

RESOLUTION

APPROVING A FIVE-YEAR AGREEMENT WITH
FIRST TRANSIT, INC. FOR TRANSIT OPERATING SERVICES

CITY OF NASHUA

In the Year Two Thousand and Nine

RESOLVED by the Board of Aldermen of the City of Nashua that the attached five-year contract with First Transit Inc. is hereby approved. The funding source for FY10 will be Account # 374-7217 "Transit – Operating, FY2010".

LEGISLATIVE YEAR 2009

RESOLUTION: R-09-188

PURPOSE: Approving a five-year agreement with First Transit, Inc. for transit operating services

SPONSOR(S): Mayor Donnalee Lozeau
ALDERMAN BENJAMIN M. CLEMONS

**COMMITTEE
ASSIGNMENT:** FINANCE COMMITTEE

FISCAL NOTE: The estimated annual cost of this contract is \$1,278,000.

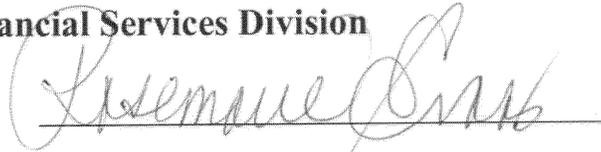
ANALYSIS

This resolution would approve a five-year contract with First Transit, Inc. for transit operating services. The funding source for FY10 will be Account #374-7217 "Transit - Operating, FY2010".

NRO § 5-74, B states that a contract that extends from the current fiscal year into succeeding fiscal year(s) in which no funds have been appropriated nor otherwise designated for this purpose shall be approved by the full Board of Aldermen before the contract shall become binding on the City.

**Approved as to account
structure, numbers and
amount:**

Financial Services Division

By: 

Approved as to form:

Office of Corporation Counsel

By: 

Date: 22 April 2009

TRANSIT CONTRACTING AGREEMENT

BETWEEN

THE CITY OF NASHUA

AND

FIRST TRANSIT, INC.

TABLE OF CONTENTS

1. Contractor Services
2. Commencement and Term
3. Scope of Services
4. Scope of Services of General Manager
5. Compensation
6. Uniforms/Appearance
7. Employer Status
8. Labor Provisions
9. Transit Employees Protective Act
10. Drug and Alcohol Policy
11. Privacy
12. Non-Discrimination
13. Materials, Equipment and Facilities
14. Control of Service
15. Routing, Service and Fares
16. Charter
17. School Bus
18. Payments
19. Records
20. Employer Fidelity Bond
21. Insurance
22. Environmental, Resource Conservation, and Energy Requirements
23. Force Majeure
24. Hold Harmless
25. Interest of Members of or Delegates to Congress
26. Federal Participation, Laws, regulations, and Assistance
27. No Government Obligation
28. Incorporation of FTA Terms
29. Program Fraud and False or Fraudulent Statements or Related Acts
30. Entire Agreement
31. Continuing Effect
32. Severability
33. Termination
34. Caption
35. Waiver
36. Governing Law
37. Resolution of Disputes, Breaches and other Litigation
38. Notices

APPENDICES

- A. Certification of Primary Participant
- B. Certification of Restrictions on Lobbying
- C. City's/Contractor Responsibilities

TRANSIT CONTRACTING AGREEMENT
BETWEEN
THE CITY OF NASHUA NH
AND
FIRST TRANSIT INC.

THIS AGREEMENT is made and entered into by and between the CITY of Nashua, (Hereinafter called the CITY) and First Transit, Inc., hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the CITY is desirous of obtaining a qualified transit contracting company for the operation of its Fixed Route & Paratransit Services, hereinafter known as FRPS; and WHEREAS, the CONTRACTOR is desirous of providing such operational services;

NOW, THEREFORE, in consideration of the foregoing recitals and covenants and agreements of each of the parties herein set forth, the parties do agree as follows:

1. Contractor Services

The CITY does hereby engage and retain the CONTRACTOR to operate its FRPS, per the "scope of services" provided into this Agreement by reference, and per the conditions set forth herein.

2. Commencement and Term

This Agreement shall become effective on July 1, 2009 and shall remain in effect until June 30, 2014. The CITY shall notify the CONTRACTOR 90 days prior to June 30, 2014 if they will not be negotiating a renewal contract.

3. Scope of Services

The CONTRACTOR shall directly operate the CITY of Nashua FRPS that are currently provided by TMNI and managed by First Transit, Inc.

The CONTRACTOR will ensure the delivery of the highest quality FRPS. Such service delivery shall comply with all applicable state and federal laws and regulations.

The CONTRACTOR shall provide a General Manager, approved by the CITY of Nashua, who shall be responsible for the operation of the CITY of Nashua's FRPS. The CONTRACTOR'S fee will include the salary and related expenses of the General Manager. All services rendered by the General Manager shall be reviewed with and monitored by Nashua's Director of Transit.

Delivery of quality operations/supervisory service shall include employment, supervision, and management of all dispatchers and operators.

The CONTRACTOR shall ensure that FRPS are not missed due to personnel deficiencies. Operations management shall include, but not necessarily be limited to, adequate personnel to maintain service, on-going training of bus operators and staff, and adequate supervisory staffing.

The General Manager shall maintain operator's records pertinent to the FRPS. The General Manager shall render and certify to the CITY'S Director of Transit full and complete monthly reports in a format agreed to by the CITY'S Director of Transit.

The CONTRACTOR, through the General Manager, shall from time to time, or at the request of the CITY, make recommendations to the CITY of Nashua regarding the CITY'S FRPS fare structure, service levels, route planning, service modifications, extensions or retractions, organization,

administration, personnel level and assignments, major service improvements, and other matters related to transit operations and policies. The General Manager will assist, prepare, and/or submit assorted Federal, State, or locally required documents, including but not limited to, Triennial Review, TIP Capital plans, permits, audits, etc. Please see Appendix C which outlines the CONTRACTOR'S and the CITY'S responsibilities.

4. Scope of Services of General Manager

In consideration of the compensation hereinafter provided for in this Agreement, CONTRACTOR does hereby agree to furnish to the CITY all operational services reasonably required and necessary for the efficient operation of the CITY'S FRPS, per the "scope of services".

The CONTRACTOR shall employ and furnish a full-time qualified person to serve as the on-site General Manager to undertake the CONTRACTOR'S obligations under this Agreement. The General Manager shall reside in the Nashua NH vicinity and shall be approved by the CITY. The CITY can withdraw approval of the General Manager at any time. The CONTRACTOR will have ninety (90) days from the receipt of the notice of "Withdrawal of Approval" of the General Manager, to furnish a qualified successor General Manager acceptable to the CITY. Failure of the CONTRACTOR to provide a qualified replacement will constitute a default of the agreement under Paragraph 33.

The General Manager's position shall not remain vacant for more than fourteen (14) consecutive calendar days. If necessary, the CONTRACTOR shall temporarily staff until permanent replacement is found. A temporary individual shall meet all the minimum qualifications required of the permanent position. As soon as possible, resumes and qualifications of all proposed candidates shall be submitted for review, and the CITY shall have the opportunity to conduct interviews locally. All expenses related to this process shall be the responsibility of the CONTRACTOR.

The CONTRACTOR shall also employ during the terms of this Agreement various other personnel, as reasonably required for the operation of the FRPS. The cost and compensation payable to all personnel shall be the obligation of the CONTRACTOR as an operating expense of the FRPS.

The General Manager and his or her staff shall conduct the day-to-day operations of the FRPS, including but not limited to matters relating to labor relations, transportation, safety & security and road supervision. The CITY shall provide an on-site office for the General Manager at the Nashua Transit Administration building located at 11 Riverside Street.

The CITY will also provide a computer, office phone (long distance included), cell phone, office furniture as well as any other items not listed for normal business use. The CITY will also supply all office equipment associated with the dispatching functions of the operation. This will include radios, Routematch software, GPS capabilities, phones, recording software and equipment not listed that is related to dispatching functions.

5. Compensation

The CITY agrees to pay the CONTRACTOR compensation for services performed in accordance with this Agreement as follows:

a. Contracting Fee

The CITY shall pay to CONTRACTOR as compensation for its services a monthly fee as follows:

Fixed Costs:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$28,693	\$29,643	\$30,626	\$31,644	\$32,698

Variable Costs:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$24.41/hr	\$25.23/hr	\$26.08/hr	\$26.96/hr	\$27.86/hr

The CITY will pay the fixed costs as listed above. The CITY will pay the CONTRACTOR a variable cost only for hourly costs the CONTRACTOR incurs while operating the service. This hourly cost shall include all costs associated with total vehicle miles as scheduled by the CITY. The CITY will be responsible for scheduling all trips and will notify the CONTRACTOR of the service that is needed. The CITY will be responsible for advising the CONTRACTOR seven (7) days in advance so the CONTRACTOR can schedule its operators accordingly.

In the event of service expansion, the CITY and the CONTRACTOR will both agree on the hourly rate listed above per applicable year, the total vehicle miles and all other costs associated with new route(s).

b. Expenses of Non-Resident Personnel

Employees of the CONTRACTOR shall not receive direct compensation from the CITY. However, the CONTRACTOR shall be entitled to reimbursement by the CITY for all reasonable expenses attributable to services performed for the CITY as provided in Section 4 hereof. The CITY shall not agree to such reimbursement for routine visits by the CONTRACTOR'S Regional Manager, however, the CITY shall agree to such reimbursement when such visits are requested by the CITY. The items that are reimbursable are air fare, lodging and meals. The expense shall not exceed \$1000.00

c. Automobile Mileage Reimbursement – General Manager

The CITY will not reimburse the General Manager for use of his/her automobile unless such use is specifically requested and required by the CITY outside of the CITY'S service area. The CITY will not have a vehicle available for the General Manager's personal use. When the General Manager is reimbursed for personal vehicle use, that rate will not exceed the current mileage reimbursement rate permitted by the US Internal Revenue Service.

6. Uniforms/Appearance

It will be the responsibility of the CONTRACTOR to provide uniforms for all employees. The CITY will provide the necessary patch that will need to be attached to certain shirts and jackets. The uniforms that will be acceptable will consist of the following;

- Blue work pants – Dickie style
- Blue shorts – Dickie style
- Tan Polo shirt with logo patch stitched on
- Tan long sleeve Polo style shirt with logo patch
- Blue fleece jacket with logo patch
- Blue Winter style jacket with logo patch
- Black boots or shoes

With the uniform language above, the CITY expects the following conditions in regards to the appearance of all of the employees;

- Employees are prohibited from displaying visible tattoos, scarifications or brands that are excessive. Excessive is defined as any tattoos, scarifications or brands that exceed 25% of any visible body part. Tattoos, scarifications and brands are considered visible if they can be seen while the employee is wearing a short sleeve shirt or shorts.

Employees are prohibited from displaying any tattoo, scarification or brand that can be considered offensive, inappropriate, or detracts from the professional appearance of Nashua Transit. Employees are prohibited from displaying any tattoo, scarification or branding above the collar line.

- Male hair length shall be no longer than shoulder length. Female hair maybe longer than shoulder length as long as it is pulled back.

7. Employer Status

The CONTRACTOR is the employer for all employees necessary for the efficient and economical operation of the FRPS and shall assume all labor and other employee contractual obligations directly related to the operation of the transit service. The CONTRACTOR shall negotiate all collective bargaining agreements. The CITY shall be consulted and advised on the agreement. Any amendments, modifications, changes, extensions, or renewals of collective bargaining agreements or other employee agreements as may be hereafter entered into by the CONTRACTOR and/or the General Manager shall be communicated to the CITY in writing within seven (7) days.

8. Labor Provisions

The requirements contained in 29 C.F.R. § 5.5 (b) are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1. The CONTRACTOR shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all personnel working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the CONTRACTOR for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. D.O.T., the Department of Labor or the CITY, and the CONTRACTOR will permit such representatives to interview employees during working hours on the job.

9. Transit Employee Protective Provisions

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

- (a) The CONTRACTOR 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 this contract and to meet the employee protective requirements of 49 U.S.C. A 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 CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. 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 and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for no urbanized 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) If the services provided under this Agreement involve transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. 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 the public body subrecipient for which work is performed on the underlying contract, the CONTRACTOR agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. 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 Grant Agreement or Cooperative Agreement with the state. The CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter. Copies of any DOL letter shall be given to the CITY.
- (c) The CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the No urbanized 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.

10. Drug and Alcohol Policy

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Parts 653 and 654. To certify compliance, the CITY shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

11. Privacy

- (a) The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (b) The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

12. Non-Discrimination

(a) Title VI of the Civil Rights Act of 1964

The CONTRACTOR agrees to comply with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", 49 CFR Part 21.

(b) Equal Employment Opportunity

The CONTRACTOR may not discriminate against any employee or applicant for employment because of race, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its third party contracts, except contracts for standard commercial supplies or raw materials and construction contracts, and shall require all such CONTRACTORS to insert a similar provision in all subcontracts, except contracts for standard commercial supplies or raw materials.

(c) Disadvantaged Business Enterprise (DBE)

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Nashua Transit's overall goal for DBE participation is 2.0%. A separate contract goal has not been established for this procurement.

b. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as Nashua Transit deems appropriate. Each subcontract the CONTRACTOR signs with a SUBCONTRACTOR must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful bidder/offeree will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The CONTRACTOR is required to pay its SUBCONTRACTOR'S performing work related to this contract for satisfactory performance of that work no later than 30 days after the CONTRACTOR'S receipt of payment for that work from Nashua Transit.

e. The CONTRACTOR must promptly notify Nashua Transit, whenever a DBE SUBCONTRACTOR performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE SUBCONTRACTOR to perform at least the same amount of work. The CONTRACTOR may not terminate any DBE SUBCONTRACTOR and perform that work through its own forces or those of an affiliate without prior written consent of Nashua Transit.

Failure of the CONTRACTOR to comply with this section or to include it in any subcontract of any tier will constitute a breach of Contract and, after notification of DOT, may result in termination of the Contract by the CITY or such remedy as the CITY deems appropriate.

The CITY & CONTRACTOR will work together to attempt to meet the goals listed above.

(d) Access Requirements for Individuals with Disabilities

The CONTRACTOR agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 *et seq.* and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. § 1612; and the following regulations and any amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 49 C.F.R. Part 27;
- (3) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (4) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Part 101-19;
- (7) Equal Employment Opportunity Commission (AC)"Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

13. Materials, Equipment and Facilities

The CITY shall provide and furnish one office, driver's room and lockers for the operators.

The CONTRACTOR shall operate the equipment provided in conformance with all safety requirements of the State of New Hampshire Motor Vehicles Safety Standards, to provide the level of service as specified by the CITY. The CITY shall be provided with the original Pre/Post trips documentation on a daily basis.

To the extent required by applicable federal laws, state statutes and local ordinances, the CITY shall be responsible for and secure all local, state, and federal franchises, permits, licenses, or operating rights as may be necessary for the CONTRACTOR to operate the CITY'S service.

14. Control of Service

The CONTRACTOR shall be responsible for the day-to-day operation of the CITY'S FRPS. All services to be rendered by the CONTRACTOR under this Agreement shall be subject to the reasonable supervision of the CITY. The CONTRACTOR shall advise the CITY of matters of importance concerning operation of the transit service and make recommendations when appropriate. Routing, scheduling, fares, and policies governing the CITY'S FRPS are under the purview of the CITY. The CITY will be responsible for directing any service cancellation due to inclement weather.

The CONTRACTOR is associated with the CITY only for the purposes and to the extent specified in this Agreement, and in respect to performance of the contracted services pursuant to this Agreement, CONTRACTOR is and shall be an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the CITY whatsoever with respect to the indebtedness, liabilities, and obligations of CONTRACTOR or any other party.

15. Routing, Service and Fares

The CITY shall establish routes, schedules, fares and policies for the operation of the FRPS. The CONTRACTOR agrees to make recommendations periodically (or when requested by the CITY) concerning changes in the routes, schedules, fares or policies.

The CITY shall prepare all necessary documentary evidence and, if needed, provide testimony relative to any contemplated change in schedule or classification of fares or in service and routing.

16. Charter

The CONTRACTOR shall not engage in charter service operation utilizing equipment or facilities of the CITY, except as provided under Section 3(f) of the Federal Transit Act, as amended, 49 U.S.C. app. § 1602(f), and FTA regulations "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued unless approved by the CITY.

17. School Bus

The CONTRACTOR may not engage in school bus operations, utilizing equipment or facilities of the CITY, exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided in Section 3(g) of the Federal Transit Act, as amended, 49 U.S.C. app. § 1602(g), and FTA regulations "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued.

18. Payments

All payments pursuant to Sections 5 hereof shall be made within thirty (30) days after receipt of invoices in conformance with this Agreement from the CONTRACTOR certifying expense.

19. Records

Where the CITY is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the CONTRACTOR agrees to provide the CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO CONTRACTOR access to CONTRACTOR'S records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case CONTRACTOR agrees to maintain same until the CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The CITY shall require copies of all of the records of the CONTRACTOR'S employees to include but not limited to driver's license, driver's record, DOT physicals and requirements, training records, certified background report, certified drug & alcohol report and any other paperwork that pertains to the operating of the CITY'S FRPS. The CITY shall have the right of access to and inspection of the records during this agreement.

All operators must have annual DOT physicals. The CONTRACTOR shall provide an annual report that states the operators did have their annual physicals.

20. Employer Fidelity Bond

The CONTRACTOR shall maintain a fidelity bond protecting the CITY from theft or other losses covering its resident General Manager and other employees directly involved in the CITY'S FRPS at such levels and deductibles as directed by the CITY. The CONTRACTOR shall provide copies of such documentation to the CITY.

21. Insurance

FIRST TRANSIT shall obtain and keep in force during the term hereof the following appropriate forms of insurance coverage customarily maintained by the transit industry for similar operations:

Commercial General Liability Insurance - \$1,000,000 per occurrence; \$2,000,000 aggregate - FIRST TRANSIT shall name the CITY as an additional insured

Workers' Compensation Insurance - As mandated by statute

The CITY shall obtain and keep in force during the term hereof the following appropriate forms of insurance coverage:

Auto Liability Insurance - \$5,000,000 combined single limit - The CITY shall name FIRST TRANSIT as an additional insured

22. Environmental, Resource Conservation, and Energy Requirements

(a) Environmental Protection.

To the extent applicable, the CONTRACTOR agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. §§ 1610; the Council on Environmental Quality regulations, 40 C.F.R. Part 1500 et seq.; and the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

(b) Air Pollution.

The CONTRACTOR agrees to comply with the joint FHWA/FTA regulations, "Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and 49 C.F.R. Part 623. The CONTRACTOR agrees to obtain satisfactory assurances that any facilities or equipment acquired, constructed, or improved under the contract are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600; in accordance with the applicable Federally-approved State Implementation Plan

(in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.

(c) Energy Conservation.

The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 et seq.

(d) Clean Water

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

23. Force Majeure

The CONTRACTOR shall not be liable to the CITY for any failure, delay or interruption of service or for any failure or delay in the performance of any obligation under this Agreement due to acts of God, governmental restrictions, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, strikes, labor unrest or other acts beyond the reasonable control of the CONTRACTOR. The CONTRACTOR shall resume service upon removal or cessation of the cause of delay or interruption.

24. Hold Harmless

During the term of this Agreement and thereafter, FIRST TRANSIT agrees to defend, indemnify, and hold the CITY harmless from any and all damages, judgments, settlements, awards, costs, and expenses of every kind which are not otherwise covered by or compensated for by the City's auto liability insurance, and that may arise or result by reason of FIRST TRANSIT's activities consistent with the Agreement.

25. Interest of Members of or Delegates to Congress

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

26. Federal Participation, Laws, Regulations, and Assistance

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Nashua Transit and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR'S failure to so comply shall constitute a material breach of this contract.

The CITY of Nashua's FRPS is supported by assistance from the Federal Transit Administration financial assistance. This Agreement is subject to the terms of financial assistance contracts between the CITY of Nashua and the US Department of Transportation. The CONTRACTOR shall comply with existing and future federal requirements while providing services under this Agreement.

27. No Government Obligation

- (a) The CITY and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the CITY, the CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (b) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

28. Incorporation of FTA Terms
"General Contract Provisions," includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.
29. Program Fraud and False or Fraudulent Statements or Related Acts.
(a) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
(b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
(c) The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the SUBCONTRACTOR who will be subject to the provisions.
30. Entire Agreement
This Agreement contains the entire agreement between the CITY and the CONTRACTOR and no oral agreement, promise, statement or representation, which is not herein contained, shall be binding upon the CITY or the CONTRACTOR. All amendments to this Agreement shall be in writing and executed by both parties.
31. Continuing Effect
This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the CITY. The CONTRACTOR shall not assign this contract or any rights hereto, without the prior written consent of the CITY.
32. Severability
If any provision of this Agreement is or becomes void or unenforceable by law, the other provisions shall remain valid and enforceable.
33. Termination
Termination for Default [Breach or Cause]: If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, Nashua Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the

contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Nashua Transit that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, Nashua Transit, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure: Nashua Transit, shall, in the case of a termination for breach or default, allow the CONTRACTOR (10) ten days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If CONTRACTOR fails to remedy to Nashua Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by CONTRACTOR of written notice from Nashua Transit setting forth the nature of said breach or default, Nashua Transit shall have the right to terminate the Contract without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude Nashua Transit from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that Nashua Transit elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by Nashua Transit shall not limit Nashua Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Termination for Convenience (Cost-Type Contracts): Either party may terminate this contract, or any portion of it, by serving a 120 day notice or termination on the other party. If the termination is for the convenience of Nashua Transit, the CONTRACTOR shall be paid the contract price for services performed in accordance with the manner of performance set forth in the contract and reasonable contract close-out costs.

CONTRACTOR may, upon the giving of ninety (90) days advance notice, terminate this Agreement if the CITY fails to cure a default within thirty (30) days of written notice of such default given by the CONTRACTOR. If more than thirty (30) days is required to cure such default, a reasonable period of time shall be permitted, provided both parties agree in writing as to the time period to be substituted. Default as used herein means failure to comply and fulfill material terms, obligations and conditions of this Agreement.

34. Caption

The caption headings of each paragraph hereof are intended for ease of reference only and do not constitute part of this Agreement. Likewise, the captions shall not be deemed to indicate the intentions of the parties hereto.

35. Waiver

The failure to enforce at any time any of the provisions of this Agreement and to require at any time performance of any party of any of the provision hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement, or any part hereof, or the right of each party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

36. Governing Law

This Agreement shall be deemed to be a contract made under the Laws of the CITY of Nashua and the State of New Hampshire and, together with the rights and obligations of the parties hereunder, shall be construed and enforced in accordance with and governed by the laws of the CITY of Nashua and the State of New Hampshire.

37. Resolution of Disputes, Breaches and other Litigation

The parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this Agreement. Disputes that cannot be resolved by negotiation shall be submitted to mediation using a mutually agreed upon mediator. In the absence of an agreement on a mediator, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. If mediation is not successful, the parties may pursue their remedies as they choose. Nothing in this Agreement shall be deemed to prevent the parties from agreeing in the future to submit a dispute to arbitration.

Performance During Dispute - Unless otherwise directed by Nashua Transit, CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of his or her employees, agents or others for whose acts he or she 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.

Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between Nashua Transit and the CONTRACTOR 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 in which Nashua Transit is located.

Rights and Remedies - The duties and obligations imposed by the Agreement and the rights and remedies available there under 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 Nashua Transit or the CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

38. Notices

All notice required hereunder and all communications made with respect to this Agreement shall be deemed to be made when deposited with the United States Postal Service, postage prepaid, return receipt requested and addressed as follows:

To CONTRACTOR:

____First Transit_____
Attn: ____President_____
Street ____600 Vine Street, STE 1400_____
P.O. Box _____
CITY, State ZIP ____Cincinnati, OH 45202_____

To the CITY of Nashua:

CITY of Nashua – Nashua Transit
Attn: Mark A. Sousa, Director of Transit
11 Riverside Street
Nashua, NH 03062

or to such other address as may from time to time be designated in a notice sent to the other party for that purpose.

IN WITNESS WHEREOF, this Agreement has been executed by _____ on the _____ day of _____, 2009, and by the CITY of Nashua on the _____ day of _____, 2009.

ATTEST: _____
CONTRACTOR name

Signature

Name

Title

ATTEST: **CITY OF NASHUA**

Donnalee Lozeau
Mayor

WITNESS:

Signature

Name

Title

APPENDIX A
CERTIFICATION OF PRIMARY PARTICIPANT

The CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, purposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal, or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

The CONTRACTOR certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable hereto.

Signature and Title of Authorized Official

The undersigned Chief legal counsel for the _____ hereby certifies that the _____ has authority under state and local law to comply with the subject assurances and that the certification above has been legally made.

Signature and Title of Manager's Attorney

Date

APPENDIX B

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certify on behalf of the
_____ that:

(1) 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid 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 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 instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, 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 section 1352, title 31, U.S.Code. 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.

Executed this _____ day of _____ 2009.

By: _____

(Signature of authorized official)

(Title of authorized official)

APPENDIX C
CITY OF NASHUA/CONTRACTOR RESPONSIBILITIES

CITY'S Responsibilities;

- ADA Requirements & Certifications
- Farebox
- Vehicle Maintenance
- Facility Maintenance
- Scheduling of Trips
- Grant Management
- Reporting to FTA & NTD
- Auto Insurance
- General Liability Insurance
- Purchasing
- Fixed Asset Reporting
- Marketing
- Fuel
- Ticket Ordering
- Billing
- Inventory
- Ride Guides
- Advertising
- RouteMatch Upgrades (Paratransit scheduling software)
- Comet Tracker Upgrades (GPS for all vehicles)

CONTRACTOR Responsibilities;

- Hiring/Firing of Operators
- Required Background Checks
- Supervisor for each Shift (this will include road supervision)
- Employee Payroll
- Employee Benefits
- All Union Matters
- General Liability Insurance
- Workers Compensation Insurance
- Training of the Operators
- Safety & Security
- Drug & Alcohol
- CDL Requirements
- DOT Annual Physicals
- Post Accident Drug Testing (Immediately following an accident that needs to be tested)
- Bonding for Fare Collection
- Code of Conduct (while operating the vehicle)
- Ticket Sales
- Discipline of Operators
- Uniforms/Appearance
- Pre/Post Trips
- Record Keeping

RESOLUTION

R-09-188

**Approving a five-year agreement
with First Transit, Inc. for transit
operating services**

IN THE BOARD OF ALDERMEN

1ST READING APRIL 28, 2009

Referred to:

FINANCE COMMITTEE

2nd Reading MAY 12, 2009

3rd Reading _____

4th Reading _____

Other Action _____

Passed MAY 12, 2009

Indefinitely Postponed _____

Defeated _____

Attest: [Signature]
City Clerk

[Signature]
President

Approved [Signature]
Mayor's Signature

5/15/09
Date

Endorsed by

[Signature]

[Signature]
MAYOR
CLEMONS

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President