

To: Board of Directors

Date: June 12, 2013

From: Bill Churchill, Director of Transportation

Reviewed by:

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### **SUBJECT:**

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#### **Summary**

The current contract with First Transit to provide ADA Paratransit services and maintenance allows for one more extension. If exercised, this would be the third and final extension under the current five year contract requiring staff to go out to bid for services beyond June 2014. First Transit has performed well in providing high quality cost effective Paratransit and shuttle services for our customers. For this reason, staff recommends the Board of Directors authorize the General Manager to sign a one year contract extension with First Transit for the operation and maintenance of the County Connection LINK service. This extension would be the third and final extension of the existing five year contract and will be to form per County Connection Legal Counsel.

Since this request for an extension marks the end of the contract with First Transit, staff will be required to develop an RFP this fall with the goal of incorporating feedback from the full Board post the paratransit workshop this summer. It is anticipated the RFP would be released next winter providing sufficient time to complete a new multi-year contract for paratransit service implementation on July 1<sup>st</sup> 2014.

#### **New Contract Rate Request**

First Transit has performed well over the life of the current contract in providing ADA paratransit and shuttle services to County Connection customers. They have consistently maintained an excellent safety record while providing a high level of customer service. Additionally, First Transit has been a great partner on containing costs during the financial crisis by foregoing a rate increase and working to improve productivity.

Following a number of meetings with County Connection staff, First Transit has formally requested a rate increase of 2% to the hourly and fixed contract rates. First Transit requests this increase to keep up with their costs of meeting our contract. This includes projected cost increases to fuel, insurance, parts and supplies. It is also important to be aware the labor contract between First Transit and the ATU Local 1605 is currently being negotiated as the current contract expires this June 30<sup>th</sup>. Since First Transit's expenses are clearly increasing and their request is in keeping with a Bay Area CPI of 2.7%, their request is reasonable.

## **Financial Impact**

If the rate increase is approved the new hourly rate would be \$31.75 per service hour compared to \$31.13 per service hour today and the new fixed rate will be \$92,118.06 as compared to \$90,311.18 today. Overall, the draft FY14 County Connection budget contains \$5,373,920 for purchased transportation (LINK contract) to cover County Connection ADA paratransit service, BART ADA paratransit service provided by LINK, St. Mary's Shuttle and the Cal State shuttle.

## **A&F Committee & Staff Recommendation**

The A&F Committee and staff recommends the County Connection extend the current contract with First Transit for the provision of LINK service with a 2% increase to the fixed and hourly rates. Staff further recommends that all of the terms and conditions remain the same.

The staff justification for this recommendation is that we find the proposed extension to be economically reasonable and prudent, and that we find the performance of First Transit over the past four years to be excellent.

## **Options**

1. Adopt Resolution No. 2013-021
2. Decline recommendation and go out to bid
3. Take other action as determined.

## **Action Requested**

The A&F Committee and staff respectfully request that the Board of directors adopt Resolution No. 2013-021.

## **Attachments:**

- 1) Resolution No. 2013-021
- 2) Contract with First Transit: Agreement for Professional Services ADA Paratransit Services, BART ADA Service, Route 250, and Route 8 Between CCCTA and First Transit, Inc.

**RESOLUTION NO. 2013-021**

**CENTRAL CONTRA COSTA TRANSIT AUTHORITY  
BOARD OF DIRECTORS**

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**AUTHORIZING EXTENSION OF PROFESSIONAL SERVICES AGREEMENT  
FOR ADA PARATRANSIT SERVICES, BART ADA SERVICE AND GAEL RAIL SHUTTLE  
WITH FIRST TRANSIT, INC. FOR FY 2014**

WHEREAS, the County of Contra Costa and the Cities of Clayton, Concord, the Town of Danville, Lafayette, Martinez, the Town of Moraga, Orinda, Pleasant Hill, San Ramon and Walnut Creek (hereinafter "Member Jurisdictions") have formed the Central Contra Costa Transit Authority ("CCCTA"), a joint exercise of powers agency created under California Government Code Section 6500 *et seq.*, for the joint exercise of certain powers to provide coordinated and integrated public transportation services within the area of its Member Jurisdictions;

WHEREAS, by Resolution No. 2009-027 the Central Contra Costa Transit Authority Board of Directors awarded a contract to First Transit, Inc. for the operation and maintenance of County Connection LINK, BART ADA and Gael Rail Shuttle for fiscal years 2010 and 2011, commencing July 1, 2009 and expiring June 30, 2011, with three possible one-year extensions to be negotiated at CCCTA's election ("Agreement");

WHEREAS, by Resolution No. 2011-013, the Board authorized an amendment to extend the contract for one year, ending June 30, 2012;

WHEREAS, by Resolution 2012-028, the Board of Directors authorized extending the contract for the second option year, ending June 30, 2013;

WHEREAS, staff has found the performance of First Transit, Inc. to continue to be satisfactory, noting an improvement in productivity and consistent excellent customer service, safety and responsiveness;

WHEREAS, staff has negotiated for the third and final extension of the Agreement with a 2% increase in the fixed and hourly rates in the cost of service for FY 2014;

WHEREAS, staff recommends that it would be in the best interests of CCCTA to continue to engage First Transit, Inc. to provide ADA paratransit services and finds their cost proposal to be fair and reasonable; and

WHEREAS, the Administration and Finance Committee has recommended exercising the third extension to renew the Agreement with First Transit, Inc. for FY 2014.

NOW, THEREFORE, BE IT RESOLVED that the Central Contra Costa Transit Authority Board of Directors authorizes a one-year extension of the Agreement with First Transit, Inc. for the operation and maintenance of County Connection LINK, BART ADA and Gael Rail Shuttle, commencing July 1, 2013, with a 2% increase in the fixed and hourly rates; and

BE IT FURTHER RESOLVED that the General Manager is authorized to execute an amendment to the Agreement on behalf of CCCTA, subject to approval as to form by Legal Counsel.

Regularly passed and adopted this 20<sup>th</sup> day of June, 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Erling Horn, Chair

ATTEST:

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Lathina Hill, Clerk to the Board

**AGREEMENT FOR PROFESSIONAL SERVICES  
ADA PARATRANSIT SERVICES, BART ADA SERVICE, ROUTE 250  
AND ROUTE 8  
BETWEEN CCCTA AND FIRST TRANSIT, INC.**

THIS AGREEMENT is made as of the 21<sup>st</sup> day of May, 2009, by and between CENTRAL CONTRA COSTA TRANSIT AUTHORITY ("AUTHORITY") and FIRST TRANSIT, INCORPORATED, a division of FirstGroup America, ("CONTRACTOR").

WHEREAS, the Board of Directors desires to obtain professional services in connection with the provision of ADA paratransit services ("County Connection LINK"), BART Complementary Paratransit Service, Route 250 ("Gael Rail Shuttle") and Route 8 ("Monument Community Shuttle") and has issued a Request for Proposals dated February 27, 2009, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the CONTRACTOR desires to furnish such services and submitted a written proposal dated April 10, 2009 a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The CONTRACTOR agrees to provide professional services to the AUTHORITY in accordance with the terms and conditions of this Agreement. Consultant represents and warrants that (1) it is experienced and qualified to perform such services; (2) it holds all licenses and certifications in good standing that may be required under applicable law or regulations to perform the work; and (3) it will retain all such licenses and certifications in active status throughout the duration of this engagement.

## 2. TERM

The CONTRACTOR shall commence the services for an initial period of 2 years under this Agreement upon the effective date of a written Notice to Proceed from the AUTHORITY. The CCCTA may exercise its option to extend the contract for three (3) additional 1-year terms pursuant to the contract document.

## 3. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the services to be performed by CONTRACTOR shall be and are the property of the AUTHORITY. The AUTHORITY shall be entitled to access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the CONTRACTOR or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the AUTHORITY. If any materials are lost, damaged or destroyed before final delivery to the AUTHORITY, the CONTRACTOR shall replace them at its own expense and the CONTRACTOR assumes all risks of loss, damage or destruction of or to such materials. The CONTRACTOR may retain a copy of all material produced under this Agreement for its use in its general business activities.

## 4. CONFIDENTIALITY

Any AUTHORITY materials to which the CONTRACTOR has access or materials prepared by the CONTRACTOR during the course of this Agreement ("confidential information") shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent disclosure of confidential information to anyone except the officers, employees and agents of the CONTRACTOR as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

CONTRACTOR shall not release any reports, information or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AUTHORITY General Manager.

5. KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that Mary Walker shall serve as the primary staff person of the CONTRACTOR to undertake, render, and oversee all of the services under this Agreement.

6. USE OF SUBCONTRACTORS

CONTRACTOR shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the AUTHORITY, except for service firms engaged in drawing, reproduction, typing and printing. CONTRACTOR shall be solely responsible for reimbursing any subcontractors and the AUTHORITY shall have no obligation to them.

7. CHANGES

The AUTHORITY may, at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 10 or in the time of required performance as set forth in the contract documents, or both. In the event that CONTRACTOR encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, CONTRACTOR shall so advise the AUTHORITY immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation. This notice shall be given the AUTHORITY prior to the time that

CONTRACTOR performs work or services related to the proposed adjustment in compensation. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes.

8. RESPONSIBILITY; INDEMNIFICATION

CONTRACTOR shall indemnify, keep and save harmless the AUTHORITY, and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONTRACTOR caused by an act or omission of the CONTRACTOR or its employees, subcontractors or agents. CONTRACTOR further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other incurred costs and expenses. If any judgment is rendered against the AUTHORITY or any of the other individuals enumerated above in any such action, CONTRACTOR shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination of the Agreement.

9. INSURANCE

A. Workers' Compensation. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws where applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease. Prior to commencement of work under this Agreement by any such employee, CONTRACTOR shall deliver to AUTHORITY a Certificate of Insurance that shall stipulate that 30 days' advance written notice of cancellation, non-renewal or reduction in limits shall be given to AUTHORITY.

B. General Liability Insurance covering any loss or liability, including the cost of defense of any action, for Bodily Injury, Death, Personal Injury and Property Damage which may arise

out of operations of the CONTRACTOR in connection with the performance of this contract. The policy will include coverage for bodily injury and property damage liability subject to the standard provisions and exclusions of the Commercial General Liability Policy Form and endorsed for premises, operations, products and completed operations. The policy or policies shall provide a minimum limit of \$15 million each occurrence.

C. Automobile Liability insurance covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle, whether or not owned by CONTRACTOR, on or off AUTHORITY premises. The policy or policies shall provide a minimum limit of \$15 million each accident. Additionally, all revenue vehicles will be insured against comprehensive and collision damage satisfactory to CCCTA.

With respect to the coverages under subsections B and C of this section, the policies will name as additional insured with respect to Contractor's services under this Agreement, the AUTHORITY and its directors, officers, employees and agents. The Insurer(s) will agree that its policies are Primary Insurance and that it will be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance covering AUTHORITY.

Inclusion of AUTHORITY as an additional insured shall not in any way affect its rights as respect to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policies will protect CONTRACTOR and AUTHORITY in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest had been named as an insured.

Prior to commencement of work under this Agreement, CONTRACTOR shall deliver to AUTHORITY a Certificate of Insurance, which will indicate compliance with the insurance requirements

of this paragraph and shall stipulate that 30 days advance written notice of cancellation, non-renewal or reduction in limits shall be given to AUTHORITY.

D. Self-Insurance Self-insurance and self-insured retentions in insurance policies are subject to separate approval by CCCTA upon review or evidence of CONTRACTOR'S financial capacity. Such programs must provide at least the same coverage and protection required above.

E. Crime Insurance (Employee Theft)

Contractor will provide crime insurance, including coverage for Contractor;s employee dishonesty and theft of money and securities from any inside location or outside messenger with the following limits of liability:

Employee Dishonesty:	[\$250,000]
Depositors' Forgery	[\$250,000]
Off and On Premises	[\$ 50,000]
Computer Fraud	[\$250,000]

With the permission of CCCTA, a deductible of up to \$25,000 may be permitted on any of the above coverages. Contractor covenants that it shall reimburse CCCTA for any and all losses within said deductible plus the cost to prove the loss, accountants' fees, defense costs, and attorneys' fees associated therewith. Contractor shall be responsible for and shall indemnify CCCTA from and hold it harmless against any and all such costs and expenses.

CCCTA shall be named as a joint loss payee on the policy. Prior to the commencement of work, a certificate evidencing this coverage shall be furnished to CCCTA by the Contractor. The policy shall also

provide that the Contractor's policy will not be cancelled or coverage reduced without sixty days' prior written notice to CCCTA.

F. Failure to Procure Insurance Contractor's failure to procure and maintain required insurance will be a material breach of the contract and CCCTA may immediately terminate.

#### 10. COMPENSATION

The CONTRACTOR agrees to perform all of the services included in Section 2 for fixed and hourly costs in its proposal for each service, which sum shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor costs and other costs and expenses incurred by the CONTRACTOR.

#### 11. MANNER OF PAYMENT

CONTRACTOR shall submit monthly invoices, detailing the services performed during the billing period. CCCTA will endeavor to pay approved invoices within thirty (30) days of their receipt.

#### 12. ENERGY CONSERVATION

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

#### 13. CLEAN WATER AND AIR REQUIREMENTS

(a) 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., and the Clear Air Act, as amended, 42 U.S.C. §§ 7401, et. seq. The Contractor agrees to report each violation to the CCCTA and understands and agrees that the CCCTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

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

#### 14. LOBBYING

Contractor shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures shall be forwarded to the CCCTA. Contractor shall ensure that all of its Subcontractors under this Contract shall certify the same. Prior to execution of this Agreement, Contractor shall submit the "Certification for Federal Aid Contracts," included in the contract documents. The CCCTA is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors.

#### 15. ACCESS TO RECORDS AND REPORTS

Contractor shall provide all authorized representatives of the CCCTA, the FTA, and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also 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 litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until the

CCCTA, the FTA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

16. 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 (15) dated October, 2008) between the CCCTA and the FTA , as 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.

17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(a) The CCCTA 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 CCCTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) 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.

18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(a) 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 causes to be made, pertaining 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.

(b) 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.

(c) 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.

## 19. PRIVACY ACT

The following requirements apply to Contractor and any of its employees that may administer any system of records on behalf of the Federal Government under any contract:

(a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, U.S.C. §552a. Among other things, the Contractor agrees to obtain the express consent of the

Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## 20. CIVIL RIGHTS REQUIREMENTS.

### 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.

### Equal Employment Opportunity

The following equal employment opportunity requirements apply:

#### (a) 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 their race, color, creed, 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 implementing requirements FTA may issue.

(b) 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.

(c) 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.

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.

## 21. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220. 1F, dated November 1, 2008, 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 CCCTA requests, which would cause the CCCTA to be in violation of the FTA terms and conditions.

## 22. CONTRACTOR'S STATUS

Neither the CONTRACTOR nor any party contracting with the CONTRACTOR shall be deemed to be an agent or employee of the AUTHORITY. The CONTRACTOR is and shall be an independent contractor, and the legal relationship of any person performing services for the CONTRACTOR shall be one solely between that person and the CONTRACTOR.

## 23. ASSIGNMENT

CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of AUTHORITY.

## 24. AUTHORITY WARRANTIES

The AUTHORITY makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

#### 25. AUTHORITY REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Directors of the AUTHORITY, the General Manager of the AUTHORITY, or such person or persons as he shall designate in writing from time to time, shall represent and act for the AUTHORITY.

#### 26. TERMINATION

The AUTHORITY shall have the right to terminate this Agreement for convenience or default at any time by giving written notice to the CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a default by CONTRACTOR, the AUTHORITY shall pay to CONTRACTOR in accordance with the provisions of Section 10 all sums actually due and owing from AUTHORITY for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by CONTRACTOR to effect such termination. If the Agreement is terminated for default, the AUTHORITY shall remit final payment to CONTRACTOR in an amount to cover only those services performed and expenses incurred in full accordance with the terms and conditions of this Agreement up to the effective date of termination.

#### 27. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Contractor and subcontractors costs incurred in the performance of this Contract will be subject to audit. Contractor and its subcontractors shall permit the Authority, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy Contractor's books, work,

documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Agreement. The Contractor shall also provide such assistance as may be required in the course of such audit. Contractor shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the Authority's auditor or staff that reimbursement of any costs including profit or fee under this Contract was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse the Authority for those costs within sixty (60) days of written notification by the Authority.

#### 28. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability or national origin. The Contractor shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability or national origin. Such actions 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. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

#### 29. NON-DISCRIMINATION ASSURANCE

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor to carry out

these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Authority deems appropriate. The Contractor shall obtain the same assurances from its joint venture partners, subcontractors, and subcontractors by including this assurance in all subcontracts entered into under this Agreement.

### 30. CONFLICT OF INTEREST

Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, Contractor may be required to publicly disclose financial interests under the Authority's Conflict of Interest Code. Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by Authority upon receipt.

No person previously in the position of Director, Officer, employee or agent of the Authority may act as an agent or attorney for, or otherwise represent, Contractor by making any formal or informal appearance, or any oral or written communication, before the Authority, or any Officer or employee of the Authority, for a period of 12 months after leaving office or employment with the Authority if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

### 31. NOTICES

All communications relating to the day-to-day activities of the project shall be exchanged between the AUTHORITY's General Manager and the CONTRACTOR's representative.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the AUTHORITY:           Central Contra Costa Transit Authority  
Attn: General Manager  
2477 Arnold Industrial Way  
Concord, CA 94520-5327

If to the CONTRACTOR:       First Transit, Inc.  
Attn: Don Swain, Regional Vice President  
  
1625 SE Hogan Road  
  
Gresham, Oregon 97080-8252

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

32. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable attorneys' fees.

33. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California.

34. THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties

35. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

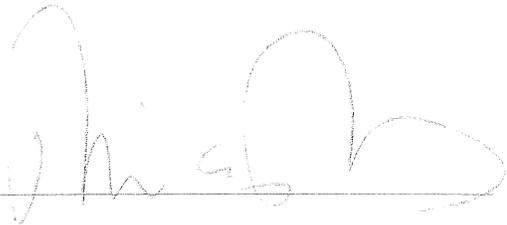
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

AUTHORITY:

CONTRACTOR:

CENTRAL CONTRA COSTA TRANSIT  
AUTHORITY

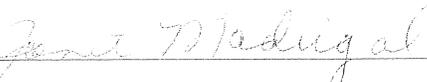
By: 

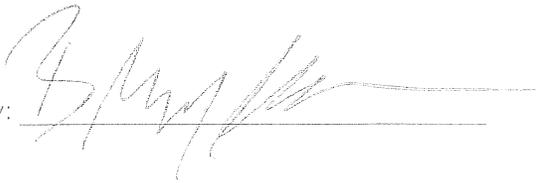
By: 

Title: General Manager

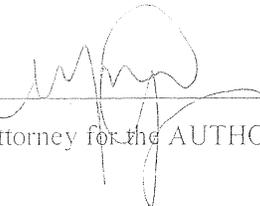
Title: SONOMA VIZE PRESIDENT

ATTEST:

By:   
Secretary for the AUTHORITY

\*By: 

APPROVED AS TO FORM:

By:   
Attorney for the AUTHORITY

Title: President

Year-ONE 7/1/09 - 6/30/10

County Connection LINK Costs Based on 105,000 Vehicle Service Hours  
 BART ADA Costs based on 1,000 Vehicle Service Hours  
 Route 250 Costs based on 890 Vehicle Service Hours  
 Route 8 Costs based on 3,906 Vehicle Service Hours

<u>Fixed Costs</u>		<u>County Connection LINK</u>	<u>BART ADA</u>	<u>Annual Total</u>
1.	Labor			
	A. Management	189,225.38	24,083.23	213,308.61
	B. Dispatch	347,983.44	44,288.80	392,272.24
	C. Clerical/Other	33,264.15	4,233.62	37,497.76
2.	Facilities			
	A. Maintenance/Modification	11,869.44	1,510.66	13,380.10
	B. Utilities	4,614.72	587.33	5,202.05
	C. Telephone	10,560.00	1,344.00	11,904.00
	D. Maintenance Tools and Equipment	6,231.29	793.07	7,024.36
3.	Other Costs (Describe)			
	A. Scheduling Software Maintenance	21,035.10	2,677.19	23,712.29
	B. Other - Employee Training Expenses	79,927.82	10,172.63	90,100.46
	C. Other - Employee Welfare	7,876.00	1,002.40	8,878.40
	D. Other - Office Supplies	17,629.92	2,243.81	19,873.73
	E. Other - Miscellaneous	3,326.55	423.38	3,749.93
	F. Regional and Area Support	94,209.58	11,990.31	106,199.89
4.	Insurance	219,202.31	27,898.48	247,100.79
Total Fixed Costs (items 1 - 4)		1,046,956	133,249	1,180,204.60
Fixed Monthly (Total Fixed Costs/12)		87,246	11,104	98,350.38

Hourly Costs (based on annual hours of service)		County Connection LINK	BART ADA	Route 8	Annual Total
1.	Labor (including fringes)				
	A. Operators	2,360,219.77	22,793.55	89,003.75	2,472,017.06
	B. Maintenance	181,812.60	1,755.83	6,856.14	190,424.57
2.	Materials and Supplies				
	A. Maintenance Parts	137,985.98	1,332.58	5,203.44	144,522.00
	B. Maintenance Supplies, etc.	74,849.08	722.85	2,822.55	78,394.48
3.	Overhead and Profit	329,388.27	3,181.03	12,421.21	344,990.51
4.	Fuel	856,946.04	8,275.86	32,315.38	897,537.28
Total Hourly Costs (Items 1 - 3)		3,084,255.69	29,785.84	116,307.10	3,230,348.63
Total Cost Per Hour of Service (Total Hourly Costs / Total Number of Vehicle Service Hours)		\$ 105,000 29.37	\$ 1,000 29.79	\$ 3,906 29.78	\$ 109,906 29.39
Total Net Costs (Total Hourly Costs + Total Fixed Costs)		4,131,211.39	163,034.75	116,307.10	4,410,553.23
Total Cost (Total Hourly Cost + Total Fixed Cost + Fuel Cost)		4,988,157.42	171,310.60	148,622.48	5,308,090.51

Route 250 Combined Hourly Rate:  $\frac{890 \text{ service hours}}{\$ 50.17}$       Route 250 Annual Cost: \$ 44,647.65

Please list below components and amounts of the Route 250 combined hourly rate:

Labor	31.29
Facilities	0.34
Materials & Supplies	2.13
Other Costs	2.29
Insurance	2.24
Overhead & Profit	3.30
Fuel	8.58
	<u>\$ 50.17</u>

GRAND TOTAL: \$ 5,352,738.15

All proposer shall provide a cost quote for providing vehicle revenue hours beyond the stated hours provided for each fiscal year or other out of scope requests by CCCTA. These quotes should be in the form of the cost charged per hour of vehicle service provided.

<u>Hourly Costs</u>	<u>County Connection Link</u>	<u>BART ADA</u>	<u>Out of Scope Requests</u>
Hourly Cost per additional hours of service provided	\$ 29.37	\$ 29.79	\$ 29.37

Year-TWO 7/1/10 - 6/30/11  
 County Connection LINK Costs Based on 107,000 Vehicle Service Hours  
 BART ADA Costs based on 1,000 Vehicle Service Hours  
 Route 250 Costs based on 890 Vehicle Service Hours

<u>Fixed Costs</u>	<u>County Connection LINK</u>	<u>BART ADA</u>	<u>Annual Total</u>
1. Labor			
A. Management	191,818.71	24,413.29	216,232.00
B. Dispatch	353,708.71	45,017.47	398,726.19
C. Clerical/Other	33,294.39	4,237.47	37,531.86
2. Facilities			
A. Maintenance/Modification	12,225.52	1,555.98	13,781.50
B. Utilities	4,753.16	604.95	5,358.11
C. Telephone	10,876.80	1,384.32	12,261.12
D. Maintenance Tools and Equipment	6,231.29	793.07	7,024.36
3. Other Costs (Describe)			
A. Scheduling Software Maintenance	21,666.15	2,757.51	24,423.66
B. Other - Employee Training Expenses	82,325.66	10,477.81	92,803.47
C. Other - Employee Welfare	8,112.28	1,032.47	9,144.75
D. Other - Office Supplies	18,158.82	2,311.12	20,469.94
E. Other - Miscellaneous	3,383.97	430.69	3,814.65
F. Regional and Area Support	95,430.77	12,145.73	107,576.51
4. Insurance	220,509.41	28,064.83	248,574.25
<hr/>			
Total Fixed Costs (items 1 - 4)	1,062,496	135,227	1,197,722.37
Fixed Monthly (Total Fixed Costs/12)	88,541	11,269	99,810.20

Hourly Costs (based on annual hours of service)		County Connection LINK	BART ADA	Annual Total
1.	Labor (including fringes)			
	A. Operators	2,462,725.11	23,325.54	2,486,050.64
	B. Maintenance	190,545.49	1,804.74	192,350.23
2.	Materials and Supplies			
	A. Maintenance Parts	158,117.28	1,497.60	159,614.88
	B. Maintenance Supplies, etc.	81,235.01	769.41	82,004.42
3.	Overhead and Profit	372,684.28	3,529.85	376,214.14
4.	Fuel	873,226.18	8,270.70	881,496.88
Total Hourly Costs (Items 1 - 3)		3,265,307.17	30,927.14	3,296,234.31
Total Cost Per Hour of Service (Total Hourly Costs / Total Number of Vehicle Service Hours)		107,000.00	1000	108,000
		\$ 30.52	\$ 30.93	\$ 30.52
Total Net Costs (Total Hourly Costs + Total Fixed Costs)		4,327,802.83	166,153.86	4,493,956.68
Total Cost (Total Hourly Cost + Total Fixed Cost + Fuel Cost)		5,201,029.01	174,424.56	5,375,453.57

Route 250 Combined Hourly Rate:  $\frac{890 \text{ service hours}}{\$ 52.53}$       Route 250 Annual Cost:  $\$ 46,749.48$

Please list below components and amounts of the Route 250 combined hourly rate:

Labor	32.63
Facilities	0.35
Materials & Supplies	2.41
Other Costs	2.34
Insurance	2.25
Overhead & Profit	3.75
Fuel	8.79
	<u>\$ 52.53</u>

GRAND TOTAL:  $\underline{\underline{\$ 5,422,203.05}}$

All proposer shall provide a cost quote for providing vehicle revenue hours beyond the stated hours provided for each fiscal year or other out of scope requests by CCCTA. These quotes should be in the form of the cost charged per hour of vehicle service provided.

<u>Hourly Costs</u>	<u>County Connection Link</u>	<u>BART ADA</u>	<u>Out of Scope Requests</u>
Hourly Cost per additional hours of service provided	\$ 30.52	\$ 30.93	\$ 30.52