

**Management Agreement
Between the Duluth Transit Authority
And
First Transit, Inc.**

For the period of December 1, 2016 through November 30, 2021

This agreement (“Agreement”) entered into by and between the DULUTH TRANSIT AUTHORITY OF THE CITY OF DULUTH, a public authority created by the statutes of the State of Minnesota, hereinafter referred to as the “DTA”, and First Transit, Inc., a Delaware corporation located at 600 Vine Street, Suite 1400, Cincinnati, Ohio, hereinafter referred to as “Contractor”, this first day of November, 2016.

Whereas, under the Duluth Transit Authority Act of 1969, Chapter 720, DTA is legally able and presently engaged in the business of providing public transportation of passengers for hire within and the areas contiguous to the City of Duluth, Minnesota, the City of Superior, Wisconsin, and the City of Proctor, Minnesota; and

Whereas, DTA intends to continue to maintain the operation of the public transportation systems in the areas where it deems practicable; and

Whereas, DTA desires to enter into contract with Contractor to manage the public transportation system at the direction of the DTA; and

Whereas, Contractor is desirous of providing the management of said public transportation system.

Now, therefore, in consideration of these premises and of the mutual terms and conditions hereinafter set out, the parties hereto agree as follows:

1. DTA does hereby engage and retain Contractor to provide the full and complete management services reasonably required for the conduct and operations of public transportation facilities (“Transit System”) principally within, or the areas contiguous to, the cities of Duluth, Minnesota, Superior, Wisconsin, and Proctor, Minnesota, and any additions made to this system by the DTA under policies, standards, and procedures established by the DTA. Contractor will not, however, be expected to achieve results beyond the limits of the funding and other resources made available to it for the operations of the Transit System.
2. Contractor will furnish a General Manager, to reside within the Duluth area, at the expense of Contractor, and shall provide the active management and direction of the Transit System for and on behalf of DTA including the transportation operations, equipment and building maintenance, schedule operations, marketing, schedules, service standards, transit planning, labor relations and labor contract negotiations (excluding interest arbitration), equipment purchasing, accounting, budgeting, employee selection and training. Specific responsibilities of Contractor include but are not limited to those set forth on Exhibit A. Contractor will furnish a fidelity bond at its own expense to DTA covering the General Manager and any personnel used or furnished by Contractor.
3. Contractor will furnish consulting and technical assistance as may be reasonably required to assist the General Manager in the operation of the Transit System. For the purpose of establishing the agreed upon compensation to Contractor, hereinafter specified, the parties agree to up to 240 hours of consulting and technical assistance will be provided during each contract year. Such assistance includes the following areas to assist the DTA in carrying out transit planning, marketing, real estate management, equipment, building utilization, maintenance, security, rates, schedules, fares, service standards, purchasing,

accounting, budgeting, safety, insurance and claims, employee selection and training, labor relations (excluding interest arbitration), public relations, equipment selection, grant applications, and all other normal managerial functions reasonably required of the day to day operations of the Transit System.

Further, at the request of the DTA, under separate contract and for an additional fee, Contractor will supply "Special Project" assistance. Such "Special Projects" include but are not limited to bus line inspections, Comprehensive Operational Analysis (COAs), MIS projects, transit development programs, etc. Such special projects of this nature and scope are not within the day to day management services provided for herein. For each "Special Project" the parties shall mutually agree upon the cost, the work task plan, special project budget, and the special project tracking/reporting plan.

For consulting and technical assistance anticipated by the parties, Contractor will provide the DTA with quarterly reports of non-resident time spent on behalf of the DTA.

Contractor will secure prior approval from the DTA Board of Directors or their designee before bringing in additional consulting or technical assistance.

DTA will pay the actual traveling and living expenses of the Contractor's personnel providing consulting or technical assistance. All such expenses shall be itemized and included in the monthly financial reports to the DTA.

4. (a) Contractor, subject to the laws of the State of Minnesota, has formed a separate wholly owned corporation, ATE Management of Duluth, Inc. ("ATED") which by assignment of Contractor shall assume and perform all services, obligations and accept all rights which have been incurred or extended to Contractor under the terms and conditions of this Agreement, except those retained by Contractor. Subject to the provisions of subsections (b) of this paragraph, ATED shall be the employer of all employees necessary for the operation of the Transit System, except the General Manager. ATED will assume all contractual obligations incidental to the operation by Contractor to the extent that ATED has agreed to be so obligated. Any amendments, modifications, or changes to the existing Collective Bargaining Agreement as may hereinafter be entered into by ATED shall first require the prior approval of the DTA Board of Directors.

(b) The DTA may, in its discretion and by adoption of a resolution, elect to become the employer of all the employees covered by the Collective Bargaining Agreement between ATED and the maintenance and operations personnel of the Transit System. In the event such a resolution is adopted and such employees thereby become public employees of the DTA, Contractor shall continue to manage the Transit System and provide all of the services specified in this Agreement, but the DTA shall assume all of the contractual obligations of ATED under the above referred to Collective Bargaining Agreement.
5. The DTA shall furnish Contractor, without cost to Contractor and at the expense of DTA, all the necessary office space, furniture, equipment, supplies, utilities, materials and telephone services, and any other services deemed necessary by the DTA for Contractor to properly and efficiently perform the management services required under the terms of this Agreement including a \$400 monthly car allowance to be paid directly to the General Manager.

6. All real estate, buildings, equipment, buses, motor vehicles, all materials and supplies reasonably necessary for the operations of the Transit System shall be furnished by DTA and shall remain the property of the DTA. All property of any type either real, personal, or mixed hereinafter acquired as reasonably necessary for performance of the Transit System operations shall be acquired at the DTA's expense and shall become the property of the DTA.

This includes the Duluth Transportation Center located at 228 West Michigan Street, Duluth, MN that is financed with Federal funds, State of Minnesota General Obligation Bonds and local funds (the "Facility"). The General Manager will, on an annual basis, report for approval to the DTA Board of Directors the Financial Status of the Facility as well as such documentation, information and reports as are needed by the DTA to fulfill its reporting requirements under the State Bond Grant Agreement No. 03806 and any other reporting requirements of the State of Minnesota and federal or local entities. The Financial report at a minimum will include current year budget and actual dollar comparisons for revenues and expenses and a forecasted budget that will include the same items plus capital improvements. The forecasted budget should be for a minimum of three years.

7. The DTA shall provide for the use of Contractor a cash working fund sufficient to cover approximately one (1) month's normal working capital requirements and in addition thereto a reserve which is agreeable to both parties shall be set up which will be adequate to take care of any fluctuation in the monthly expenses. The DTA shall, upon presentation of proper certification by Contractor, reimburse Contractor for the operating costs of the preceding month by the 10th of the month next following. This shall include all expenses and liabilities incurred by Contractor for and on account of the operation of the public Transit System and shall include but not be limited to the following:

- A. Wages and salaries paid to all employees, except the salary of the General Manager, for the operation of the public Transit System together with all social security, unemployment, or other payroll taxes now or hereafter imposed or levied on an employer.

- B. All other employee' costs, including the cost of Workers' Compensation insurance for the employees of ATED and any cost required to be paid by the ATED under the Collective Bargaining Agreement with the employees which shall include payments for any pensions for either union or non-union retirees.

- C. All other expenses necessary and incident to the efficient operation and maintenance of the Transit System, the property, both real and tangible, owned by the DTA in connection therewith and disbursed by Contractor, including any independent audits performed by qualified public accounting firms, advertising and business promotion expenses, business, professional and civic association dues and expenses, subscriptions to periodicals, stationery, postage, other general, and administrative expenses.

8. Contractor shall notify the DTA from time to time regarding the types and amounts of material, supplies, and equipment needed for use in the operation, maintenance, and repair

of the Transit System. Contractor shall make recommendations as to the type, quantity and amount of material, supplies and equipment to be purchased, and such shall be purchased with the prior approval of DTA.

9. All revenues derived from the operations of the Transit System, whether from passengers or from other sources, shall be and remain from the initial receipt thereof, the absolute property of the DTA and the treatment of such revenues, including the banking thereof and the accounting thereof shall be as directed by the DTA.
10. Contractor, on behalf of the DTA, shall receive, collect, and deposit all the aforesaid revenues from the transit operations in the manner directed by the DTA, and Contractor shall keep and maintain the books and records reflecting the operation of the Transit System in conformance with the requirements of the DTA and at the direction of the DTA, and shall render and certify to the DTA such full and complete monthly or other operating reports and financial statements as the DTA shall request. All money due and payable on behalf of the DTA in connection with Contractor's operation of the Transit System shall be paid in such manner as the DTA shall direct.
11. Contractor agrees to prepare the necessary budgets and projections as are required by the DTA and agrees to furnish periodic reports and recommendations to the DTA relating to service extensions, route planning, and service policies and either prepare or assist the DTA in the preparation of its annual report of operations. Contractor agrees to assist in the setting up and operation of the "Operating Fund" as may be reasonably required and requested. The DTA has authority to establish and determine routes and the scheduling of service for the Transit System and, after public hearing before the City Council and upon approval by the City Council, the authority to fix and alter fares and any other charges to be collected in connection with the operation of the Transit System. Contractor agrees to make periodic recommendations as to the rate of fares required and any deletions, additions, or changes in the service, and routing of the Transit System.
12. Contractor will indemnify, defend, and save the DTA their agents, servants, and employees, harmless from and against any and all loss, liability, claims, demands, suits, judgments, costs and expenses (including but not limited to attorneys' fees) asserted by any person or persons, including agents or employees of the DTA or of Contractor, by reason of death or injury to person or persons or the loss of or damage to property to the extent arising out of the criminal misconduct, fraud, willful or intentional torts, or gross negligence of the General Manager or other employees of the Contractor providing services under Paragraph 3 above.
13. (a) DTA shall furnish and maintain, at its sole cost and expense, at all times during the term of this Agreement and any renewal or extension thereof, (i) a standard policy of automobile liability insurance having a combined single limit of not less than \$5,000,000 per occurrence with a retention of not to exceed \$100,000 per occurrence insuring Contractor and ATED and their agents, servants, and employees for the ownership, maintenance, use, or operation of the buses and other vehicles used in connection with the management and operation of the Transit System; (ii) a standard policy of general liability insurance having a combined single limit of not less than \$5,000,000 per occurrence with a retention of not to exceed \$100,000 per occurrence insuring Contractor and ATED and their agents, servants, and employees for their wrongful acts and omissions in connection

with the management and operation of the Transit System pursuant to this Agreement. Each such policy (a) shall be written by insurer reasonably acceptable to Contractor, (b) shall be endorsed to name Contractor and ATED as additional insureds, (c) shall provide that the coverage afforded thereby is primary as to Contractor and ATED not excess and (d) shall provide that it cannot be canceled or materially altered without thirty (30) days prior written notice to the Contractor.

(b) DTA shall indemnify, defend and hold Contractor and ATED and their agents, servants and employees harmless from and against any and all loss, liability, claims, damage and expense (including but not limited to attorneys' fees) resulting from or arising out of DTA's failure to furnish and maintain the insurance policies required by Paragraph 13.A above in accordance with the terms thereof. In the event of any such failure, Contractor may, at its option, furnish such policy or policies, without prejudice to any other remedy Contractor may have, and the cost and expense of furnishing and maintaining such policy or policies shall be deemed an operating expense of Contractor payable in accordance with the provisions of Paragraph 7 above. The foregoing shall not, however, apply to criminal penalties or awards and judgments arising out of willful or intentional tort or fraud committed by Contractor.

(c) DTA shall hold Contractor and ATED, their agents, servants, and employees harmless from any and all liability to, or claims made by third persons, regardless of whether such liability is assessed and regardless of whether such claims are made, during the term of this Agreement or subsequent to its expiration or termination, arising out of the performance of this Agreement by Contractor and/or ATED, their agents, servants, and employees, whether or not caused in whole or in part by the negligence of Contractor or ATED or their agents, servants, or employees, provided that such performance was within the scope of the duties of such agents, servants, or employees required by the provisions of this Agreement, provided, however, this indemnification shall not apply to the criminal penalties or awards and judgments arising out of misconduct, fraud, willful or intentional torts, or gross negligence of Contractor, its agents, servants, or employees.

(d) Any contractual obligations or liability including, but not limited to, wages, benefits, pension or profit sharing plans including, but not limited to unfunded and under-funded pension benefit obligations, including without limitation, liability for vested, but unfunded or under-funded benefits, labor contract, and other contractual obligations entered into or assumed by Contractor in connection with the operation of the Transit System shall be binding upon Contractor only for the term of this Agreement and in the event this Agreement is terminated or expires then the DTA agrees to assume all obligations and liabilities under said contracts either on behalf of itself or any successors to Contractor. The DTA does hereby indemnify Contractor and hold them harmless from all liability or costs arising out of the operation of the Transit System with the exception of the salary of the General Manager and the cost of the fidelity bond for the General Manager and the consulting personnel.

14. (a) Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota:

(1) Workers' compensation covering Contractor's own employees in accordance with the laws of the state of Minnesota.

(2) Commercial General Liability Insurance, with limits not less than \$1,500,000 Single Limit.

(b) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the DTA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DTA will render any such change or changes in said policy or coverages ineffective as against the DTA.

(c) The insurance required herein shall be maintained in full force and effect during the term of this Agreement.

(d) Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.

15. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of “claims made” insurance, 60 days’ notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the DTA with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the DTA, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said “claims made” insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

16. 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:

Period	Monthly Fee
11/01/16 - 10/31/17	\$19,425.01
11/01/17 - 10/31/18	\$19,911.23
11/01/18 -10/31 /19	\$20,410.36
11/01/19- 10/31/20	\$20,922.77
11/01/20 - 10/31/21	\$21,448.87

Option Years:

Period	Monthly Fee
11/01/21 – 10/31/22	\$21,989.06
11/01/22 – 10/31/23	\$22,543.74
11/01/23 – 10/31/24	\$23,113.36
11/01/24 – 10/31/25	\$23,698.35
11/01/25 – 10/31/26	\$24,299.19

On or before June 1, 2021, the Contractor shall provide written notice to the DTA indicating that the initial term will expire on October 31, 2021. Upon written notice from the DTA to the Contractor dated on or before September 1, 2021, the DTA may, at its sole discretion, extend the term of this Agreement for a period of five (5) years, from November 1, 2021 through October 31, 2026. The DTA is not required to renew the Agreement and may, at its sole option and discretion, allow the Agreement to expire at the end of its initial term and thereafter directly operate the Transit System or contract with some other entity to operate the Transit System.

If the DTA extends the term of this Agreement in accordance with the foregoing, all of the terms and conditions of this Agreement shall continue, unmodified, in full force and effect until October 31, 2026, except for payment to the Contractor under this Agreement shall be increased as set forth in this Section.

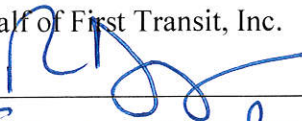
17. Contractor agrees to abide by the terms and conditions of any agreement entered into by the DTA pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, in the performance of its obligations hereunder.
18. This Agreement shall be binding upon and inure to the benefit of the respective Parties hereto and their successor or assigns.
19. The current General Manager assigned to the DTA is Mr. Dennis Jensen. If a change in General Manager becomes necessary, Contractor will submit resumes of prospective replacements and will assign a new General Manager only after the prior approval of the DTA, said approval to be by resolution of the DTA Board of Directors. Following Mr. Jensen's tenure, all General Managers of the DTA shall perform services solely for the DTA and for no other transit authority or entity during the term of this Agreement. If at any time the DTA requests Contractor to assign a new General Manager under this Agreement, Contractor shall comply with such requests. In the event that Contractor desires to change the General Manager and the DTA does not approve any of the proposed replacements, or in the event that the DTA requested a change in General Manager and a replacement approved by the DTA is not available, the DTA may cancel this Agreement on giving ninety (90) days' written notice of such cancellation to Contractor.
20. In connection with the execution of this Agreement, neither Contractor nor ATED shall discriminate against any employee or applicant for employment because of race, religion, color, age, sex, disability, or national origin. Contractor and ATED will take affirmative actions to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, age, sex, disability, or national origin. Such actions shall include, but not be limited to, the following employment and promotion; demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation; and selection for training, including apprenticeship. No person in the United States shall, on grounds of race, religion, color, age, sex, disability or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the DTA has received federal financial assistance from the Department of Transportation. The applicable provisions of the Presidential Executive Order 11246, as amended, relating to the Equal Employment Opportunity are incorporated by reference herein.

21. The DTA agrees that, in the event Contractor or ATED, their agents, servants, or employees are charged with or sued for any alleged discriminatory or sexual harassment practices, insofar as the alleged practices occurred at the direction of the DTA or were done according to the policies of the DTA, the DTA will indemnify Contractor or ATED against any liability or expenses involved in the defense of such claims or lawsuits.
22. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
23. In case of any default hereunder claimed to exist by either Party, such Party shall give the other Party prompt written notice of such default, setting forth the facts and reasonable detail, and in the event that the allegedly defaulting Party has not remedied such default within thirty (30) days (or in case of defaults which require a longer period of remedy has failed to commence upon such remedy within said period and thereafter to diligently proceed with the same to completion), the non-defaulting Party shall have the right to terminate this Agreement for cause. This Agreement shall also be terminable for cause at the option of the other Party if any party is adjudicated as bankrupt, is subjected to the appointment of a receiver and fails to have such receiver removed within sixty (60) days, has any of its property attached and fails to remove such attachment within sixty (60) days, becomes insolvent and for a period of sixty (60) days is unable to pay its debts as the same become due upon sixty (60) days' written notice. This Agreement shall also be terminable should the DTA lose the right to provide public transit services or should funding from the State of Minnesota or Federal Government be discontinued.
24. No member, officer, or employee of DTA during his or her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
25. Should any part of this Agreement be declared to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions will not affect the validity of the remainder of this Agreement, which will continue in full force and effect.
26. This Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the DTA and Contractor.
27. This Agreement shall not be assigned, transferred, hypothecated, or pledged by either party without the prior written consent of the other party. However, this Agreement shall be binding upon the successors or assigns of the respective parties.
28. No officer, director, or employee of the DTA or Contractor shall be personally liable for the fulfillment of the conditions of this Agreement.
29. Contractor shall not be liable to the DTA for any failure, delay, or interruption of service or for any failure or delay in the performance of any obligation under this Agreement due to strikes, walkouts, acts of God, governmental restriction, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, or other similar acts beyond the reasonable control of Contractor.
30. This Agreement shall be governed by the law of the State of Minnesota.

31. Contractor shall comply with all Duluth Transit Authority applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 50B of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report all violations to FTA and to the USEPA Assistant Administrator for Enforcement (EN-329).
32. 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.).
33. This Agreement constitutes the entire agreement between the parties, with respect to the subject matter, and supersedes any previous understandings, representations, commitments, or agreements, oral or written.
34. No provision of this Agreement may be waived except by a writing signed by the party to be charged, nor may this Agreement be amended except by a writing executed by both parties.
35. The Contract Documents in priority order consist of this Agreement and any amendments thereto; Request for Proposal dated June 27, 2016, the General Specifications, Mandatory Clauses and Technical Specifications, and all addenda and modifications thereto, issued prior to the execution of the Contract, and the Contractor's Proposal dated September 6, 2016, including required certificates, all as fully a part of the Contract as if attached to this Contract or repeated herein
36. Contractor shall be an independent contractor and is not an employee of the DTA.

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

On Behalf of First Transit, Inc.

By: 
 Title: Kevin Ullrich President
 Date: 12/9/16

On Behalf of the Duluth Transit Authority


By: 
 Title: General Manager
 Date: Nov 30, 2016

EXHIBIT A

1. With oversight from the DTA Board of Directors, establish or assume control of a subsidiary corporation for daily operations, maintenance and employment purposes in order to operate the transit system as applicable.
2. Operate the transit system in compliance with all applicable federal, state and local regulations and the DTA Board of Directors requirements.
3. Select, employ and properly train all employees needed to operate the transit system, including labor relations and labor contract negotiations.
4. Ensure safety of personnel, prevent losses and arrange all appropriate insurance coverages.
5. Ensure compliance with any existing labor agreement(s) and negotiate future labor agreements.
6. Maintain positive employee relations.
7. Ensure compliance with applicable environmental and occupational safety and health laws and regulations.
8. Seek state, federal and local operating and capital grants to benefit the DTA and properly complete all necessary documents for such grants.
9. Perform all budgeting, accounting and financial functions.
10. Prepare and administer all federal, state or local grants.
11. Establish and maintain the accounting controls necessary to ensure protection of all funds and assets and compliance with DTA audit requirements.
12. Develop and execute marketing analysis and plans to increase ridership.
13. Monitor and evaluate all current operations and institute internal procedures to improve operations and create economies to reduce costs.
14. Develop and implement management techniques and operational improvements to ensure an environmentally sound transit system.
15. Prepare and execute a strategic plan for the transit system and work with the DTA to help implement specific goals identified in the DTA comprehensive plan and vision.
16. Perform all marketing and promotional functions for all operations including advertising.
17. Prepare and administer the budget for the DTA.
18. Participate on local and or state transportation committees as needed.
19. Provide management personnel development, training continuity and recruitments as necessary.
20. Provide overall management and policy recommendations.
21. Maintain all facilities, equipment and rolling stock and make recommendations for future purchases of each category as may be required by the transit system.
22. Administration of contracts for special transit services.