

5/15/2014 CAR II-15

**AGREEMENT TO PROVIDE  
PARATRANSIT TRANSPORTATION SERVICES**

THIS AGREEMENT is made and entered into this 15<sup>th</sup> day of May, 2014, by and between Escambia County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as "County") and First Transit, Inc., a Delaware Corporation authorized to conduct business in the State of Florida (hereinafter referred to as the "Operator"), whose federal identification number is 23-1716119, and whose principal address is 600 Vine Street, Cincinnati, OH 45202.

**WITNESSETH:**

**WHEREAS**, the Americans with Disabilities Act of 1990 (the "ADA") provides that certain public entities make available fixed route mass transportation services and Complementary Paratransit services to the public, and to fulfill this need the County duly approved the Escambia County ADA Transportation Policy (the "ADA Policy") and the ADA Paratransit Plan Update (the "ADA Plan") as prepared by Escambia County Area Transit ("ECAT"); and,

**WHEREAS**, pursuant to Chapter 427, Florida Statutes, a Transportation Disadvantaged Program was created to provide transportation for persons who because of physical or mental disability, income, status or age are unable to transport themselves or purchase transportation, and to fulfill this need, the Pensacola-Alabama Transportation Planning Organization (the "TPO") as official planning agency, in cooperation with the Escambia County Transportation Disadvantaged Coordinating Board (the "TDCB"), designated Escambia County as the Community Transportation Coordinator (the "CTC"); and

**WHEREAS**, the County, as CTC, issued a Request for Proposals ("RFP") seeking a qualified Operator to provide door-to-door paratransit transportation services to Escambia County residents and visitors, as may be required to meet the needs of the County's paratransit transportation program, including ADA Complementary, Medicaid Non-Emergency Transportation (NET), Transportation Disadvantaged, and Disability related services; and

**WHEREAS**, the Operator desires to provide the transportation services described herein, and the County desires to engage the Operator to provide door-to-door paratransit transportation services in accordance with governing regulations and requirements stipulated herein, and to enter into an Agreement with the Operator for this purpose, which is in the best interests of the residents of Escambia County, Florida.

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

Date: 5/19/2014  
Verified By: J. Carver

1000

1000

1000

1000

1000

1000

1000

**ARTICLE I**  
**Recitals**

1. Recitals. The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

**ARTICLE II**  
**Scope of Services**

2. The Operator agrees to provide door-to-door paratransit transportation services, including ADA Complementary, Medicaid Non-Emergency Transportation (NET), Transportation Disadvantaged, and Disability related services, according to the scope of work outlined in Escambia County's Request for Proposals for Operator for Paratransit Service Specification No. P.D. 13-14.029, attached hereto as Exhibit "A". In the event of a conflict between the terms of the Exhibit referenced above and this Agreement, the terms of this Agreement shall prevail.

2.1 ECAT, as agent for the County, shall provide a list of persons currently eligible under federal law, including 49 CFR, Part 37, who shall be authorized by ECAT, on behalf of the County, to participate in the ADA Paratransit Program ("Participant(s)", "User(s)", "Rider(s)"), and such list shall provide the following information, if available:

- a) Name, age, address and telephone number;
- b) Social security number for identification purposes;
- c) Brief description of disability; and
- d) Ambulatory or wheelchair (if client can transfer to seat).

2.2 ECAT, as agent for the County, shall be responsible to determine eligibility for the ADA Complementary Paratransit Service under governing federal law and guidelines, and to authorize any Rider to receive the benefit of services under this agreement. Operator shall administer ECAT's rules and policies regarding eligibility. ECAT reserves the right to rely upon information provided by the Operator and/or any other designated Certifying Agency, in determining eligibility. After determining eligibility of an applicant, ECAT shall contact the Operator within a reasonable time with its decision, which shall be binding and final. Qualification and eligibility shall be determined by ECAT under the federal guidelines at 49 CFR, Part 37, §§37.123-.125, which are hereby incorporated by reference into this Agreement as if fully set forth herein

2.3 ECAT, as agent for the County, shall be responsible for determining eligibility for the Medicaid Non-Emergency Transportation (NET) and non-sponsored Transportation Disadvantaged (TD) Programs in accordance with established criteria. Operator shall administer ECAT's rules and policies regarding eligibility. After determining eligibility of an applicant, ECAT shall contact the Operator within a reasonable time with its decision, which shall be binding and final.

2.4 The Operator shall abide by all provisions of Chapter 427, Florida Statutes, and Rule 41-2 as promulgated by the State of Florida Transportation Disadvantaged Commission in its performance under this Agreement. Chapter 427, Florida Statutes, and Rule 41-2, F.A.C., are each incorporated for all purposes into this Agreement as if fully set forth herein.

2.5 The Operator shall comply with the ADA Complementary and Transportation Disadvantaged Service Standards for Escambia County as provided under the Americans with Disabilities Act and the Transportation Disadvantaged Service Plan.

2.6 The Operator shall prepare a Transportation Disadvantaged Service Plan that provides information relating to the coordination of transportation services for the transportation disadvantaged population in this service area.

2.7 The Operator shall be responsible to collect fares established in coordination with the contract managers, and which shall be set forth in an Escambia County Paratransit Rate Schedule ("Fare Schedule") approved by the contract managers. This Fare Schedule may be altered with the approval of all contract managers from time to time, but shall be subject to quarterly review when altered.

### **ARTICLE III** **Compensation**

3. In exchange for the Operator's satisfactory performance of the scope of services as referenced herein, the County agrees to pay Operator on a per trip basis in accordance with the Cost Proposal, attached hereto as Exhibit "B".

3.1 The County shall make monthly payments to the Operator, subject to submission of all documentation with respect to Rider eligibility, trip information and other substantiation of costs and any other relevant documentation requested by the contract managers.

3.2 The method of payment shall be monthly, based upon the periodic submission of invoices totaling costs and collections totals. Verification of costs and expenditures is expected to require thirty (30) days, and payment shall be made promptly upon such verification.

3.3 The Operator shall be responsible to collect fares as established in the Fare Schedule described herein. Daily collections shall be documented and their receipt verified by both the individuals responsible for collecting from Riders and by the Operator. Such verification need not be submitted with monthly invoices, so long as it is available for inspection together with like documentation.

3.4 The Operator shall be responsible to promptly repay overpayments made by the County for expenditures not authorized to be paid by the County, disallowed or unearned under this Agreement.

3.5 The Operator shall prepare and submit an invoice to the County each month together with all supplemental information to substantiate the listed costs and expenditures. The invoice will show an offset, or deduction, for fares collected and calculated through the date of the invoice. Invoices shall be due on or before the tenth (10th) day of the first month following the month in which service was delivered, and shall be due on or before the tenth (10th) day of each succeeding month thereafter. Failure to submit an invoice or to explain such failure, after Notice of Demand for the same made by the County, shall relieve the County of responsibility for costs incurred during the previous billing cycle which were known or should have been known to the Operator.

3.6 Upon receipt of an Invoice and supplemental information, the County shall review the complete submission, request further information as needed, Notice the Operator of any amounts in dispute and submit the invoice to the appropriate official for payment. The County reserves the right to withhold payment of any expense or other amount in dispute until the matter is resolved, but payment of the undisputed portion of an invoice and acceptance of such payment shall not be deemed a waiver by the County or the Operator of a claim to any unresolved amount withheld and unpaid.

3.7 Service levels -

A. Permanent Changes

Escambia County reserves the right to adjust (increase or decrease) service hours on any Escambia contracted revenue service by providing the contractor with a written thirty (30) day notice prior to the start of the adjusted hours. The contractor will make permanent service changes as requested by Escambia County with no adjustment in the cost per revenue hour charged to Escambia County, provided that the adjustments do not exceed (increase or decrease) twenty percent (20%) of the initial service hours as described in the RFP.

In the event of adjustments in excess of twenty percent (20%), the contractor and Escambia County with either negotiate and adjust the cost per revenue hour, or pursue termination of the agreement, in part or in whole, or any combination thereof, as Escambia deems to be in its best interest.

#### **ARTICLE IV** **Reporting**

4. The Operator shall assemble and provide copies of a **Quarterly Report** to the County (ECAT), including a listing of trip information, current Rider list, number of accidents and road calls, denials and no-shows, payments to operators, complaints, a narrative summary of progress and a statement of quarterly cost totals.

4.1 The Operator shall use a form of Quarterly Report which is approved by the contract managers.

4.2 The Quarterly Report shall be due quarterly before each quarterly meeting, based on the date of commencement of this Agreement, and this obligation shall

survive termination of this Agreement and continue until all information concerning the project has been received by the contract managers.

4.3 This Quarterly Report is due on the 1st day of each subsequent quarter, unless the quarterly meeting is held thereafter, in which case the report shall be due seven (7) days in advance of said meeting date, or if an alternative schedule is agreed upon by the parties.

4.4 The Operator shall provide the County with additional information as may be required by state or federal agencies to substantiate transportation service activities, client or rider eligibility, trip information or Program expenditures.

4.5 The Operator is also responsible to provide data to ECAT for ECATs **National Transit Database (NTD) reports** required by the federal government in connection with services provided under this Agreement in the form described under the Federal Transit Administration Act of 1964, as amended (the "FTA Act"). This data , for the fiscal year ending September 30, will be submitted to ECAT prior to November 30. Any additional reports or verifications requested by ECAT from the Operator will constitute an additional expense based upon preparation and personnel time.

4.6 The Operator shall also submit an **Annual Operating Report** to the County on or before September 15<sup>th</sup> of each year.

## **ARTICLE V**

### **Indemnification and Insurance**

5. The Operator shall act as an independent contractor, and not as an employee of the County, ECAT or as the designated Agent of the County in providing the aforementioned service. he Operator shall hold harmless Escambia County, ECAT and their subsidiaries or affiliates, elected and appointed officials, employees, representatives and agents from any and all claims, suits, actions, damages, liability and expenses in connection with the loss of life, bodily or personal injury, property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the performance of this Agreement. The Operator's obligation shall not be limited by or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy or insurance.

5.1 The Operator shall purchase on forms no more restrictive than the latest editions of the Comprehensive General Liability and Business Auto policies filed by the Insurance Services Office. the County shall be named as an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Agreement. The County shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. The Operator shall at all times during the tenure of this Agreement maintain in full effect the following policies of insurance:

- a. Commercial general liability insurance policy covering all acts of the

Operator in managing and implementing the activities described herein with \$1,000,000 per occurrence and \$2,000,000.00 aggregate limits, to include coverage for bodily injury, broad form property damage, personal injury, contractual liability, and independent contractors.

b. Business Automobile Liability insurance coverage with \$1,000,000 per occurrence and \$2,000,000.00 aggregate limits, to include bodily injury and property damage arising out of operation, maintenance or use all owned, hired and non-owned vehicles.

c. All workers' compensation and employer's liability insurance required by applicable Florida law and the responsibility of the coverages of the Recipient.

All of the above policies shall be with carriers admitted to do business in the State of Florida. The Operator shall have certificates of insurance forwarded to:

ECAT  
1515 West Fairfield Drive  
Pensacola, Florida 32501

Escambia County  
Office of Risk Management  
221 Palafox Place  
Pensacola, Florida 32502; and

The Certificate will show the County as an additional insured and the certificate holder shall provide that Escambia County shall be notified at least thirty (30) days in advance of policy cancellation, nonrenewable or adverse change or restriction in coverage. If required by the County, the Operator shall furnish copies of the Coordinator's insurance policies, forms, endorsements, jackets and other items forming a part of or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the County, an ACORD 25. Any working which would make notification of cancellation, adverse change or restriction in coverage to the County an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The Operator shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the County and shall file with the County Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the County, the Operator shall, upon instructions of the County, cease all operations under the Agreement until directed by the County, in writing, to resume operations.

5.2 The Operator required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Operator's coverage. The Operator's policies of coverage will be considered primary as related to all provisions of the Agreement.

5.3 The Operator agrees to pay on behalf of the County, as well as provide a legal defense for the County, both of which will be done only if and when requested by the County, for all claims as described in paragraph 5.1 of this Agreement. Such payment on the behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.

The Operator and any of its associates, agents, insurers or subcontractors involved in the performance of this Agreement must comply with all applicable federal, state and local laws and regulations governing environmental pollution control and abatement in effect on the date of execution of this Agreement, as well as any other specific requirements stated elsewhere in this document. Operator agrees to indemnify and hold harmless the County, ECAT, and their respective agents and employees, from and against any and all liability, claims, suits, losses, expenses, judgments, costs and damages, including those resulting from the negligence of the Operator, its employees, agents, subcontractors, or other authorized representatives, which may arise as a result of the violation of any Environmental Law, Ordinance, Statute, Rule or other environmentally related legal requirement associated with the prosecution of the work defined in this Agreement. Further, the Operator assumes all legal and financial liability and the direct responsibility for assuring full and complete employee training and protection of the public, through the proper management, handling, removal, transportation and disposal of any hazardous materials, chemicals, wastes, or substances encountered by or used in the completion of the work in any way related to this Agreement.

## **ARTICLE VI**

### **Contract Period**

6. This Agreement shall be effective upon execution by both parties on July 1, 2014, and shall continue for a period of three (3) years. Upon mutual agreement of the parties, this Agreement may be extended up three (2) additional one (1) year terms. In no event shall the Agreement extend beyond five (5) years in duration after exercising all options for renewal. If any such renewal results in changes in the terms or conditions, such changes shall be reduced to writing as an addendum to this contract and such addendum shall be executed by both parties and approved by the Board of County Commissioners. An additional six (6) months extension may also be unilaterally exercised at the County's discretion.

6.1 Provided, that if the contract managers agree that Operator has failed to satisfactorily perform its duties as set forth herein, or in the event that funds cease to be provided to the County, then the County may terminate this contract upon no less than twenty-four (24) hours written Notice to the Operator without incurring any penalty, and shall be responsible to pay for services actually performed through the date of termination only.

6.2 The County determination as to lack of funds shall be a final authority and determination of the same.

6.3 The Operator shall be subject to an annual performance review by the County

and ECAT. Prior to each annual review, the Operator shall submit the Annual Operating Report described under Article IV hereof.

## **ARTICLE VII** **Accountability**

7. The Operator shall maintain all books, records and documents according to generally accepted accounting practices and procedures, and shall reflect all expenditures of funds provided hereunder, collection of fares, calculation of trip mileage and other costs associated with the transportation services provided herein as necessary to properly account for all funds expended in performance of this Agreement..

7.1 These records and accounts shall be kept and maintained, subject to inspection, review, or audit for a period of three (3) years following the termination of this Agreement unless said records are the subject of audit or litigation, in which case they shall be retained indefinitely pending resolution of such review.

7.2 Access to such records, documents, reports, audits, books and ledgers containing information in connection with the transportation services provided herein shall be provided to the County, the State of Florida, the Florida Transportation Disadvantaged Commission, the Federal Transit Administration, the Comptroller General of the United States, or their representatives; or the Operator shall transfer these records and accounts to the custody of the County in order to insure their accountability for such a period.

7.3 The Operator shall make all records, documents, reports, audits, books and ledgers containing information in connection with the transportation services provided herein available and subject at all reasonable times to inspection, review and audit by federal, state or local officials, or their respective representatives as authorized by the County.

7.4 In cases of misappropriation of funds the County may, at its sole discretion, declare the Operator ineligible for consideration for future projects and programs involving local, state or federal funding.

## **ARTICLE VIII** **Nepotism**

8. The Operator agrees to abide by the provisions of Section 112.3135, Florida Statutes, hereby incorporated by reference, pertaining to nepotism in its performance under this Agreement.

## **ARTICLE IX** **Civil Rights and Anti-Discrimination**

9.1 The Operator agrees to abide by the spirit and intent of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, in that its operation

under this contract is free of discrimination against its employees, persons, or groups of persons on the basis of race, color, sex, or national origin. Both of the said Civil Rights Acts are incorporated by reference herein.

9.2 All services associated with this project shall be made available to the public in a non-discriminatory manner. Within the eligibility parameters established under federal law, services and access thereto shall be available without regard to race, creed, color, handicap, familial status, disability, marital status, religion, or national origin. The Operator accepts sole responsibility for ensuring such non-discriminatory access to the services provided hereunder.

9.3 The Operator will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, physical handicap, or familial status. Such action shall include but not be limited to the following: employment; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Operator agrees to post in a conspicuous place Notices setting forth the provision of this Equal Employment Opportunity clause.

9.4 The Operator shall safeguard information concerning any Rider or applicant for services and shall insure that no information is used or disclosed for any purpose not in conformity with state regulations (HRSM 50-1) or federal regulations (45 CFR, §205.5), except upon the written approval of the Rider, the applicant or such person's responsible parent or guardian when authorized by law. In any event when such information is disclosed, the circumstances involved with the event shall be reported to the County in writing through ECAT.

## **ARTICLE X** **Program Income**

10. Income from fares collected is anticipated to result from the transportation services provided under this Agreement. Fares shall be collected from authorized riders by the Operator and deducted at least monthly from invoices submitted to the County for payment. Fare amounts collected but not deducted from invoice payment requests, whether by error or miscalculation, shall be forwarded promptly to ECAT. Any additional program income generated by Program activities shall be deposited into the same Fund and used to provide additional assistance in the future, in accordance with the requirements of Chapter 427, Florida Statutes.

## **ARTICLE XI** **Uniform Requirements**

11. The Operator shall comply with applicable provisions of the uniform requirements described in Chapter 427, Florida Statutes with regard to the performance of this Agreement.

A. The Operator agrees to comply with any amendments or revisions to said rules, regulatory provisions or directives as may be promulgated by the State of Florida.

B. Funding for this procurement will include federal capital assistance for ADA paratransit operating costs from the Federal Transit Administration (FTA) and is considered to be a Third Party Contract in accordance with the guidelines established in FTA Circular C 4220.IE. This Circular requires that the following contract provisions be included in all contracts for the procurement of supplies, equipment and services.

**11.1 BREACHES AND DISPUTE RESOLUTION.** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the County, the County Administrator. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Operator mails or otherwise furnishes a written appeal to the County Administrator. In connection with any such appeal, the Operator shall be afforded the opportunity to be heard and to offer evidence in support of its position. The decision of the County Administrator shall be binding upon the Operator and the Operator shall abide by the decision. Nothing in this paragraph is meant to limit either party's rights to pursue any action through arbitration or in a court of law.

A. Performance during Dispute. Unless otherwise directed by the County, Operator shall continue performance under this Contract while matters in dispute are resolved.

B. Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

C. Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and the Operator arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida.

D. Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or Operator shall constitute a waiver of any right or duty afforded them under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **11.2 TERMINATION**

A. For Convenience. Either party, by not less than sixty (60) days prior written notice, may terminate this contract, in whole or in part, for convenience. If this contract is terminated for convenience, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective

date of termination.

B. For Default. If the Operator fails to pick up the designated passengers or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Operator fails to comply with any other provision of this contract, the County may terminate this contract for default. Prior to termination for default, the County shall provide not less than thirty (30) days prior written notice and opportunity to cure. If the default is not cured within thirty (30) days, the County may terminate by delivering a Notice of Termination with immediate effect specifying the nature of the default. The Operator will only be paid the contract price of services performed in accordance with manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Operator was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

### 11.3 TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

The Operator agrees to comply with applicable transit employee requirements as follows:

A. General Transit Employee Protective Requirements. To the extent that FTA determines that transit operations are involved, the Operator agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U. S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the contract and to meet the employee protective requirements of 49 U.S.C. §5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Operator agrees to carry out that work in compliance with the terms stated in that DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with federal assistance provided by FTA either for projects for elderly individuals with disabilities authorized by 49 U.S.C. §5310(a) (2), or for projects for nonurbanized areas authorized by 49 U.S.C §5311. Alternate provisions for those projects are set forth in subsections B and C of this clause.

B. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C §5310 (a)(2) for elderly individuals and individuals with disabilities. If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. §5310 (a)(2), and if the Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C §5333(b) are necessary or appropriate for the state and public body subrecipient for which work is performed on the underlying contract, the Operator agrees to carry out the Project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C §5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in Grant

Agreement or Cooperative Agreement with the State. The Coordinator agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5311 in Nonurbanized Areas. If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. §5311, the Operator agrees to comply with terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

D. The Operator agrees to include the any applicable in each subcontract involving transit operations financed in whole or in part with Federal assistance provided FTA.

#### 11.4 ENERGY CONSERVATION REQUIREMENTS

The Operator 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 Energy Policy and Conservation Act (42 USC §§6322, et seq.).

#### 11.5 CLEAN WATER REQUIREMENTS

The Operator agrees to comply with mandatory standards orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq. The Operator agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

#### 11.6 CERTIFICATION OF RESTRICTION ON LOBBYING

The undersigned Operator certifies, to the best of his/her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-

LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed.Reg. §1413 (1/19/96).

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352, (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Operator certifies or affirms the truthfulness and accuracy each statement of its certification and disclosure, if any. In addition, the Operator understands and agrees that the provisions of 31 U.S.C. §§3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Name and Title of Authorized Official

\_\_\_\_\_  
Date

#### 11.7 CLEAN AIR REQUIREMENTS

The Operator agrees to comply with all applicable standards orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401, et seq. The Operator agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

#### 11.8 INTEREST OF MEMBERS OF OR DELEGATES OF CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

#### 11.9 PROHIBITED INTEREST

The operators, officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

#### 11.10 DEBARRED BIDDERS CERTIFICATION

The Operator certifies that neither it nor its principals (as defined at 49 C.F.R. §29.995 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or

voluntarily excluded from participation in this transaction by any federal department or agency. Further, the Operator certifies that he or she will obtain an identical certification from all its sub-contractors. The Operator also agrees that when a sub-contractor is unable to certify to any of the statements in this certification, the prospective participant shall submit an explanation to the Operator.

Signature/Date/Title: \_\_\_\_\_

**ARTICLE XII**  
**Procurement, Assignment and Subcontracting**

12. The Operator shall be required to utilize procurement procedures which assure open competition and maximum access to businesses wishing to participate in Program activities.

12.1 No service herein contemplated to be performed by the Operator may be subcontracted, and no service or benefit hereunder may be assigned by the Operator without the prior written permission of the contract managers. No such subcontract or assignment shall be valid unless it requires the same record keeping and reporting to be performed by the subcontractor or the assignee as is required in this Agreement to be made by the Operator. Notwithstanding the requirements of this section, the contract managers consent to the subcontracting of vehicle operations to subcontracted carriers operating under the coordinated system.

**ARTICLE XIII**  
**Notices**

13. Initial contract manager responsible for coordination and administration of this Agreement is hereby designated as follows:

County: County Administrator or designee  
Escambia County Board of County Commissioners  
3633 W Park Place  
Pensacola, Florida 32505  
(850) 595-3436

13.1 The contract coordinator for Operator shall be as follows:

Operator: General Manager  
First Transit  
1515 West Fairfield Drive  
Pensacola, Florida 32501  
(850) 595-3228, Ext. 214

13.2 All Notices required herein to be given, made or sent shall be deemed to have been given, made or sent when posted with the U.S. Postal Service, certified mail, return receipt requested, and properly addressed to each of the contract managers shown above.

13.3 The parties agree that any modification or substitution of contract managers' names or accompanying addresses shall be made in writing to the other party in the manner provided for Notices above.

**ARTICLE XIV**  
**General Provisions**

14. The Operator agrees:

14.1 To abide by Chapter 119, Florida Statutes, as the same may be amended from time to time, and which is incorporated by reference herein;

14.2 To permit and facilitate such audits by the State of Florida, the Clerk of the Circuit Court, the Comptroller General of the United States, designated independent auditing firm(s) or their authorized representatives as may be directed in relation to this Agreement;

14.3 To produce all documents upon request by the County, State of Florida, the Federal Transit Administration or the authorized representatives of each;

14.4 To secure an annual audit by an independent Certified Public Accountant and provide a copy of said audit and any responses thereto to the County within sixty (60) days of the end of the Operator's corporate accounting year.

14.5 That Operator is a foreign corporation operating "for profit" in this state, and in Escambia County with Occupational License 685867-047146. Further, Operator functions primarily as a service organization with specific emphasis upon providing transportation opportunities for qualified disabled individuals.

14.6 Any review, renegotiations and modification or Amendment of this Agreement shall only be valid when reduced to writing and duly signed. The parties agree to renegotiate this Agreement if federal or state revisions to any law necessitate respective modifications of these terms.

14.7 If the Operator is called upon to assist in emergency situations, such as but not limited to hurricane evacuation, the provider shall be reimbursed for any and all costs incurred, subject to verification of costs and expenditures by ECAT based on receipts and other documentation.

14.8 By executing this agreement Operator hereby certifies that it has established a drug testing policy, which complies with the requirements of all federal, state or local regulatory agencies, including random drug testing.

**ARTICLE XV**  
**Understanding of Terms**

15. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

15.1 This Agreement is executed in Escambia County, State of Florida, and shall be construed under the laws of the State of Florida, and the parties agree that any action relating to this Agreement shall be instituted and prosecuted in the courts of the County of Escambia, State of Florida, and each party waives the right to change of venue. Further, it is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance.

15.2 It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with governing law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

15.3 The headings appearing in this Agreement have been inserted for the purpose of convenience and for ready reference. They do not purport to, and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they appertain.

15.4 All Notices under this Agreement shall be in writing, and shall be sent by certified mail to the parties at the address identified in this Agreement as described in Article 13, above.

15.5 Each individual executing this Agreement on behalf of a corporate or governmental party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said party, in accordance with a duly adopted action of the governing Board of said party in accordance with applicable law, and that this Agreement is binding upon said party in accordance with its terms.

15.6 In the event Operator 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, strike, labor dispute, labor shortages, governmental action or any other condition or cause beyond Operator's control, County shall excuse Operator from performance under this Agreement.

**ARTICLE XVI**  
**EXHIBITS INCORPORATED**

16. The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement:

- Attachment 1: Chapter 427, Florida Statutes
- Attachment 2: Rule 41-2, Florida Administrative Code
- Attachment 3: Finance Element
- Attachment 4: Rate Model
- Attachment 5: References
- Attachment 6: Grievance Policy
- Attachment 7: Rule 14-90, Florida Administrative Code
- Attachment 8: Memorandum of Agreement
- Attachment 9a: Escambia County CTC Annual Operating Report 2011/2012
- Attachment 9b: Florida CTD Annual Performance Report 2013/2014
- Attachment 10: Transportation Disadvantaged Service Plan 2013/2014
- Attachment 11: CTC Evaluation
- Attachment 12: US Dept. of Labor, Office of Labor Mgmt. Std., Section 13(c)

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals this date and year first above written.

Date Executed

5/15/2014

Date BCC Approved

5/15/2014

**ESCAMBIA COUNTY**, a political subdivision of the State of Florida by and through its Board of County Commissioners.

Lumon J. May  
Lumon J. May, Chairman

Approved as to form and legal sufficiency.

By/Title: [Signature]  
Date: 5/13/14

ATTEST: PAM CHILDERS  
Clerk of the Circuit Court

[Signature]  
Deputy Clerk



**OPERATOR:**  
**FIRST TRANSIT, INC.**, a Delaware corporation authorized to conduct business in the State of Florida

By: [Signature]  
President

Date: 6-2-14

ATTEST: CORPORATE SECRETARY

By: [Signature]  
Secretary

