

AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and First Transit, Inc., a Delaware Corporation (hereinafter referred to as "Contractor"), authorized to do business in Florida, whose address is 22192 Network Place, Chicago, Illinois 60673, this ____ day of _____, 2018.

WHEREAS, until January 29, 2018, the City had an agreement with Unique Transportation & Tours LLC to provide drivers to operate and maintain the City-owned trolleys ("Services"). However, the agreement with Unique Transportation & Tours LLC was terminated because it was no longer able to perform the Services for the City; and,

WHEREAS, the City desires to obtain these Services from Contractor; and,

WHEREAS, utilization of the City's competitive procurement methods to obtain these Services is not practical due to fact that the City needs to acquire these Services immediately in order to continue providing these Services to the residents and visitors to the City without interruption; and,

WHEREAS, the City Commission deems approval of this Agreement to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Contractor shall provide Services to the City, in accordance with and pursuant to Contractor's proposal, attached hereto and incorporated herein as Exhibit A, and the terms and conditions of this Agreement.

3 The City shall pay the Contractor in accordance with the pricing schedule detailed in Exhibit A.

4 This Agreement is in full force and effect upon full execution by the City for a term of one year.

5 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement. The

City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

6 The Contractor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors. The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

7 Contractor shall provide certificates of insurance to the City evidencing its insurance coverage and naming the City as an additional insured. Such insurance shall be in an amount and form as described in Exhibit B and shall be delivered to the City prior to execution of this Agreement. If Contractor fails to provide the certificates of insurances in a form acceptable to the City, the City may immediately terminate this Agreement.

8 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

For CONTRACTOR:

First Transit, Inc.
1020 Center Street, Suite 16
Horseheads, New York 14845
Attn: Tim McCann, Senior Vice President

9 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

10 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

11 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

- a. Contractor shall comply with public records laws, specifically to:
- i. Keep and maintain public records required by the City to perform the service.
 - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon

request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

12 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

13 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

14 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. The City's purchase order terms and conditions.
- c. Any subsequent information submitted by Contractor during the evaluation and negotiation process.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Mark R. Lauzier, City Manager

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney



(SEAL)

CONTRACTOR

By: _____

Print Name: Catherine DeGray

Title: Region Director of Operations

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27 day of February, 2018, by Catherine DeGray, as Regional Director of Operation (name of officer or agent, title of officer or agent), of First Transit (name of corporation acknowledging); a Florida (state or place of incorporation) corporation, on behalf of the corporation. He / She is personally known to me or has produced (type of identification) as identification.

Zulaima Ray
Notary Public – State of Florida Zulaima Ray



FIRST TRANSIT, INC. PROPOSAL FOR TROLLEY SERVICES

For City of Delray Beach Roundabout

OVERVIEW

First Transit, Inc. is pleased to submit this proposal to operate the City of Delray Beach Roundabout trolley routes. The Roundabout is more than just a service for tourists, shopper hopper or beach shuttle. It fulfills a real transit need for the people of Delray Beach, from the coastal area to The Set. First Transit understands these needs, as we have partnered with dozens of municipalities throughout the United States to provide transit services in a safe and efficient manner.

The Objective

- Need #1: The City of Delray Beach needs to provide reliable transit services for its citizens along its main corridor.
- Need #2: The City of Delray Beach partners with a transit provider that has the resources and experience to provide this service, with minimal service interruptions.
- Need #3: The City of Delray Beach and First Transit, Inc. must formulate an agreement that takes into account the needs of the City while at the same time providing First Transit with the resources to operate the Roundabout safely and efficiently.

The Opportunity

- Goal #1: Retrain all former Unique Trolley drivers to bring them up to First Transit's Safety and Training Standards. Provide drivers with new uniforms. **(Completed)**
- Goal #2: Provide spare vehicle to operate Route 2 until second the Roundabout trolley is put back into operations. **(Completed)**
- Goal #3: Develop an agreement with the City of Delray Beach that can serve until an RFP is developed.

OUR PROPOSAL

First Transit, Inc. has a well-deserved reputation for Safety, Efficiency and Professionalism. The resources we can bring to the forefront of our projects allow us to react with flexibility. The following proposal takes into account that this is an emergency contract, and both partners have accrued additional expenses to get the service operational again.

Execution Strategy

As the service is operational, our execution strategy will to be continue to provide extremely qualified personnel and a highly responsive approach to managing opportunities and issues. Following is a description of deliverables that will be required by both the City and First Transit.

Project Deliverables

Following is a complete list of all project deliverables:

Deliverables to be supplied by First Transit, Inc.
Liability insurance that meets the requirements for The City of Delray Beach.
Management oversight (Dispatchers and Road Supervisors)
First Transit supplied operators, including all wages, benefits, uniforms and training
Spare bus, including maintenance*

*The rate for the use of the spare trolley will be \$60.00 an hour, per route. This rate includes the driver and spare trolley.

Deliverables to be supplied by The City of Delray Beach
Two trolleys, including vehicle maintenance
Fuel for City owned trolleys and First Transit spare vehicle
Parking and storage of trolleys and First Transit spare vehicle
Permission to advertise for drivers in all vehicles

Pricing

Cost for service: \$45.00 an hour, per route.

Benefits

- Result #1: The City is served by true transit professionals who have the resources to provide consistent service throughout the length of this relationship.
- Result #2: The City has a true partner, a local business who believes in the value of outreach; First Transit is a member of the Chamber of Commerce and looks forward to other sponsorship opportunities. The majority of First Transit's employees are residents of the City of Delray Beach.

CONCLUSION

Even though the motto of Delray Beach is "The Village by the Sea," it must be recognized that it is a successful, vibrant and growing community. The good people of Delray expect quality services that are equal to the reputation of this fine City. First Transit is the company that can meet these expectations.

If you have questions on this proposal, feel free to contact me at your convenience by email at richard.gonzalez2@firstgroup.com, or by phone at 904.738.4632. We will be in touch with you soon to arrange a follow-up conversation on the proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Gonzalez", is written over a faint, illegible printed name.

Richard Gonzalez, General Manager

EXHIBIT B
INSURANCE REQUIREMENTS

The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of Contractor's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

Contractor shall provide insurance coverage as follows:

1. **WORKERS COMPENSATION AND EMPLOYERS' LIABILITY**

Workers Compensation Insurance to apply for all employees in compliance with the "Workers Compensation Law" of the State of Florida and all applicable Federal laws. The City reserves the right not to accept exemptions to the Workers Compensation requirements of this agreement. Employers' liability insurance shall be included to protect against on-the-job injury or illness which may not fall within the provisions of the Florida State's Workers' Compensation Law.

2. **COMMERCIAL GENERAL LIABILITY**

Minimum limits of \$1,000,000; and include Products/Completion Liability of \$1,000,000. Such certificate shall list the City as additional insured. The combined bodily injury and property damage limit shall not be less than \$1,000,000 per occurrence with an annual aggregate of \$2,000,000.

NOTE: If Comprehensive General Liability limits are less than \$1,000,000, the sum of Comprehensive General Liability limits and Excess Liability limits must equal no less than \$1,000,000.

3. **AUTOMOBILE LIABILITY**

Automobile Liability Insurance to include owned, non-owned, and hired, with minimum limits of \$1,000,000 each occurrence. The combined bodily injury and property damage limit shall not be less than \$5,000,000 per occurrence.

All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.