

	FIRST COOPERATIVE PURCHASING AGREEMENT BETWEEN CITY OF GOODYEAR AND FIRST TRANSIT CON-23-0046-	Office of Procurement 1900 N. Civic Square Goodyear, Arizona 85395 Phone: (623) 882-7893
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THIS FIRST COOPERATIVE PURCHASING AGREEMENT (“Agreement”) is entered into by and between the City of Goodyear, an Arizona municipal corporation (“City”) and First Transit, Inc., a Delaware corporation (“Contractor”). City and Contractor will collectively be referred to as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, after completing a competitive procurement process, the City of Avondale (“Avondale”) entered into a Professional Services Agreement, effective September 12, 2022 with no subsequent amendments, with the Contractor to provide Microtransit Services (hereinafter referred to as the “Avondale Contract”). A copy of the Avondale Contract is attached hereto as **Exhibit A** and incorporated herein by reference.

WHEREAS, the City is permitted, pursuant to § 3-4-9 of the City of Goodyear Code and § R3-4-9.01 of the City of Goodyear Procurement Regulations, to purchase materials, services under the Avondale Contract, at its discretion, and the Avondale Contract permits its cooperative use by other political subdivisions, pursuant to Section 14.21, Cooperative Use of Contract, of the Avondale Contract.

WHEREAS, the City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the Avondale Contract, (ii) establishing the terms and conditions by which the Contractor may provide Microtransit Services to the City, and (iii) setting the aggregate amount to be expended by the City pursuant to this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and any other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date last signed below and shall remain in full force and effect until 09/12/23. Pursuant to Sections 1.1 and 1.2, Term of Agreement, of the Avondale Contract, this Agreement has four (4) renewals remaining. The City has no obligation to extend or renew this Agreement, and any decision to do so is at the sole discretion of the City, and any such renewal shall be executed in accordance with the terms of Sections 1.2 and 1.3 of the Avondale Contract.
2. Agreement. The Contractor shall provide Microtransit Services, as agreed to by the Parties consistent with the Avondale Contract. For the purpose of this Agreement the City is an Eligible Procurement Unit (as such term is defined under the Avondale Contract) and is afforded all of the rights and responsibilities as an Eligible Procurement Unit under the Avondale Contract

Compensation. The City shall pay Contractor an aggregate amount not to exceed Purchase Order(s) at the rates as set forth in the Avondale Contract.

3. Payments. The City shall pay the Contractor monthly based upon the work performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Avondale Contract, and (ii) document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing both this Agreement and the Avondale Contract will be subject to rejection and may be returned.
4. Conflict of Interest. This Agreement is subject to cancellation by the City pursuant to A.R.S. § 38-511.
5. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, the State of Arizona and the City of Goodyear, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal, state and local laws, rules and regulations applicable to this Agreement. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona without regard to conflicts or choice of law provisions. Any action arising out of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa.
6. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, invoices and/or the Avondale Contract, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Avondale Contract (collectively, "Unauthorized Conditions"), other than the City's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any of the unauthorized conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Avondale Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.
7. Indemnification; Insurance. To the extent provided under the Avondale Contract, the City shall be afforded all of the rights, privileges, insurance coverage and indemnifications afforded to Avondale Contract, and such rights, privileges, insurance coverage and indemnifications shall inure and apply with equal effect to the City under this Agreement including, but not limited to the Contractor's obligation to provide the indemnification and insurance. In any event, except to the extent caused by the City's gross negligence or willful misconduct, passenger-upon-passenger violence that is not due to Contractor's negligence, or Contractor's good faith adherence to City's policies, procedures or directives, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the cost of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof)

relate to, arise out of, or are caused by, in whole or in part, or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

8. Termination for Convenience. City at any time and for any reason and without cause may terminate, this Contract at City's convenience. Upon termination for convenience, the Contractor shall be paid for all undisputed services performed to the termination date. , unless the notice directs otherwise, immediately discontinue further services and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Goodyear is a violation of this Agreement and the City of Goodyear Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

9. Termination for Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its non-performance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

10. Continuation of Services – Israel: For contracts in excess of One Hundred Thousand (\$100,000) Dollars, Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott" of Israel, as that term is defined in A.R.S. § 35-393.

11. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:

City of Goodyear
Christine McMurdy
Project Management Coordinator

Engineering Department
14455 West Van Buren St, Suite D
Goodyear, AZ 85338

With copies to:

City of Goodyear
Procurement Department
1900 N. Civic Square
Goodyear, AZ 85395

If to Contractor:

First Transit, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
Attn: Bradley Thomas, CEO
Email: brad.thomas@firstgroup.com
Phone: 513-241-2200

With copies to:

First Transit, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
Attn: General Counsel
Email: mike.petrucchi@firstgroup.com

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

IN WITNESS WHEREOF, the person signing this Agreement below, warrants that they have full authority to do so and that their signatures shall bind the parties for which they sign.

CITY OF GOODYEAR

By: _____
Jacque Behrens, CPPB

Title: Procurement Manager

Date: _____

FIRST TRANSIT, INC.

By:  _____
Name Bradley A. Thomas

Title: CEO

Date: 9-21-22

ATTEST

By _____
Darcie McCracken, City Clerk

APPROVED AS TO FORM

By _____
Roric Massey, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
FIRST TRANSIT, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into as of the date of last signature below, between the City of Avondale, an Arizona municipal corporation (the “City”) and First Transit, Inc., a Delaware corporation (the Contractor”).

RECITALS

A. The City issued a Request for Proposals, PW 22-039 “Avondale-Goodyear Microtransit” (the “RFP”), a copy of which is on file in the City’s Finance Office and incorporated herein by reference, seeking proposals from vendors to provide Microtransit services for city residents, improve mobility for communities, provide an enhanced customer experience, and meet operational and economic requirements (the “Services”).

B. The Contractor responded to the RFP by submitting a proposal (the “Proposal”), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until September 12, 2023 (the “Initial Term”), unless terminated as otherwise provided in this Agreement.

1.2 Renewal Terms. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason. The Contractor’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this

Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

1.3 Pricing Adjustment. Any requests for reasonable price adjustments must be submitted in accordance with this Section 1.3. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

At least sixty (60) days prior to Contract expiration date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the Consumer Price Index for All Urban Consumers (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

1.4 Volume Adjustment. Should the Service Hours in Exhibit C be lower than projected, First Transit and Avondale, or the respective City, that utilize this agreement will renegotiate the hourly rate based on the revised scope of work."

1.2.1 Software Licensing and Maintenance. This contract may be renewed upon mutual written agreement of the parties beyond the term stated above in Section 1.2 for any related software licensing and maintenance, and such shall remain in place for the life of the purchased equipment under this contract subject to availability and appropriation of funds for each fiscal year.

1.4 Non-Default. By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Contractor shall be deemed to affirmatively assert that (i) the City is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Consultant claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Scope of Work. Contractor shall provide the Services as set forth in the Scope of Work attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. The City of Avondale shall pay Contractor for the Services at the rates set forth in the Fee Proposal (City of Avondale) attached hereto as Exhibit C and incorporated herein by reference.

4. Payments. The City shall pay the Contractor monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document

and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Safety Plan. Contractor shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration (“OSHA”), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Contractor’s sole determination, the Services to be provided do not require a safety plan, Contractor shall notify the City, in writing, describing the reasons a safety plan is unnecessary. The City reserves the right to request a safety plan following such notification.

6. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

7. Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire City residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel possessing substantially equal ability and qualifications.

8. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Contractor’s performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the City.

9. Licenses; Materials. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The City has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Contractor.

10. Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

11. Indemnification. To the fullest extent permitted by law, and except to the extent caused by the City’s gross negligence or willful misconduct, passenger-upon passenger violence that is not due to Contractor’s negligence, or Contractor’s good faith adherence to City’s policies, procedures or directives, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages,

liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

12.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the negligent work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth above and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor’s insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor’s responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate

RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Contractor’s insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Contractor shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Section.

12.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured

under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. [Intentionally Omitted]

D. Workers' Compensation Insurance. If Contractor employs anyone who is required by law to be covered by workers' compensation insurance, Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

12.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the City.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Contractor of written notice by the City. Upon termination for convenience, Contractor shall be paid for all undisputed services performed to the termination date.

13.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such

additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a Contractor to any other party of this Agreement with respect to the subject matter of this Agreement.

13.5 Gratuities. The City may, by written notice to the Contractor, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

13.6 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Contractor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

14. Miscellaneous.

14.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above and Exhibit B. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Contractor do not intend to nor will they combine business operations under this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

14.3 Laws and Regulations. Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards.

14.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

14.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements

have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the City, signed by the City Manager, which shall not be unreasonably withheld. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

14.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior, written approval of the City. The Contractor is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Contractor.

14.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

14.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

14.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

14.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Cherlene Penilla, Acting City Manager

With copies to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Procurement Officer

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

If to Contractor: First Transit, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
Attn: Bradley Thomas, CEO
Email: brad.thomas@firstgroup.com
Phone: 513-241-2200

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining

to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 14.17 below, Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.18 Israel. For Contracts in excess of One Hundred Thousand (\$100,000) Dollars, Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Scope of Work, any City-approved Purchase Order, the Fee Proposal, the RFP and the Contractor's Proposal, the documents shall govern in the order listed herein. If the Agreement is renewed pursuant to Subsection 1.2 above and such renewal includes any conflicting terms, other than price, those terms will be null and void.

14.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

14.21 Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Contractor. Contractor may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Contractor. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

14.21.1 The Exhibit D. Federal Requirements, Exhibit E. FTA Certifications and Exhibit F. PTD Compliance of RFP 22-039 shall apply to cooperative purchases identified with federal funds only:

14.22 Force Majeure. In the event Contractor is unable to provide the transportation services as specified in this Agreement because of any act of God, civil disturbance, fire, riot, war, terrorism, picketing, labor shortages, governmental action, fuel shortage, interruption to power or communication grid, pandemic, epidemic, or any other condition or cause beyond Contractor's control, City shall excuse Contractor from performance under this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

"City"

CITY OF AVONDALE,
an Arizona municipal corporation



Kevin Custer, Procurement Manager

Date: Sep 12, 2022

"Contractor"

First Transit, Inc.,
a Delaware corporation



By: Brad Thomas (Sep 12, 2022 17:23 EDT)

Name: Brad Thomas

Title: CEO