements therein apply to the contract arising from this procurement.

13.28. Davis-Bacon Act and Copeland Act

The contractor shall comply with provision under the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor Regulations 29 CFR Part 5. The Contractor shall also comply with provisions under the Copeland (Anti-Kickback) Act

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(18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

13.29. Energy Conservation
Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

13.30. Environmental Violations
For all contracts and subcontracts in excess of $100,000, contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15) which prohibits the use under nonexempt Federal contracts, grant or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to FTA and to the US/EPA Assistant Administrator for Enforcement (ENO329).

ARTICLE 14 - BINDING

This Agreement shall be binding on the assignees, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

ARTICLE 15 – NOTICE

All notices hereunder and communications with respect to this Agreement shall be effected upon the mailing thereof registered or certified mail return receipt requested or by Federal Express and addressed as follows:

To CONTRACTOR

First Transit
2581 Washington Road, Suite 223
Pittsburgh, PA 15241
Attn: Beverly Edwards, Vice President

To CITY

City of Moorhead
500 Center Avenue
Moorhead, MN 56560
Attn: City Manager

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

FIRST TRANSIT

By: _____

Printed Name: Beverly A. Edwards

Date: 12·22·2015

CITY OF MOORHEAD, MINNESOTA

By: _____
Del Rae Williams, Mayor

Date: 12/17/15

By: _____
Michael J. Redlinger, City Manager

ATTACHMENT A

This attachment is still under development and will include the requirements of the Request for Proposal, the proposal received from First Transit , and the negotiated elements of the proposal as delineated if the Council Communication.

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