

TO: James L. App, City Manager
FROM: James Throop, Director of Administrative Services
SUBJECT: Transit Fleet Maintenance Services Contract Award
DATE: April 16, 2013

Needs: For the City Council to consider a contract for maintenance of the transit fleet.

Facts:

1. Maintenance of the City's transit vehicles is currently done by the City's Fleet Services department, which maintains all other city vehicles.
2. Due to funding restrictions in recent years, new transit vehicles could not be purchased on the usual schedule. Older transit vehicles, which require more maintenance, have been retained out of necessity.
3. Due to the aging of the transit fleet as well as other City departments' equipment, the City's Fleet Services has had difficulty keeping the transit fleet in good working order. Repair costs have been steadily rising, and outside vendors are frequently needed to supplement to the work done by the City's mechanics.
4. City staff investigated the possibility of outsourcing the transit fleet vehicle maintenance. An RFP was issued, and noticed in the Tribune Newspaper on February 6th and 8th, 2013.
5. Two firms attended the pre-bid meeting, but one declined to bid. One proposal was received from First Transit, who is also the city's current Operations Contractor for transit.
6. The proposal was reviewed, and found to be responsive in scope, while describing First Transit's extensive experience with fleet maintenance. However, the original proposal's cost was found to be too high to justify pursuing a contract. First Transit then submitted a Best-And-Final Offer (BAFO).
7. The monthly rate from the BAFO of \$19,378 is significantly lower than the average monthly cost of \$22,577 for transit fleet maintenance during FY 2011/12.
8. A contract document for the services has been prepared with the assistance of the City's contracts attorney.
9. A dedicated contractor for Transit Fleet maintenance services should improve the quality of existing transit fleet vehicles and maintain the quality of new vehicles, while freeing City mechanics to focus on other City vehicles.
10. The proposed consolidation of the transit services would not be affected by outsourcing transit vehicle maintenance. First Transit is aware of the planned consolidation, and willing to enter into a contract for a potentially limited term.

Analysis &
Conclusion:

The City has had a long and positive relationship with First Transit as its transit Operations Contractor. First Transit has extensive experience in fleet maintenance. Transferring the transit fleet mechanical upkeep to First Transit would likely result in improved vehicle maintenance, at an equal or lower cost, while allowing the City's Fleet Services more time to maintain other City fleets and equipment.

Policy
Reference: City of Paso Robles Purchasing and Payment Procedures Manual.

Fiscal
Impact: Potential savings of approximately \$3,000 per month, or \$36,000 per year in vehicle maintenance costs for the transit fleet. Additional savings may be realized through improved maintenance of all the City's fleets.

Options:

- a. Adopt Resolution No. 13-xxx approving the Contract for fleet maintenance services, and authorizing the Director of Administrative Services to execute said contract with First Transit, or;
- b. Amend, modify or reject the above option.

Attachments:

- 1) Contract document
- 2) Resolution

CITY OF EL PASO DE ROBLES

1000 Spring Street
Paso Robles, CA 93446

AGREEMENT FOR TRANSIT VEHICLE MAINTENANCE SERVICES

THIS AGREEMENT for Transit Vehicle Maintenance Services (the "Agreement") is made by and between the **City of El Paso de Robles**, a public body, corporate and politic, (herein "CITY") and **First Transit**, a California _____, (herein "Vehicle Maintenance Contractor"), wherein Vehicle Maintenance Contractor agrees to provide the transit vehicle maintenance services specified herein ("Services").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. CONTRACT ADMINISTRATOR. **Michael Seden-Hansen** will administer this Agreement on behalf of City (herein "Contract Administrator"). _____ is the authorized representative for Vehicle Maintenance Contractor. Changes in designated representatives shall be made only after advance written notices to the other party.

2. NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to parties in writing, delivered as follows:

CITY: City of El Paso de Robles
Attn: Michael Seden-Hansen
Transit Services Coordinator
821 Pine Street
Paso Robles, CA 93446
Email:

VEHICLE MAINTENANCE CONTRACTOR:

First Transit
Attn: _____
1625 S.E. Hogan Road
Greshman, OR 97080-8252
Email

The parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

3. EXHIBITS. The following Exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit A. Scope of Services to be performed by Vehicle Maintenance Contractor and inventory of transit vehicles to be serviced under this Agreement.

Exhibit B. A listing of hourly rates of Vehicle Maintenance Contractor's personnel that will be used to calculate compensation for authorized additional services.

Exhibit C. Insurance Requirements.

4. SCOPE OF SERVICES. The Vehicle Maintenance Services shall include, generally, preventive maintenance, mechanical repairs, overhauls, road call services, and other such services as may be required to assure the continuity of safe, effective and economical operation of the fleet. Vehicle Maintenance Contractor shall provide all necessary management, supervision, labor, parts, tools, equipment, and supplies required to maintain the transit fleet in a state of repair and service readiness and consistent with generally accepted fleet maintenance and operation practices. In addition, the Vehicle Maintenance Contractor will provide City with a detailed computerized record of maintenance and repairs for each vehicle at least once per month. The Services are more fully described in Exhibit A, Scope of Services.

5. TERM.

A. The initial term of this Agreement shall commence on issuance of the City's Notice to Proceed, which shall occur no later than June 1, 2013, and shall terminate on June 30, 2014 unless terminated earlier or extended as set forth herein.

B. The City may extend the term of this agreement for up to [redacted] additional 1-year terms for a total contract term of [redacted] years, subject to parties' agreement on adjusted compensation.

C. The price(s) in this Agreement, including Exhibit B, will be effective for the entire initial term, and will be subject to adjustment if the City extends the contract term. Prices for the extended contract period may be adjusted, but may not be increased more than the percentage change in the U.S. Consumer Price Index for all Urban Consumers (CPI-U) between the date of the initial contract and the date the extended contract term begins.

6. COMPENSATION OF VEHICLE MAINTENANCE CONTRACTOR.

A. City shall pay Vehicle Maintenance Contractor the Annual Contract Amount of [redacted] for each twelve month period following commencement of Services plus amounts due for authorized Additional Services.

B. The Annual Contract Amount is full compensation for all labor, materials, equipment and services required to perform the Services, except the following, which shall be Additional Services:

1. Total engine failure. The Vehicle Maintenance Contractor would notify the CITY that the engine had catastrophic failure and would only be corrected by full engine replacement.
2. Total transmission failure. The Vehicle Maintenance Contractor would notify the CITY that the transmission had catastrophic failure and would only be corrected by full transmission replacement.
3. Total Differential (rear-end) failure. The Vehicle Maintenance Contractor would notify the CITY that the rear-end had catastrophic failure and would only be corrected by full rear-end replacement.
4. Major vehicle body damage resulting from collision or other event.

City may obtain third party verification of vehicle condition prior to authorizing Additional Services.

C. Vehicle Maintenance Contractor shall invoice the CITY on a monthly basis for one-twelfth of the Annual Contract Amount and any authorized Additional Services performed during the preceding month. The invoices shall identify the Services performed by date and by vehicle; invoices for Additional Services will identify each task, the parts required, and the time spent on each task on each vehicle.

D. Additional Services, including parts and labor, shall be charged in accordance with the "Cost of Services" attached hereto as Exhibit B and incorporated herein by reference. Vehicle Maintenance Contractor shall not perform Additional Services without written approval from the City Contract Administrator. If the Vehicle Maintenance Contractor proceeds prior to receiving written approval by the City of the Additional Services, City will not be liable for compensation for those services, and Vehicle Maintenance Contractor does so at Vehicle Maintenance Contractor's own risk.

E. City shall pay only for Additional Services authorized by the City Contract Administrator in writing or requested verbally by City and confirmed in writing by Vehicle Maintenance Contractor within five (5) working days.

F. Compensation and Method of Payment.

1. Upon receipt and approval of an invoice, the City shall pay the invoice within thirty (30) days of receipt. Before approving an invoice, City may examine Vehicle Maintenance Contractor's records for compliance with all California Highway Patrol and other requirements for reports and documentation.

2. Invoices for Additional Services shall identify those services by date, the task performed, the person performing the work, and parts and equipment used.

3. The City may withhold payment, in whole or in part, on account of Services not performed satisfactorily, delays in Vehicle Maintenance Contractor's performance, other defaults, or to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind arising from or related to Vehicle Maintenance Contractor's Services. If City intends to withhold any payment, it must notify Contractor within fifteen (15) days of either: 1) the receipt of invoices covering services at issue, or 2) the occurrence of events or circumstances giving rise to City's intention to withhold, which ever occurs earlier. City's failure to notify Contractor of its intent to deduct or to deduct shall not constitute a waiver of the City's right to assert a claim against Vehicle Maintenance Contractor or to withhold payment at a future time. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Vehicle Maintenance Contractor is liable under the Agreement or state law. Payments to the Vehicle Maintenance Contractor shall not be contingent on the construction, completion or ultimate success of the Project.

7. Schedule for Performance of Services.

A. Vehicle Maintenance Contractor's Services under this agreement will be performed in accordance with the maintenance schedule prepared by Vehicle Maintenance Contractor and approved by City, as that schedule may be adjusted by mutual agreement.

B. Time is of the essence in the performance of this Agreement.

C. The foregoing notwithstanding, neither party shall be liable for damages or delays arising out of circumstances beyond its reasonable control, including but not limited to any act of God, civil disturbance, fire, riot, war, terrorism, picketing, strike, labor dispute, labor shortage or government action.

8. **INDEPENDENT CONTRACTOR.** City retains Vehicle Maintenance Contractor as an independent contractor as defined in Labor Code 3353, under the control of the City as to the result of the work but not the means by which the result is accomplished. Vehicle Maintenance Contractor is not an employee of City. Vehicle Maintenance Contractor is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Vehicle Maintenance Contractor shall also not be employees of City, and shall at all times be under Vehicle Maintenance Contractor's exclusive direction and control. Vehicle Maintenance Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Vehicle Maintenance Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

9. PERFORMANCE STANDARDS.

A. Compliance with laws.

(1) Vehicle Maintenance Contractor shall (and shall cause its agents and subcontractors), at its sole cost and expense, to comply with all City, County, State and

Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Services and this Agreement ("Applicable Laws"). Any corrections to Vehicle Maintenance Contractor's Services, reports or other Documents (as defined below) that become necessary as a result of the Vehicle Maintenance Contractor's failure to comply with these requirements shall be made at the Vehicle Maintenance Contractor's expense.

(2) Should Vehicle Maintenance Contractor become aware that the requirements referenced in subparagraph 1 above change after the date of a service, report or other Document is prepared, Vehicle Maintenance Contractor shall be responsible for notifying City of such change in requirements. Vehicle Maintenance Contractor will bring the Services and Documents into conformance with the newly issued requirements at the written direction of City. Vehicle Maintenance Contractor's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

(3) Vehicle Maintenance Contractor certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

(4) Vehicle Maintenance Contractor's compliance with Applicable Laws includes, but is not limited to, compliance with any testing program for illegal drugs or other substances.

B. Vehicle Maintenance Contractor represents that it has the skills, expertise, licenses and permits necessary to perform the Services in accordance with all Applicable Laws and manufacturers' warranties. Vehicle Maintenance Contractor shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Vehicle Maintenance Contractor is engaged. Permits, certifications and/or licenses shall be obtained and maintained by Vehicle Maintenance Contractor without additional compensation throughout the term of this Agreement.

10. TAXES. Vehicle Maintenance Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the Services.

11. CONFLICT OF INTEREST.

A. Vehicle Maintenance Contractor understands that its professional responsibility is solely to City. Vehicle Maintenance Contractor warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Vehicle Maintenance Contractor shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If Vehicle Maintenance Contractor discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Vehicle Maintenance Contractor shall promptly disclose the relationship to the City and take such action as the CITY may direct to remedy the conflict.

B. Vehicle Maintenance Contractor (including principals, associates and employees) covenants and represents that it does not now have any investment or interest in

real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Vehicle Maintenance Contractor's Services hereunder. Vehicle Maintenance Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

C. Vehicle Maintenance Contractor is not a designated employee within the meaning of the Political Reform Act because Vehicle Maintenance Contractor:

(1) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(2) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

12. RESPONSIBILITIES OF CITY. City shall provide all information requested by Vehicle Maintenance Contractor that is reasonably necessary to performing the Services provided herein.

13. OWNERSHIP OF DOCUMENTS.

A. The records, reports, and other material prepared by or on behalf of Vehicle Maintenance Contractor under this Agreement including all drafts and working documents, and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Services are completed or not. Vehicle Maintenance Contractor shall deliver all Documents to City upon request at (1) the completion of the Services, (2) the date of termination of this Agreement for any reason, or (3) any time requested by City, upon five (5) days written notice.

B. The Documents may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable without further employment of or payment of any compensation to Vehicle Maintenance Contractor.

C. Vehicle Maintenance Contractor shall include in all subcontracts and agreements with respect to the Services that Vehicle Maintenance Contractor negotiates, language which is consistent with this Section 13.

E. All reports, information, data, and exhibits prepared or assembled by Vehicle Maintenance Contractor in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Vehicle Maintenance Contractor shall not make any of these documents or information available to any individual or organization not employed by the Vehicle Maintenance Contractor or the City without the written consent of the City before any such release.

14. RECORDS, AUDIT AND REVIEW.

A. Vehicle Maintenance Contractor shall establish and maintain records pertaining to this Agreement. Vehicle Maintenance Contractor's accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, utility bills, invoices and vouchers.

B. Vehicle Maintenance Contractor shall permit City and its authorized representatives to inspect and examine Vehicle Maintenance Contractor's books, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Vehicle Maintenance Contractor pursuant to this Agreement and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Agreement; and Vehicle Maintenance Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Agreement.

C. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

15. INDEMNIFICATION.

A. To the fullest extent permitted by law, Vehicle Maintenance Contractor shall protect, defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Vehicle Maintenance Contractor or its subcontractors), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the Services, whether by Vehicle Maintenance Contractor, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement nor completion of the Services shall release Vehicle Maintenance Contractor from its obligations under this Section 15, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

C. Vehicle Maintenance Contractor shall be fully responsible for all obligations under this Section, including Liabilities arising from any subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The obligation to indemnify and

defend City as set forth herein is binding on the successors, assigns or heirs of Vehicle Maintenance Contractor and shall survive the termination of this Agreement or this section.

D. Vehicle Maintenance Contractor's compliance with the insurance requirements does not relieve Vehicle Maintenance Contractor from the obligations described in this Section 15, which shall apply whether or not such insurance policies are applicable to a claim or damages.

16. INSURANCE. Vehicle Maintenance Contractor shall provide insurance in accordance with the requirements of Exhibit C.

17. PERSONNEL.

A. The Vehicle Maintenance Contractor represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Vehicle Maintenance Contractor or under Vehicle Maintenance Contractor's supervision, and all personnel engaged in the work shall be qualified to perform such services.

B. Vehicle Maintenance Contractor shall make every reasonable effort to maintain stability and continuity of Vehicle Maintenance Contractor's Key Personnel assigned to perform the Services. Key Personnel for this contract are as follows:

- Maintenance Manager
- Lead Mechanic

Vehicle Maintenance Contractor shall provide City with a minimum twenty (20) days prior written notice of any changes in Vehicle Maintenance Contractor's Key Personnel, provided that Vehicle Maintenance Contractor receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

C. Vehicle Maintenance Contractor plans to retain the following subcontractors, suppliers or vendors who will provide services, materials or equipment as indicated below:

Name	Services

Vehicle Maintenance Contractor will not utilize subcontractors other than those listed above without advance written notice to the City. Vehicle Maintenance Contractor will not utilize a subcontractor to whom the City has a reasonable objection. Subcontractors providing services will provide liability insurance as required in Exhibit C unless the City waives this requirement, in writing.

D. Injury and Illness Prevention Program. Vehicle Maintenance Contractor certifies that it is aware of and has complied with the provisions of California Labor Code

Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

18. NONEXCLUSIVE AGREEMENT. Vehicle Maintenance Contractor understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Vehicle Maintenance Contractor as the City desires. However, City will give Vehicle Maintenance Contractor at least thirty (30) days written notice of any increase, decrease or change in services from those contemplated at the start of this contract which materially affect the service levels or equipment levels required of Vehicle Maintenance Contractor.

19. ASSIGNMENT. Vehicle Maintenance Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20. SUSPENSION AND TERMINATION.

A. The City may suspend this Agreement and Vehicle Maintenance Contractor's performance of the Services, wholly or in part, upon seven (7) days advance written notice for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Vehicle Maintenance Contractor to perform any provision of this Agreement. Vehicle Maintenance Contractor will be paid for satisfactory services performed through the date of temporary suspension.

B. If Vehicle Maintenance Contractor at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any material respect to properly and diligently prosecute its Services, or otherwise fails to perform fully any and all of the agreements herein contained, Vehicle Maintenance Contractor shall be in default.

C. If Vehicle Maintenance Contractor fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents or other materials (in paper and electronic form) prepared or used by Vehicle Maintenance Contractor and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Vehicle Maintenance Contractor under this Agreement; or (2) terminate Vehicle Maintenance Contractor's right to proceed with this Agreement.

D. In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Vehicle Maintenance Contractor, whether located at Vehicle Maintenance Contractor's place of business, or at the offices of a subcontractor, and may employ any other person or persons to finish the Services and provide the materials therefor.

E. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon thirty (30) days written notice to Vehicle Maintenance Contractor. In the event of termination without cause, Vehicle Maintenance Contractor shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows: (1) Payment for Services then satisfactorily completed and accepted by City, plus (2) Payment for Additional Services satisfactorily completed and accepted by City. The amount of any payment made to Vehicle Maintenance Contractor prior to the date of termination of this Agreement shall be deducted from the amounts described in (1) and (2) above. Vehicle Maintenance Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 6(F) shall be applicable in the event of a termination for convenience.

F. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 20 and Vehicle Maintenance Contractor shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

21. DISPUTE RESOLUTION.

A. Should any dispute arise out of this Agreement, either party may request that it be submitted to mediation. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first requesting mediation and making a good faith attempt to reach a mediated settlement. Upon the written request of either party, the parties shall exchange documents reasonably necessary to a resolution of the dispute prior to the mediation. The mediation process, once commenced by a meeting with the mediator shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

22. CITY NOT OBLIGATED TO THIRD PARTIES. City shall not be obligated or liable for payment hereunder to any party other than the Vehicle Maintenance Contractor.

23. NON-DISCRIMINATION. Vehicle Maintenance Contractor shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

24. UNAUTHORIZED ALIENS. Vehicle Maintenance Contractor hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Vehicle Maintenance Contractor so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Vehicle Maintenance Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

25. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

26. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

27. REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

28. NO WAIVER OF DEFAULT. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

29. ENTIRE AGREEMENT AND AMENDMENT.

A. This document represents the entire and integrated agreement between City and Vehicle Maintenance Contractor and supersedes all prior negotiations, representations, and agreements, either written or oral.

B. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

C. This document may be amended only by written instrument signed by both City and Vehicle Maintenance Contractor.

30. SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

31. APPLICABLE LAW; VENUE. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court with jurisdiction over to San Luis Obispo County, if in federal court.

32. EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

33. AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Vehicle Maintenance Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Vehicle Maintenance Contractor is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall be effective on the date executed by City.

**VEHICLE MAINTENANCE CONTRACTOR:
FIRST TRANSIT**

By: _____

Name:

Title:

Date: _____

CITY OF EL PASO DE ROBLES

James L. App, City Manager

Date: _____

Approved as to Form:

Linda R. Beck, Special Counsel

Attest:

EXHIBIT A

To

AGREEMENT FOR TRANSIT VEHICLE MAINTENANCE SERVICES

SCOPE OF SERVICES AND INVENTORY OF VEHICLES TO BE SERVICED

SECTION 1 - SCOPE OF SERVICES

A. VEHICLE MAINTENANCE - GENERAL

1. General. At all times, Vehicle Maintenance Contractor shall ensure that all components of each vehicle, including but not limited to its body, frame, mechanical, electrical, hydraulic or other operating systems are maintained in proper working condition, free from damage and malfunction, at a level ready to satisfactorily pass a California Highway Patrol (CHP) inspection at all times. City will request that the Motor Carrier Unit of the California Highway Patrol annually prepare and submit to City a Safety Compliance Report (CHP 343) and Vehicle Inspection Reports (CHP 343A) for all vehicles specified in this agreement. Vehicle Maintenance Contractor must attain satisfactory rating in each category of the Safety Compliance Report (maintenance records, driver records, regulated equipment and terminal). Vehicle Maintenance Contractor must correct any deficiencies noted on any vehicle inspection report within 10 days or as required.

2. Vehicle Maintenance Contractor, at its sole cost and expense, shall maintain stores of and provide lubricants, repairs, parts, and supplies required for the maintenance and operation of all transit vehicles. All parts, suppliers and materials shall meet vehicle manufacturer standards and warranty requirements. Vehicle Maintenance Contractor shall keep sufficient inventory on hand to minimize vehicle downtime and ensure peak vehicle requirements are met (see also "Parts" section).

3. All repairs to vehicles utilized in transporting passengers under this contract with the City shall be performed by the Vehicle Maintenance Contractor, or other vendors and suppliers subject to prior approval by City. Vehicle Maintenance Contractor shall perform repair work expeditiously in response to identification of problems by drivers and recorded on Daily Vehicle inspection reports (DVIR's), as well as by other employees, or the City. Vehicle Maintenance Contractor shall assure City that no repairs shall be deferred beyond the next scheduled Preventive Maintenance Inspection (PMI).

4. Vehicle Maintenance Contractor must notify the transit dispatch office within 30 minutes of completed repairs and testing when the vehicle is ready to go back in service.

B. REQUIRED MAINTENANCE PROGRAMS

1. Preventative maintenance and needed repairs shall receive first priority. No vehicle will be placed in service that fails to comply with the Commercial Vehicle Safety Alliance North American Uniform Out-of-Service Criteria. <http://www.tn.gov/safety/CVE/NorthAmericanStandardOut-Of-ServiceCriteria.pdf>

2. Where the Vehicle Maintenance Contractor's employees, vehicle operators, or the City observe that maintenance is needed, the maintenance will be performed promptly and not be deferred on account of preventative maintenance schedules. Vehicle Maintenance Contractor shall not defer maintenance for reasons of shortage of maintenance staff or operable vehicles, nor shall transit service be curtailed for the purpose of performing maintenance without consent of City. The Vehicle

Maintenance Contractor shall adjust the maintenance work schedule as necessary to meet all scheduled services and complete preventative maintenance activities according to the schedule approved by City.

3. The Vehicle Maintenance Contractor shall supply with its Proposal copies of proposed work order forms, driver vehicle condition reports, and any other forms to be used for vehicle maintenance or other services. City reserves the right to provide its own inspection forms for use by the Vehicle Maintenance Contractor.

C. MAINTENANCE STAFF

1. The Vehicle Maintenance Contractor shall provide an adequate staff to maintain the fleet to City standards as described in this proposal.

2. The Vehicle Maintenance Contractor shall have mechanics on duty or on-call at all times when Transit vehicles are in service to respond to maintenance needs and road calls. The Vehicle Maintenance Contractor must provide certified Journey Mechanics to perform maintenance on air conditioning systems and must comply with all EPA, DOE, DOT and CARB requirements that require certifications to perform any and all maintenance. All staff that may operate City vehicles must be in possession the appropriate class California State CDL. The Vehicle Maintenance Contractor must provide knowledgeable, trained, and system-certified mechanics for corrective maintenance procedures, to include, but not limited to: electrical systems, heating and air conditioning, brake systems, hydraulics, fuel, body, wheelchair lifts, and steering systems. Work and worker qualifications must meet manufacturer requirements for warranties.

3. Maintenance Manager: Vehicle Maintenance Contractor must provide a fully qualified Maintenance Manager to oversee the City contract. This individual, subject to City approval, must meet the following qualifications: 1) be a fully credentialed journeyman mechanic with experience on the type of equipment in the City's fleet, 2) possess a minimum of five (5) years of maintenance management experience in a shop of comparable size involving buses, trucks, autos, and other equipment.

4. The Vehicle Maintenance Contractor shall submit with Proposal, the proposed staff for the maintenance of the fleet, including FTE equivalents, mechanics resumes including certifications, maintenance support programs and resources, and training.

5. Vehicle Maintenance Contractor shall provide information on mechanical training programs for mechanics, including ASE and other certifications, opportunities for ongoing training including those provided by the Vehicle Maintenance Contractor, and any premium pay program for mechanics with ASE or other certifications.

D. MAINTENANCE TRACKING

1. The Contractor shall comply with DOT & CHP regulations for tracking vehicle maintenance history. The Vehicle Maintenance Contractor shall provide reports on vehicle maintenance performed, preventative maintenance scheduling, fluid consumption, tracking of vehicle and component life-to-date mileages, tire tracking, warranty tracking and cost-per-mile reports. City reserves the right to request copies and review any and all documents of repairs made to the vehicles as well as outside repairs made to the vehicles or vehicle components. The Vehicle Maintenance Contractor will submit a monthly preventative maintenance compliance report to City verifying the completion of PM inspections and services during the previous month to be submitted by the fifth day of each month. Vehicle Maintenance Contractor shall submit, as part of any Proposal, detailed information and sample documents of the maintenance tracking program. At the termination of the agreement at its normal expiration or any other point, all maintenance records must be made available to the City in a form acceptable to City.

2. Vehicle Maintenance Contractor shall maintain all maintenance records, such that the annual CHP inspection will be using the contractor's records, with no assistance from the City.

3. **CORRECTIVE MAINTENANCE.** Any vehicles found with safety defects or safety-related defects will be placed out of service immediately. The Vehicle Maintenance Contractor's maintenance program shall demonstrate procedures for minimizing vehicles being placed out of service for mechanical reasons.

SECTION 2 - PREVENTATIVE MAINTENANCE PROGRAM

A. Regular Preventative Maintenance will be performed in accordance with City's standard maintenance intervals as specified by, but not limited to, OEM requirements.

B. The Preventative Maintenance program shall be an aggressive program having regularly scheduled preventative maintenance inspections every 3,000 miles or 45 days. The Vehicle Maintenance Contractor, at a minimum, shall follow OEM service requirements and interval for equipment operated under the Normal Service Conditions. Any change in service/preventative maintenance intervals, unless otherwise must be approved by City.

C. Preventative Maintenance Inspection forms shall be provided by Vehicle Maintenance Contractor and approved by the City. Any safety defects found during various inspections, including driver inspections, shall be repaired prior to the vehicle going back into service. Any other repairs needed, resulting from or cited during the preventative maintenance inspection, that prevents the vehicle going back into service, shall be completed within two (2) days unless the City is notified otherwise by the Vehicle Maintenance Contractor with a subsequent anticipated completion date.

SECTION 3 - AIR CONDITIONING/HEATING SYSTEM MAINTENANCE.

An air conditioning system maintenance inspection shall be performed with each inspection. Air conditioning systems are expected to be functional year-round. However, a more detailed air conditioning inspection and service shall be performed annually in April/May of each year. In addition, Vehicle Maintenance Contractor shall perform a seasonal inspection and service of each vehicle's heating system during October of each year. The inspections shall include, but not be limited to, OEM requirements. If Vehicle Maintenance Contractor is performing this work in-house, Vehicle Maintenance Contractor must have certified Journey Level Mechanics performing the A/C work. The Vehicle Maintenance Contractor shall keep an up-to-date record required by the EPA and CARB of all air-conditioned maintenance performed on all vehicles. Said record shall be made available to City.

SECTION 4 - ENGINE MAINTENANCE

A. It is City's goal to maximize the service life of each engine prior to overhaul or replacement. A good preventative maintenance program and repairs made prior to major failures should give each engine a life expectancy of a minimum of 150,000 miles.

B. In addition, oil leaks shall be repaired as required to ensure minimal oil leakage on roads, parking lots, and layover points. Engine tune-ups shall be performed based on OEM recommendations under Severe Service Conditions.

C. Should total engine failure occur, the vendor will be responsible for obtaining an estimate for the replacement of the engine and forwarding the estimate to the City within 7 days. The City will decide if the engine should be replaced, at an additional cost to the City, or whether the bus should be permanently removed from transit service. Notification to vendor will occur within 7 days.

SECTION 5 - PASSENGER LIFT MAINTENANCE

Wheelchair lifts shall be maintained in accordance with OEM and City standards. Vehicle Maintenance Contractor shall possess any certifications necessary to maintain and repair wheelchair lifts. In addition to scheduled PMI's an annual inspection shall be made of each vehicle equipped with a wheelchair lift. The Vehicle Maintenance Contractor shall provide a copy of the inspection form with its proposal inspections and adjustments shall be made in accordance with the manufacturer's recommendations.

SECTION 6 - OTHER INSPECTIONS BY THE CITY

A. The City, or its designated representatives, shall be entitled, at all times, to conduct inspections of any facility or records of the Vehicle Maintenance Contractor or Subcontractor in order to determine compliance with the provisions hereof. Nothing in this provision or any other inspection or approval by City of any vehicle shall relieve Vehicle Maintenance Contractor of its obligation to maintain and operate each vehicle in strict compliance with the provisions hereof.

B. EMISSIONS INSPECTIONS. The Vehicle Maintenance Contractor will be responsible for any emissions tests or inspections of each vehicle according to Federal, State, and local requirements.

C. ROAD TESTING. The Vehicle Maintenance Contractor must conduct a road or other appropriate operating test on all vehicles that have had safety-related repairs or adjustments (e.g., brakes, steering, lifts, etc.). These vehicles must be deemed safe to operate by the Vehicle Maintenance Contractor prior to return to service.

SECTION 7 - WASTE MANAGEMENT

A. The Vehicle Maintenance Contractor will be responsible for the lawful disposal of all wastes (e.g., used oils, oil filters, coolants, tires, etc.) generated during the course of the contract.

B. Disposal of all waste materials will be done in accordance with local, state and federal laws and regulations. The Vehicle Maintenance Contractor will train its employees in working with and handling hazardous materials. The Vehicle Maintenance Contractor will obtain any necessary permits for storage, handling, and disposal.

C. The Vehicle Maintenance Contractor will maintain records, including up-to-date Material Safety Data Sheets (MSDS) and contingency plans for handling a spill or other mishap, on all hazardous chemicals and other hazardous wastes, which will contain the materials' origin, use, transportation, and ultimate distribution and disposal. The agreement will indemnify City from liability (including fines, penalties, and/or enforcement actions) for all actions of the Vehicle Maintenance Contractor and its agents relating to waste disposal, transportation and environmental releases of hazardous substances.

SECTION 8 - OUTSIDE REPAIRS

The Vehicle Maintenance Contractor will be responsible for arranging and managing outside repairs which cannot be performed by Vehicle Maintenance Contractor. These outside repairs may include bodywork and painting, glass replacement, transmission sealing and repair, upholstery, radiator work, alternator work, towing and other work to be outlined in Vehicle Maintenance Contractors Proposal. All responsibility for paperwork, invoicing, quality control, vehicle movement, vehicle security, etc. associated with outside repairs will be that of the Vehicle Maintenance Contractor. Invoices from vendors utilized by the Vehicle

Maintenance Contractor will be accepted and paid solely upon prior approval of the subcontractor and pricing by the City.

SECTION 9 - TIRE MANAGEMENT

The Vehicle Maintenance Contractor will be responsible for arranging and managing tire repair and replacement. Proposal shall include the tire management program, and describing efforts to maximize tire life. All responsibility for paperwork, invoicing, quality control, vehicle movement, vehicle security, etc. related to tire management will be that of the Vehicle Maintenance Contractor. Subcontractor invoices will be accepted and paid solely upon prior approval of the price and of the subcontractor by City. Tire vendors are to be specified in the Proposal. Contactor shall also furnish and maintain equipment for tire mounting and dismounting.

SECTION 10 - PICK-UP AND DELIVERY OF VEHICLES

City Transit vehicles are stored at the City Transit vehicle storage yard at 800 Pine Street, Paso Robles. The Vehicle Maintenance Contractor is required to arrange for the pickup and delivery of the vehicles from this location to any maintenance or vendor facilities.

SECTION 11 - RE-REPAIRS

The Vehicle Maintenance Contractor shall track and identify re-repairs. Subsequent repair orders on re-repairs shall be clearly marked as such. Re-repairs shall not include any costs in billings presented to City without prior written approval.

SECTION 12 - ROAD CALLS

The Vehicle Maintenance Contractor shall provide emergency road service, including towing service, for vehicles in the City Transit fleet. The Vehicle Maintenance Contractor shall either address the mechanical issue on site, or tow any vehicle requiring this service upon approval by City. Vehicle Maintenance Contractor shall immediately provide a replacement vehicle for any road calls to a vehicle in revenue service to minimize impact on operations. The Vehicle Maintenance Contractors Proposal should describe procedures for minimizing the number of road calls and preventing chances of recurrence.

SECTION 13 - WARRANTY WORK

The Vehicle Maintenance Contractor shall arrange with manufacturer approved shops all vehicle repairs covered under warranty. Vehicle Maintenance Contractor shall assure that OEM parts are used for all warranty work. Vehicle Maintenance Contractor shall monitor the status of warranty-covered work, and report to the City all warranty work as part of its maintenance reporting. Description of contactor software and procedures for monitoring warranty work shall be included in the Proposal

SECTION 14 - PERFORMANCE

The timely performance of non-PMI repairs is defined as completion within three (3) working days of the Vehicle Maintenance Contractor taking possession of the vehicle. If the Vehicle Maintenance Contractor fails to perform repair activities, or fails to maintain vehicle safety

and reliability, they shall be notified in writing by the City. The Vehicle Maintenance Contractor shall then have ten (10) days (or such period as City may authorize in writing) to cure such failure, and in writing state a method or plan preventing recurrence of such failure. Non-compliance of the performance provisions and failure to produce cure may result in contract termination.

SECTION 15 - PARTS

The Vehicle Maintenance Contractor shall procure, stock, store, and furnish all parts and supplies required to maintain and repair City Transit vehicles. The Vehicle Maintenance Contractor shall maintain a sufficient inventory at all times to accommodate the on-going PMI schedule including common repair items. Proposals shall include a detailed description of the Vehicle Maintenance Contractors inventory control system.

All parts, materials, lubricants, fluids, oils, and equipment used by the Vehicle Maintenance Contractor shall meet or exceed OEM specifications and requirements. These include but are not limited to electronic and/or computer diagnostic and repair equipment, which interacts with systems components on the vehicle to allow correct diagnosis and repair.

SECTION 16 - RECORDS

A. The Vehicle Maintenance Contractor shall provide an electronic maintenance management system. This system shall have the capability to record each service or repair provided on each vehicle, produce summaries of services, produce a complete vehicle history of repair, and other specialized reports of maintenance data that City may require.

B. The Vehicle Maintenance Contractor shall provide City with detailed work orders upon completion of all repairs, to include time of repair, part costs, diagnosis, trouble shooting, and corrective actions taken.

C. The Vehicle Maintenance Contractor must also make available upon request all computerized and hard data, books, records, correspondence, instructions, drawings, receipts, vouchers, and memorandum pertaining to work for the City agreement for auditing purposes if so requested by City. A sample work order and monthly report should be included in any Proposal. Vehicle Maintenance Contractor may use additional systems for maintenance tracking, including systems to monitor cost and time efficiency in repairs and trends in the fleet's mechanical performance should also be described, and samples included, in any proposal.

D. Service records must be kept for all vehicles, retained for a period of not less than two (2) years, and must be available to the City for inspection at any time.

SECTION 17 - VEHICLE CLEANING

A. Vehicle Maintenance Contractor shall be responsible for the removal of any graffiti or other blemishes on the interior or exterior of the vehicles.

B. Interior seats shall be maintained in proper operating condition at all times. All tears, gum, burns, graffiti and other damage shall be repaired in a professional manner immediately upon their discovery. Vehicle Maintenance Contractor shall replace seats or covers which are worn or cannot be professionally repaired and/or cleaned, using materials which are identical in design and color as those materials being replaced.

C. Vehicle washing and detailing shall be arranged by the Vehicle Maintenance Contractor, should the City request this service. Any vendor sought for this service must be approved by the City.

SECTION 18 - FUELING

The City will provide access to commercial fueling at a location within the City. Vehicles should be returned to revenue service after mechanical work with full fuel levels.

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INSERT VEHICLE INVENTORY

EXHIBIT B
To
AGREEMENT FOR TRANSIT VEHICLE MAINTENANCE SERVICES
HOURLY RATES

EXHIBIT C
to
TRANSIT VEHICLE MAINTENANCE AGREEMENT
INSURANCE REQUIREMENTS

Vehicle Maintenance Contractor shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Vehicle Maintenance Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Vehicle Maintenance Contractor agrees to amend, supplement or endorse the existing coverage to do so. Vehicle Maintenance Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Vehicle Maintenance Contractor in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence, \$2 million aggregate.

2. Garage Keeper's Liability – Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of \$1 million.

3. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Vehicle Maintenance Contractor or its employees will use personal autos in any way in connection with performance of the Services, Vehicle Maintenance Contractor shall provide evidence of personal auto liability coverage for each such person.

4. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1 million per occurrence.

5. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Vehicle Maintenance Contractor, subcontractors or others involved in performance of the Services. The scope of coverage provided is subject to

approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Vehicle Maintenance Contractor. Vehicle Maintenance Contractor and City agree to the following with respect to insurance provided by Vehicle Maintenance Contractor:

a. Vehicle Maintenance Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Vehicle Maintenance Contractor also agrees to require all contractors, and subcontractors to do likewise.

b. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Vehicle Maintenance Contractor, or Vehicle Maintenance Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Vehicle Maintenance Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

c. All insurance coverage and limits provided by Vehicle Maintenance Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

e. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

f. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Vehicle Maintenance Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

g. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Vehicle Maintenance Contractor's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 22 of the Agreement.

h. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Vehicle Maintenance Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

i. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Vehicle Maintenance Contractor or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

j. Vehicle Maintenance Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the Services by Vehicle Maintenance Contractor, provide the same minimum insurance coverage required of Vehicle Maintenance Contractor. Vehicle Maintenance Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Vehicle Maintenance Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

k. Vehicle Maintenance Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Vehicle Maintenance Contractor or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Vehicle Maintenance Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Vehicle Maintenance Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

l. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Vehicle Maintenance Contractor ninety (90) days advance written notice of such change. If such change results in additional cost to the Vehicle Maintenance Contractor, and the City requires Vehicle Maintenance Contractor to obtain the additional coverage, the City will pay Vehicle Maintenance Contractor the additional cost of the insurance.

m. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

n. Vehicle Maintenance Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Vehicle Maintenance Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

- o. Vehicle Maintenance Contractor will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Vehicle Maintenance Contractor is unable to do so, Vehicle Maintenance Contractor will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.
- p. Vehicle Maintenance Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Vehicle Maintenance Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
- q. The provisions of any workers' compensation or similar act will not limit the obligations of Vehicle Maintenance Contractor under this agreement. Vehicle Maintenance Contractor expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.
- r. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- s. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
- t. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
- u. Vehicle Maintenance Contractor agrees to be responsible for ensuring that no contract entered into by Vehicle Maintenance Contractor in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- v. Vehicle Maintenance Contractor agrees to provide immediate notice to City of any claim or loss against Vehicle Maintenance Contractor arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

END OF EXHIBIT C

RESOLUTION NO. 13-xxx

A RESOLUTION OF THE CITY OF EL PASO DE ROBLES
APPROVING A CONTRACT WITH FIRST TRANSIT FOR TRANSIT FLEET
MAINTENANCE SERVICES

WHEREAS, The City issued a Request for Proposals for transit fleet maintenance services, and

WHEREAS, a Proposal and a Best and Final Offer (BAFO) were received from First Transit., and

WHEREAS, the Proposal's cost to provide transit fleet maintenance services would likely result in a cost savings to the City;

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the Contract for Transit Fleet Maintenance Services is awarded to First Transit, and

BE IT FURTHER RESOLVED that the Director of Administrative Services is hereby authorized to execute a contract with First Transit.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of April 2013 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk