

AMENDMENT TO MANAGEMENT AGREEMENT

This Amendment (this "Amendment") is made this 25th day of June 2021, by and between the Duluth Transit Authority of the City of Duluth ("DTA") and First Transit, Inc. ("Contractor")

WHEREAS, DTA and Contractor (the "Parties") entered into a Management Agreement (the "Agreement") dated December 9, 2016; and

Whereas, the DTA owns a portion of a building in fee simple and has a perpetual lease for the remainder of the Multimodal facility located at 228 West Michigan Street, in Duluth, MN; and

WHEREAS, the parties now wish to amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants, promises and undertakings contained in the Agreement and this Amendment, the Parties hereby agree to reaffirm the Agreement, amended as follows:

1. Paragraph 16 of the Agreement is hereby deleted in its entirety and replaced with the following:

"The DTA shall pay to Contractor as compensation for the management and supervisory services to be performed and provided in accordance with the terms hereof, as follows:

<u>Period</u>	<u>Monthly Fee</u>
11/01/20 - 10/31/21	\$21,448.87

Extension Year:

<u>Period</u>	<u>Monthly Fee</u>
11/01/21 - 10/31/22	\$21,989.06

The term of this Agreement, originally scheduled to terminate on October 31, 2021, is extended to April 30, 2022, and thereafter may be extended for an additional six month period from May 1, 2022 through October 31, 2022, unless terminated herein.

Upon written notice from the President of the DTA Board of Directors, the DTA may choose to limit the scope of services Contractor currently provides, as follows and at the following itemized pricing:

- (a) Oversight services for support of ATED staff:
\$7,352.96 per month (\$88,235.00 annually)
- (b) Maintenance of ATED subsidiary: \$416.66 monthly
(\$5,000.00 annually)

At the request of the President of the DTA Board of Directors, this reduction of services and corresponding reduction in contract costs shall be retroactive to February 1, 2021. Amounts refunded shall be deducted from any amounts owed by the DTA to the Contractor.

For the avoidance of doubt, notwithstanding any such reduction in services, DTA shall at all times remain responsible for all operating expenses of ATED as set forth in this Agreement. At its sole discretion and with thirty (30) days' notice to Contractor, DTA may discontinue use of these services, *provided* that DTA shall have arranged for the sale/transfer of ownership interests in ATED in accordance with Paragraph 4(c) simultaneously with the cessation of services."

2. Paragraph 4 of the Agreement is amended by adding the following as a new clause (c) at the end thereof: "(c) Upon the written request from the President of the DTA Board of Directors, Contractor agrees to sell/transfer 100% of the ownership interests in ATED to an entity of DTA's choosing, including DTA itself (collectively or individually "Transferor") pursuant to customary transfer documentation reasonably acceptable to Contractor. Upon any such sale/transfer, the parties hereto agree that they will amend and restate this Agreement to reflect the change in ownership of ATED. The parties hereto agree that upon any sale/transfer of ATED to any Transferor, DTA will or will require Transferor to become the contributing employer to the Central States, Southeast and Southwest Areas Pension Plan and assume ATED's contribution history and contribution obligations to the Central States, Southeast and Southwest Areas Pension Plan."
3. AMENDMENT, MODIFICATION, AND WAIVER No amendment, modification, or waiver of any condition, provision, or term of this Amendment or the Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the Commissioner of Minnesota Management and Budget, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default

This Amendment supersedes all oral negotiations and prior and contemporaneous writings with respect to the subject matter hereof and is intended by the Parties as the final expression of the Agreement with respect to the terms and conditions set forth herein and as the complete and exclusive statement of the terms agreed to by the Parties. If there is any conflict between the terms, conditions, and provisions of this Amendment and those of any other agreement or instrument, the terms, conditions and provisions of this Amendment shall prevail.

Except as expressly modified, amended or supplemented herein, the Agreement is hereby reaffirmed and ratified by the parties in its entirety.

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

First Transit, Inc.

Sign Name: _____

Print Name: _____

Title: _____

Date: _____

Duluth Transit Authority of the City of Duluth

Sign Name: 

Print Name: Rod Fourwire

Title: General Manager

Date: 6-25-21