



CITY OF EL PASO DE ROBLES
"The Pass of the Oaks"

CITY COUNCIL AGENDA
Tuesday, January 5, 2010 7:30 PM

ADDENDUM
to Regular Meeting

MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL
CONFERENCE CENTER, 1000 SPRING STREET

DISCUSSION ITEM

10. Transit Fleet Lease to First Transit

J. Throop, Administrative Services Director

Replacement report and attachments for Transit Fleet Lease to First Transit.

OPTIONS:

- A. Adopt Resolution No. 10-XXX approving the amendment of the Transit Services Agreement to include the lease of transit vehicles to the City's transit operator, First Transit, or
- B. Amend, modify or reject the above option

ROLL CALL VOTE

*** End of Addendum ***

TO: James L. App, City Manager
FROM: Jim Throop, Director of Administrative Services
SUBJECT: **Transit Fleet Lease to First Transit**
DATE: January 5, 2009

NEEDS: For the City Council to consider a lease agreement for the City's Transit Fleet to First Transit, Inc.

- FACTS:**
1. The City contracts with First Transit (formerly Laidlaw Transit Services) to provide Dial-A-Ride (DAR) and Fixed route services (the Paso Express and North County Shuttle).
 2. The option of leasing the vehicles used in the City's transit service to First Transit exists in the current operating agreement.
 3. Leasing the buses to First Transit would reduce the city's risk/liability/exposure.
 4. The city would continue to be responsible for providing fuel and maintenance services for the transit fleet.
 5. A fee of one dollar (\$1.00) per year would be paid by First Transit to the City for the vehicle lease.
 6. The ownership of the buses would stay with the City of Paso Robles.
 7. The lease agreement would automatically terminate should the operating contract be terminated or not renewed.

ANALYSIS &

CONCLUSION: The City currently owns and operates a fleet of eleven (11) transit buses. One (1) bus is used for Dial-A-Ride and the remaining ten (10) buses are used for the Paso Express and North County Shuttle fixed-route service

Currently all of the City's transit fleet is registered in the City's name, even though the buses are operated by the City's transit services operator, First Transit. As a means to reduce risk and liability exposure to the City, a lease is recommended between the City and its service provider, First Transit, that would include all of the transit fleet buses.

It is typical for most cities' to lease city-owned transit vehicles to their transit operators. According to First Transit, the City's current contracted operator, the City of Paso Robles is one of the only transit systems to have not entered into a lease agreement. The lease agreement would simply state that the transit system vehicles would be leased to First Transit for one dollar (\$1.00) per year. The lease agreement would remain in effect until the current operating contract expires or terminates for any reason.

By leasing the vehicles to First Transit, the City decreases its exposure in terms of risk and liability. However, it will not completely remove all risk/liability/exposure, but does lessen the impact upon the City should an accident occur.

The City would continue to legally-own and maintain the transit vehicles.

FISCAL

IMPACT:

No direct fiscal impact, though the reduction in the City's risk/liability/exposure could be viewed as a possible cost-avoidance.

OPTIONS:

- A. Adopt Resolution No. 10-XXX approving the amendment of the Transit Services Agreement to include the lease of transit vehicles to the City's transit operator, First Transit, or
- B. Amend, modify or reject the above option

RESOLUTION NO. 10-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING AMENDMENT TO TRANSIT SERVICES AGREEMENT AND LEASE OF
TRANSIT VEHICLES TO FIRST TRANSIT, INC.

WHEREAS, the City of Paso Robles provides public transit services through its operations contractor, First Transit Inc. (formerly Laidlaw Transit Services, Inc.); and

WHEREAS, the City maintains a current fleet of 11 vehicles for providing transit services; and

WHEREAS, the City's exposure to risk and liability would be reduced by the leasing of transit vehicles to First Transit; and

WHEREAS, First Transit has agreed to lease the City's transit fleet for the sum of One Dollar (\$1.00) per year;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of El Paso de Robles to approve the First Amendment to the Transit Services Agreement, attached hereto as Exhibit A and incorporated herein by reference, to include a lease of the City's transit fleet to First Transit; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute the First Amendment to the Transit Services Agreement and the Vehicle Lease Agreement, subject to any non-substantive, technical changes approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 5th day of January 2010 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Lonnie Dolan, Deputy City Clerk

FIRST AMENDMENT TO TRANSIT SERVICES AGREEMENT

This First Amendment to Transit Services Agreement (“First Amendment”) is entered into _____ day of _____, 2010, by and between the City of Paso Robles, a municipal corporation (“City”) and First Transit, Inc., a Delaware corporation (“Contractor”).

Recitals

A. City and Laidlaw Transit Services, Inc. a Delaware corporation, (“Laidlaw”) entered into a Transit Services Agreement (The September 1, 2007, for the provision of certain transit services by Laidlaw for City.

B. Contractor is the successor-in-interest to Laidlaw.

C. Lessor desires to lease to Contractor, and Contractor is willing to lease, the vehicles used by Contractor to provide the services under the Services Agreement.

Agreements

A. City and Contractor hereby agree that the Vehicle Lease Agreement, attached hereto as Exhibit A and incorporated herein by reference, shall be made a part of the Services Agreement.

B. Section 15 of the Services Agreement is hereby revised in its entirety to read as follows:

"15. Notices. Service of all notices under this Agreement shall be sufficient if given personally or mailed to the party involved at its respective address set forth below, or at such address as each party may provide in writing to the other party. Any notice mailed shall be effective when deposited in the United States mail, duly addressed, and with postage prepaid.

To Lessee: First Transit, Inc.

with a copy to: _____

To Lessor: City of El Paso de Robles
1000 Spring Street
Paso Robles, California 93446

Attn: Jim Throop

With a copy to: Iris Yang
McDonough Holland & Allen PC
500 Capitol Mall, 18th Floor
Sacramento, CA 95814"

C. Except as modified by this First Amendment, all other terms and conditions of the Services Agreement shall remain in full force and effect.

City of Paso Robles, a municipal corporation

By: _____
James L. App, City Manager

Attest:

By: _____
Dennis Fansler, City Clerk

"CITY"

First Transit, Inc., a Delaware corporation

By: _____

Name:

Title:

"CONTRACTOR"

VEHICLE LEASE AGREEMENT

This Vehicle Lease Agreement ("**Lease**") is made on _____, 2010 (the "**Execution Date**"), by and between the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California ("**Lessor**" or "**City**"), and FIRST TRANSIT, INC., a Delaware corporation ("**Lessee**"), successor in interest to Laidlaw Transit Services, Inc., a Delaware corporation ("**Laidlaw**"), who agree as follows:

RECITALS

A. Lessor and Laidlaw entered into that certain Transit Services Agreement (the "**Services Agreement**"), dated September 1, 2007, whereby Lessor contracted with Laidlaw to provide transportation management and operations for the transit systems of the City.

B. Laidlaw merged with First Transit, Inc. on June 30, 2008.

C. Lessor is the owner of the vehicles used by Lessee in the performance of the Services Agreement. Lessor and Lessee hereby desire to execute this Lease to set forth the terms and conditions for the lease of certain vehicles to Lessee to effectuate the purpose of the Services Agreement and for the convenience of the parties.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Lease. Subject to the terms and conditions set forth in this Lease, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the vehicles and other property described in Exhibit A attached hereto (individually and collectively, the "**Vehicles**").

2. Term. The term (the "**Term**") of this Lease shall commence upon the Execution Date and expire automatically upon the expiration or earlier termination of the Services Agreement.

3. Rent; Payment.

(a) Rent. In consideration for the leasing of the Vehicles, Lessee agrees to pay to Lessor as rent ONE AND NO/100 DOLLARS (\$1.00) per year ("**Rent**"), due on the Execution Date and on July 1 of each subsequent year thereafter during the Term.

(b) Place of Payment. Lessee shall pay Lessor the Rent described in Section 3(a) at the office of Lessor, located at 1000 Spring Street, Paso Robles, California 93446.

(c) Late Payment; Interest. Should Lessee fail to pay any part of the Rent or any other sum required by Lessee to be paid to Lessor, within thirty (30) days after the due date, the past due payment shall bear interest from the date due at the rate of ten percent (10%) per annum, or the maximum rate allowed by law.

4. Use. Lessee shall use the Vehicles in a careful and proper manner, in compliance with manufacturer's guidelines and warranty requirements, and Lessee shall comply with all federal, state, and municipal laws, ordinances, and regulations relating to possession, use, or maintenance of the Vehicles. Lessee shall have the exclusive right to direct and control operation of the Vehicles and shall not use the Vehicles for a purpose other than their intended use.

5. Cleaning of Vehicles. Lessee shall ensure the Vehicles are kept clean and maintained in accordance with the terms and conditions of this Section 5.

(a) Cleaning Materials. Lessee shall be responsible for providing all appropriate cleaning equipment and supplies (collectively, "**Cleaning Materials**") required to satisfy the conditions of this Section 5. All Cleaning Materials shall be approved by Lessor prior to their use and Lessor shall provide reasonable storage for such materials.

(b) Cleaning Standards. Lessee shall clean and maintain each Vehicle as set forth below (collectively, "**Cleaning & Maintenance**"):

(i) General Vehicle Cleaning Standards. Lessee shall remove any and all foreign materials from each Vehicle, in a professional manner, immediately upon their discovery in or upon any Vehicle including, but not limited to, gum, litter, newspapers, and graffiti.

(ii) Daily Vehicle Cleaning Standards. Lessee shall completely clean the interior of each Vehicle, in a professional manner, daily including, but not limited to, (i) washing all windows, (ii) removing all dust from seats, dashboards, wheel wells, rails, ledges and wheelchair lifts; (iii) removing all fingerprints and head prints; (iv) sweeping all floor areas and mopping all liquid spills; (v) emptying and removing all trash; and (vi) ensuring each Vehicle is free of all paper, gum and debris.

(iii) Weekly Vehicle Cleaning Standards. Lessee shall completely wash the exterior of each Vehicle, in a professional manner, every seven (7) days.

(iv) Vehicle Detailing. Lessor may request, at its option and expense, that each Vehicle periodically receive a more thorough Vehicle Detailing of the interior and exterior of each Vehicle.

(c) Subcontractor. Lessee may subcontract with a third party vendor for performance of the required services under this Section 5 only upon securing Lessor's prior written approval, which such approval shall not be unreasonably withheld.

(d) Reimbursement. Lessor shall reimburse Lessee monthly for reasonable direct costs incurred by Lessee in purchasing the Cleaning Materials and performing Cleaning & Maintenance, in an amount not to exceed _____ AND ___/100 (\$_____.__) per month. No later than the last day of each month, Lessee shall submit to Lessor all receipts and supporting documentation evidencing Lessee's reasonable costs for purchasing the Cleaning Materials and performing Cleaning & Maintenance for the then current month or, in the alternative, for the costs of subcontracting with an approved third party vendor for the

performance of such cleaning services (a "**Reimbursement Application**"). Lessor shall review the Reimbursement Application and reimburse Lessee for those costs Lessor determines, in its reasonable discretion, constitute reasonable direct costs related to the performance of Cleaning & Maintenance for the respective month. Any reimbursement by Lessor shall be made no later than ten (10) days after receipt of a Reimbursement Application.

6. Alterations. Lessee shall not make any alterations, additions, or improvements to the Vehicles without Lessor's prior written consent. All additions to and improvements of the Vehicles shall belong to and become the property of Lessor on the expiration, or earlier termination of this Lease.

7. Lessor's Inspection. Lessor shall have the right during business hours and upon reasonable notice to enter into and on the premises where the Vehicles may be located for the purpose of inspecting the Vehicles or observing their use. Lessee shall give Lessor immediate notice of any attachment or other judicial process affecting any portion of the Vehicles.

8. Insurance. Lessee, at its own expense, shall maintain insurance on the Vehicles at a level which is customary under the circumstances and, at a minimum, in accordance with Section 23 of the Services Agreement.

9. Representations and Warranties.

(a) Use of Vehicles. Lessee represents and warrants that Lessee is capable of using and maintaining the Vehicles for their intended use.

(b) Authority. Lessee represents and warrants that it is duly authorized to execute all agreements, documents and instruments in connection with this Lease and that it has full authority to enter into this Lease.

(c) Accuracy. Lessee represents and warrants that the information provided pursuant to this Lease is and shall be true, correct, valid and genuine.

10. Indemnity. Lessee agrees to indemnify and hold Lessor and its respective council members, commissioners, employees, agents, officials, representatives, volunteers, insurers, predecessors, successors and assigns, and each of them, in their individual or fiduciary capacities, separately and collectively, harmless from all damages, claims, demands, losses, or causes of action, including attorneys' fees and costs, arising out of, connected with, or resulting from the Vehicles, including without limitation, the use or operation of the Vehicles. Lessee's obligation to indemnify Lessor excludes the sole negligence or willful misconduct of Lessor. This provision shall survive the termination or expiration of this Lease and is made for the benefit of and will be enforceable by Lessor.

11. Limitations on Lessor's Liability. LESSOR SHALL NOT HAVE ANY RESPONSIBILITY TO LESSEE OR ANY OTHER PERSON, WHETHER ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, FOR ANY LIABILITY, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE VEHICLES OR THE USE OR OPERATION THEREOF, OR ANY CONSEQUENTIAL DAMAGES, INCLUDING THOSE FOR INTERRUPTION OF SERVICE, LOSS OF

BUSINESS OR OTHER ANTICIPATED PROFITS, UNLESS SUCH LIABILITY, LOSS OR DAMAGE RESULTS DIRECTLY FROM LESSOR'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT.

12. Default. The occurrence of any of the following events shall, at the option of the Lessor, terminate this Lease and Lessee's right to possession of the Vehicles:

- (a) The nonpayment of Rent, or other fees owed to Lessor, by Lessee for a period of thirty (30) days after such payment is due and payable;
- (b) The default by Lessee under any term, covenant or condition of this Lease;
- (c) The subjection of any Vehicle to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or
- (d) Lessee becoming in default under the Services Agreement.

13. Remedies Upon Default. On the happening of any of the events described in Section 12, Lessor shall have the right to exercise any one or more of the following remedies:

- (a) To sue for and recover all Rents, and other payments, then accrued or thereafter accruing, with respect to the Vehicles and this Lease;
- (b) To take possession of the Vehicles, without demand or notice, wherever it may be located, without any court order or other process of law; and
- (c) To pursue any other remedy at law or in equity.

Lessor's remedies are cumulative, and may be exercised concurrently or separately.

14. Attorneys' Fees. In the event that any legal proceeding arises from any dispute between Lessor and Lessee relating to this Lease, the prevailing party in any such proceeding shall be entitled to recover its attorneys' fees and costs incurred, in addition to any other relief to which it may be entitled.

15. Lessee's Assignment. Without Lessor's prior written consent, Lessee shall not (i) assign, transfer, pledge, or hypothecate this Lease, the Vehicles or any part of the Vehicles, or any interest in the Vehicles, or (ii) sublet or lend the Vehicles or any part of the Vehicles to be used by anyone other than Lessee or Lessee's employees. Lessor's consent to any of these acts applies only in the specific instance and is not a consent to any subsequent act by Lessee or any other person.

16. Lessor's Assignment. All rights of Lessor under this Lease may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without notice to Lessee. If Lessor assigns this Lease or the rentals due or any interest under this Lease, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor shall excuse performance by Lessee of any provision of this Lease, provided that Lessor's assignee shall promptly cure any defaults by Lessor and thereafter perform all duties, covenants, or conditions required to be performed by Lessor under the terms of this Lease.

17. Ownership. The Vehicles are, and shall at all times be and remain, the sole and exclusive property of Lessor, and Lessee shall have no right, title, or interest in the Vehicles except as expressly set forth in this Lease and the Services Agreement. During the Term, Lessee shall be the registered owner of the Vehicles.

18. Location of Vehicles. Lessee shall not, without prior written consent of Lessor, store the Vehicles in any location other than _____.

19. Successors and Assigns. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

20. Notices. Service of all notices under this Lease shall be sufficient if given personally or mailed to the party involved at its respective address set forth below, or at such address as each party may provide in writing to the other party. Any notice mailed shall be effective when deposited in the United States mail, duly addressed, and with postage prepaid.

To Lessee: First Transit, Inc.

With a copy to: _____

To Lessor: City of El Paso de Robles
1000 Spring Street
Paso Robles, California 93446

Attn: Jim Throop

With a copy to: Iris Yang
McDonough Holland & Allen PC
500 Capitol Mall, 18th Floor
Sacramento, CA 95814

21. Entire Agreement; Modification; Waiver. This Lease constitutes the entire agreement between Lessor and Lessee, and it shall not be amended, altered, or changed except by a written agreement signed by Lessor and Lessee. No waiver of any provision of this Lease shall be deemed or constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Services Agreement. The terms and conditions of this Lease are in addition to, and shall not supersede or amend, the terms and conditions of the Services Agreement.

23. Gender and Number. Whenever the context of this Lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural. Whenever the word "Lessor" is used in this Lease, it shall include assignees of Lessor.

24. Headings. The headings to the sections of this Lease are solely for the convenience of the parties, and are not intended as an aid in the interpretation of the instrument.

25. California Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

26. Invalidity. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected.

27. Time. Time is of the essence as to this Lease and each and all of its provisions.

28. Incorporation of Recitals. The Recitals set forth above, and all defined terms and exhibits set forth in such recitals and in the introductory paragraph preceding the Recitals, are hereby incorporated into this Lease as if set forth in full.

LESSOR:

CITY OF EL PASO DE ROBLES,
a municipal corporation of the State of California

By: _____
Name: _____
Title: _____

Approved as to Form:

By: _____
Name: Iris Yang
Title: City Attorney

-AND-

LESSEE:

FIRST TRANSIT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

CITY TRANSIT VEHICLE ROSTER - DECEMBER 2009

City ID #	Type of Service:	Year	Make	Model	Vehicle VIN	Veh. Lic #	Mileage as of 12/15/09
13	(Backup vehicle for all services)	2002	Ford E-450	EI Dorado	1FDWE45F12HA61289	909551	186,549
14	Paso Express - Fixed Route	2002	Ford E-450	EI Dorado	1FDWE45F82HA61290	909550	184,482
15	Paso Express - DAR	2002	Ford E-450	EI Dorado	1FDWE45FX2HA61291	1120723	185,106
16	Paso Express - DAR	2003	Ford E-450	EI Dorado	1FDWE45FX3HB83778	1174599	184,336
17	Paso Express- Fixed Route	2003	Ford E-450	EI Dorado	1FDWE45F13HB83779	1174598	181,107
18	Paso Express- Fixed Route	2004	Ford E-450	EI Dorado	1FDXE45P54HB23700	1190494	112,529
19	Paso Express- Fixed Route	2006	Chevrolet	EI Dorado	1GBG5V12X4F522901	1213589	113,483
20	North County Shuttle	2007	Chevrolet	EI Dorado	1GBG5V1997F421334	1258080	80,374
21	Paso Express- Fixed Route	2007	Chevrolet	EI Dorado	1GBG5V19X7F421455	1258079	74,247
22	Paso Express- Fixed Route	2007	Chevrolet	EI Dorado	1GBG5V1997F421270	1258078	64,453
23	North County Shuttle	2009	Chevrolet	EI Dorado	1GBG5V1939F406668	1322217	27,420