

## AGREEMENT FOR TRANSPORTATION SERVICES (POINT TO POINT)

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the CITY OF POMPANO BEACH, a Florida municipal corporation, having its principal office located at 100 W. Atlantic Boulevard, Pompano Beach, Florida 33060 (referred to as "CITY"), and CIRCUIT TRANSIT INC. (referred to as "CONTRACTOR"), authorized to do business in Florida, whose address is 777 S. Flagler Drive, Suite 800 W, West Palm Beach, FL 33401; collectively referred to as "the Parties."

**WHEREAS**, the CITY issued a Request for Proposals ("RFP") for Micro-Transit Transportation Services, RFP No. P-29-20, on August 10, 2020; and

**WHEREAS**, Circuit Transit Inc. submitted its response to the CITY's RFP for Micro-Transit Transportation Services; and

**WHEREAS**, on December 8, 2020, the CITY Commission directed staff to begin negotiations with Circuit Transit, Inc.; and

**WHEREAS**, the Parties desire to enter into this Agreement to provide Micro-Transit Transportation Services (the "Services") consistent with the CONTRACTOR's response to the RFP Proposal; and

**WHEREAS**, the CITY finds that this Agreement serves a municipal and public purpose and conforms to the requirements of Florida law;

**NOW THEREFORE**, in consideration of the promises, mutual covenants, provisions and undertakings contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Incorporation of Recital. The above recitals are true and correct and are incorporated by reference.

2. Scope of Services

2.1 The CONTRACTOR shall provide Services to the CITY, in accordance with and pursuant to CONTRACTOR's Proposal, and the terms and conditions of this Agreement. The Services may be adjusted based upon the needs of the users, and may be adjusted by mutual agreement of the Parties and their execution of a written amendment to this Agreement. Notwithstanding the foregoing, to the extent that the terms and conditions of this Agreement conflict with the terms and conditions of the CONTRACTOR's Proposal, this Agreement shall control.

2.2 CONTRACTOR shall provide a year-round point to point transportation program that will provide the City of Pompano Beach residents, visitors, and business employees ("Riders") with convenient and efficient transportation options. The Service should be hospitality

oriented, and may include supplementary service during special events requiring vehicles, personnel, and resources.

2.3 Micro-Transit Transportation Services. CONTRACTOR will be responsible for providing the Services within the boundaries of the Service Area as shown in the map in **Exhibit "A"**, which is attached and incorporated in this Agreement by reference.

2.4 The goals of the Services to be provided by CONTRACTOR are to do the following:

- 2.4.1. Operate a demand-response system throughout the boundaries of the Service Area indicated in **Exhibit "A"**. All rides shall either commence or terminate within the boundaries of the Core Service Area described in **Exhibit "A."** The demand-response system boundaries served by CONTRACTOR may be changed upon the execution of a written amendment to the Agreement executed by the CONTRACTOR and the CITY's City Manager or their authorized representatives.
- 2.4.2. Provide a safe and pleasing passenger experience with capable, qualified and courteous drivers that will serve as ambassadors, more specifically described in Section 2.6.
- 2.4.3. Feature a mobile application with which the user will be able to locate their position and flag a proximate, available vehicle to make the pickup.
- 2.4.4. Cut down time workers and visitors spend in their vehicles circling and idling in the hopes of finding parking adjacent to their destination.
- 2.4.5. Allow users to get to their destination within the Service Area without the need to drive, park or even own a personal vehicle.
- 2.4.6. Reduce traffic and vehicle emissions in the Service Area.

2.5 CONTRACTOR shall utilize no less than three (3) Neighborhood Electric Vehicles (NEV), and at least one (1) wheelchair-accessible NEV, for a total of no less than four (4) vehicles in CONTRACTOR's fleet of vehicles (the "Vehicles") to provide Services pursuant to this Agreement. All Vehicles will meet the Federal Motor Vehicle Safety Standards. CONTRACTOR shall also supply charging equipment for the Vehicles for the duration of this Agreement. The Vehicles used throughout the Term of this Agreement must be consistent and identifiable with the appropriate signage as described in this Agreement.

2.6 The CONTRACTOR agrees to meet the following performance criteria for the Services to be provided pursuant to this Agreement:

2.6.1 Services:

2.6.1.1 The CONTRACTOR shall provide the Services to the Riders by providing on-demand rides to work, for shopping, restaurant, events, nightlife access and for various venues serving the Core Service Area which is attached as **Exhibit "A"**.

2.6.1.2 Service will be provided Sunday through Thursday 10:00 A.M. until 8:00

P.M. and Friday through Saturday 10:00 A.M. until 11 P.M. Any changes in total service hours shall be in writing and mutually agreed upon in writing executed by the CITY's City Manager and the CONTRACTOR.

- 2.6.1.3 CONTRACTOR shall comply with the driver schedule, which is attached as **Exhibit "B"**, in order to insure there is a minimum number of vehicles operating within the Service Area. Three (3) vehicles shall have a minimum capacity of five (5) standard passengers, and at least one (1) vehicle shall have a decreased standard passenger capacity to provide for one (1) wheelchair passenger.
- 2.6.1.4 All trips must begin and end within the Core Service Area as shown on the Service Area Map, which is attached hereto as **Exhibit "A"**. Any changes in the Service Area Map, including the Core Service Area, shall be in writing and mutually agreed upon in writing executed by the CITY and the CONTRACTOR.
- 2.6.1.5 The Parties shall meet at least annually to review the services provided in the Service Area and the Core Service Area, and determine if any adjustments are necessary. Any agreed upon adjustments shall be reduced to a written amendment to this Agreement, to be executed by both Parties.
- 2.6.1.6 The service shall be free to users. Tipping is permitted, but not required.
- 2.6.1.7 CONTRACTOR and its drivers are permitted to refuse service when, in the driver's opinion, a passenger poses a threat to themselves, other passengers, the driver, the vehicle, or other vehicles or persons.
- 2.6.1.8 CONTRACTOR is permitted to establish reasonable restrictions on the provision of services to non-service animals.
- 2.6.1.9 CONTRACTOR shall be prepared to adjust fleet to adhere to changing demands, such as during special events, as more particularly defined in Section 3.4 of the Agreement.
- 2.6.1.10 CONTRACTOR will communicate any problems or requests to the CITY through its City Manager or designee.
- 2.6.1.11 CONTRACTOR will have the right to suspend operation of the vehicles without penalty in the case of severe weather, unsafe operating conditions, or the issuance of a tropical storm or hurricane watch or warning, subject to providing written notification to the CITY.

## 2.6.2 Drivers

- 2.6.2.1 CONTRACTOR agrees that their drivers shall serve as ambassadors for the City of Pompano Beach, and shall present themselves in a friendly, personable, and customer-service oriented manner at all times.
- 2.6.2.2 CONTRACTOR shall provide professional, experienced, well-groomed hospitality-oriented personnel and resources to engagingly communicate with riders while answering their questions.
- 2.6.2.3 Drivers must be knowledgeable about the City of Pompano Beach and

comfortable speaking of the City of Pompano Beach as a visitor destination. Preference shall be given to hire drivers who reside in the City of Pompano Beach. An ability to converse in other languages (French and Spanish) would be helpful.

### 2.6.3 Vehicles:

- 2.6.3.1 CONTRACTOR's vehicles shall be properly licensed and authorized to legally operate on the public streets and rights-of-way in the State of Florida.
- 2.6.3.2 Vehicles shall be equipped with equipment/hardware to collect ridership data and with GPS units for vehicle location.
- 2.6.3.3 Vehicles shall be aesthetically suitable for a neighborhood shuttle.
- 2.6.3.4 CONTRACTOR shall be responsible for the cleanliness interior and the exterior of the vehicles. Vehicles shall be free of graffiti, vandalism, defacement and other damage to the satisfaction of the CITY.
- 2.6.3.5 CONTRACTOR must ensure that at least one vehicle in use, at all times, is wheelchair-accessible.
- 2.6.3.6 CITY will provide for Four (4) spaces within its Pier Parking Garage for vehicle storage and charging.
- 2.6.3.7 Vehicle maintenance must be performed by the CONTRACTOR.

### 2.6.4 Technology/App:

- 2.6.4.1 After a ride is requested, patrons must be picked up promptly and safely delivered to their destination, with a reminder to use the app again for subsequent trips back to their point of origin or another destination.
- 2.6.4.2 CONTRACTOR shall offer a mobile application ("App") that is available to individuals on their Android and iPhone electronic devices. The App will allow an individual to do the following with their Android and iPhone devices:
  - a. View location of vehicle, stops, and estimated times of arrival ("ETA") in real-time after a request is made and assigned to a driver.
  - b. App shall be at no cost to the user.
  - c. App shall allow users to provide feedback and rate drivers.
  - d. Allow an individual to request a pickup and be given an estimated wait time based upon driver and vehicle availability.

CONTRACTOR shall maintain updates to the App, provide App maintenance, and App issue solving at no cost to the CITY. The CONTRACTOR shall be able to track Rider and usage data and provide reports to CITY. The App will allow CONTRACTOR's drivers to enable real-time tracking and passenger counting. CONTRACTOR shall fully retain all rights and ownership in its App.

2.6.5 When drivers use the App to respond to Riders' ride requests, the driver app must be able to organize ride requests in a queue format, allowing for multiple rides to be assigned to one driver.

2.6.6 CONTRACTOR shall provide a toll-free telephone number that may be used by Riders to access service information.

2.7 Customer service is one of the CITY's key factors of the Services to be provided by CONTRACTOR. CONTRACTOR will be responsible for addressing all complaints in a courteous and timely manner and provide reports to CITY staff as needed and upon City's request.

2.8 CONTRACTOR will provide services using its own vehicles. Creative, tourist-oriented and colorful designs of the vehicles are encouraged. CONTRACTOR will provide notice to the CITY for review and comment on the final design, which shall be subject to the CITY's consent, and such consent shall not be unreasonably withheld. The CITY shall be deemed to have consented to the final design if the CITY has not objected to such design within forty-eight (48) hours of notice. CONTRACTOR will be responsible for all costs associated with the design of the vehicles.

2.9 CONTRACTOR shall replace any vehicle at its sole expense when the vehicle cannot be maintained in good working order, in accordance with applicable laws, and regulations, or the vehicles are no longer able to be maintained in accordance with the requirements of this Agreement. CONTRACTOR shall use its best efforts to restore non-operational vehicles within 10 business days from the date of any incident requiring the vehicle to be removed from operation. CONTRACTOR shall provide verbal and written notice to the CITY of any delay in restoring a non-operational vehicle that extends beyond 10 business days from the date of malfunction. If the CITY determines that any such delay is due to CONTRACTOR's lack of diligence, the CITY will have the right to pursue any remedy provided for in this Agreement or at law or equity.

2.10 If the Parties agree on modifications or revisions to an element of the Services, after the CITY has approved performance of a particular task or project, and a budget has been established for that task or project, the CONTRACTOR shall submit a revised budget to the CITY for approval prior to proceeding with the task or project.

2.11 Reporting. CONTRACTOR shall provide CITY with, monthly, quarterly, and yearly level of service reports. All reports will be due within 15 days of the period end. Upon request by the CITY, CONTRACTOR shall provide the CITY with weekly level of service reports. These reports shall include the following:

2.11.1 Number of Riders on a daily, weekly, and monthly basis and locations for pickup and drop-off;

2.11.2 Addresses from which riders are picked up and addresses of drop off locations;

2.11.3 Number of vehicles not in operation on a daily, weekly, and monthly basis,

- including a description of the malfunction or reason for the inoperable vehicle, and the length of time to place the vehicle back in service;
- 2.11.4 Average wait time from request through the mobile app until arrival by the vehicle on a daily, weekly, and monthly basis;
- 2.11.5 Average trip duration on a daily, weekly, and monthly basis;
- 2.11.6 Number of passenger complaints received, and resolution of complaints on a daily, weekly, and monthly basis.

In the event CONTRACTOR does not provide the required report, the CITY reserves the right to withhold payment until the required report is received. To the extent that the CITY requires additional information related to the above reporting requirement, the CONTRACTOR shall provide the information to the CITY.

### 3. Contract Price.

3.1 The CITY agrees to pay CONTRACTOR for the faithful performance of this Agreement, and for work as directed by CITY in accordance with the schedule at **Exhibit "C"**, which is inclusive of an annual minimum guaranteed vehicle advertising revenue of \$20,000 described in Paragraph 3.7 below. The Contract Price is all-inclusive for the work being performed by CONTRACTOR, and the CITY shall not be responsible for the payment of any additional fees, unless the parties enter into a written amendment to this Agreement which is approved by the City Commission, and executed by both Parties. The CITY will not make any additional payments such as fuel surcharges, demurrage fees, delay in delivery charges.

### 3.2 Payment Terms.

- 3.2.1 The Contract Price to be paid to CONTRACTOR by the CITY shall be divided into twelve payments per month based on the annual amounts at **Exhibit "C"**, subject to any additional credits for advertising revenue that may be applied for the benefit of the CITY as set forth more fully in Section 3.7.
- 3.2.2 Any additional charges for services performed for the CITY by CONTRACTOR outside of the scope of Services to be provided, which may be mutually agreed upon by the Parties from time to time and billed on an hourly basis, in accordance with Section 3.4 below, will be provided in a separate invoice to the CITY and paid by the CITY to CONTRACTOR on a monthly basis.

### 3.3 Invoices.

- 3.3.1 **Contract Price.** For payment purposes, CONTRACTOR will invoice the CITY on a monthly basis for the Services provided pursuant to this Agreement. CONTRACTOR shall submit invoice to the CITY no later than the 15th day of the month. CITY may withhold payment until a final determination is made that all Services have been or are being performed pursuant to this Agreement. Notwithstanding the foregoing, in no event shall CITY withhold payment that is more than fifteen (15) days past due unless it has provided CONTRACTOR with written notice of a material breach of this

Agreement for which payment is being withheld, with an opportunity to cure as more fully set forth in Section 11.

- 3.3.2 Charges for Additional Services. For additional charges incurred by CITY in connection with services performed for the CITY by CONTRACTOR outside of the scope of Services to be provided. The CITY agrees to pay the CONTRACTOR as set forth in Section 3.4 below, CONTRACTOR shall submit an invoice to the CITY no later than the 15th day of the month in which such services are performed.
- 3.3.3 The invoices submitted by CONTRACTOR shall contain the following basic information: CONTRACTOR's name and address, invoice number, date of invoice, a description of the service performed, and any credits to the CITY for advertising revenue due to the CITY pursuant to Section 3.7.

3.4 Hourly Rate. For services to be provided outside of the Services agreed upon by the parties under this Agreement, but utilizing the four (4) contracted fleet vehicles, the CITY agrees to pay the CONTRACTOR an hourly rate per vehicle, for the services provided, as indicated in Exhibit "C." Any services provided by the CONTRACTOR outside of the Services agreed upon by the parties under this Agreement shall require the prior written consent of CONTRACTOR and the CITY's City Manager or their authorized representatives. Upon request from the CITY, the cost for any additional vehicles shall be provided by CONTRACTOR to the CITY. The CITY shall only be obligated to pay the cost for the use of additional vehicles, and CONTRACTOR shall only be obligated to supply the additional vehicles, upon the execution of a written authorization executed by the CONTRACTOR and the CITY's City Manager or their authorized representatives.

3.5 Prompt Payment. The CITY prides itself on paying its vendors promptly and efficiently, and as such requires that vendors accept payment via wire transfer, ACH (direct deposit), or an appropriate electronic payment method. All payments shall be made in accordance with the Florida Prompt Payment Act, Section 218.74, Florida Statutes, upon presentation of a proper invoice by CONTRACTOR.

3.6 The CITY will assess the following Schedule of Penalties against the CONTRACTOR as a consequence of the CONTRACTOR's failure to conform to the customer service requirements:

- 3.6.1 Failure to provide backup service within twenty-four (24) hours in the event that one or more vehicles are out of service shall result in a penalty of \$50.00.
- 3.6.2 Failure to maintain vehicle exterior and interior cleanliness and aesthetics following a written warning to the CONTRACTOR from the CITY with a twenty-four (24) hour opportunity to cure, shall result in a penalty of \$100.00 per occurrence.
- 3.6.3 Failure to notify the CITY regarding any changes in schedule shall result in a penalty of \$100.00 per occurrence.

Penalty charges incurred in any given month will be deducted from the payment for that

month.

### 3.7 Revenue Sharing/Advertisement Sales Services.

- 3.7.1 CONTRACTOR shall sell space on the exterior or interior of the Vehicles for the display of commercial advertising with the goal of raising revenue to partially finance the cost of the Services performed under this Agreement ("Advertising Revenue"). CONTRACTOR agrees to provide the City with a copy of all advertising revenue contracts it executes with businesses, as well as providing an accounting of all advertising revenue in a report to accompany each monthly invoice.
- 3.7.2 CONTRACTOR shall credit the CITY's monthly invoice by 1/12<sup>th</sup> of the annual minimum guarantee advertising revenue, Twenty Thousand Dollars (\$20,000.00), generated from the sale of advertising on the Vehicles during each calendar year of the Term.
- 3.7.3 Gross Advertising Revenue in excess of the Minimum Guarantee Advertising Revenue or \$20,000.00) that is generated and actually received by CONTRACTOR in connection with sales of advertising on the interior or exterior of the Vehicles (collectively the "Advertisement Sales Services" and the advertisements so sold, the "Advertisements") shall be divided equally between CONTRACTOR and the CITY, with each party entitled to 50% of Gross Advertising Revenue that is generated and actually received by CONTRACTOR.
- 3.7.4 Gross Advertising Revenue means the gross advertising revenue received less all other costs and expenses, including, but not limited to advertisement design and production costs, incurred by the CONTRACTOR in connection with providing the Advertisement Sales Services.
- 3.7.5 CONTRACTOR shall determine the methods, details, and means for performing the Advertising Sales Services, subject to the CITY's consent which shall not be unreasonably withheld. The City shall be deemed to have consented if the CITY has not objected to such Advertising Sales Services within forty-eight (48) hours of the notice to the CITY. CONTRACTOR shall not accept advertising content that includes or is related to the following:
  - 3.7.5.1 Discrimination against a persons, or sections of the community on account of race, sex, age, sexual preference, religion, disability, sexual orientation, or political belief;
  - 3.7.5.2 Contains strong or obscene language;
  - 3.7.5.3 Promotes the use of tobacco and controlled substances;
  - 3.7.5.4 Contains sexual or reproductive material;
  - 3.7.5.5 Promotes or opposes "adult entertainment" strip clubs, and/or the sale of pornographic materials;
  - 3.7.5.6 Promotes the sale or distribution of firearms; and
  - 3.7.5.7 Contravenes any applicable law.
- 3.7.6 CONTRACTOR shall invoice each advertiser for amounts owed for



Advertisement Sales Services. CONTRACTOR shall provide a credit in the amount of 50% of Gross Advertising Revenue to the CITY on the following month's submitted invoice after receipt by the CONTRACTOR of the amounts due from each advertiser. The CONTRACTOR's obligation to submit invoices for amounts owed for Advertisement Sales Services shall be satisfied as to any advertiser by the delivery to such advertiser of three invoices reflecting the amount owed over a ninety (90) day period, whether or not invoiced funds are actually received by the CONTRACTOR. The CONTRACTOR's invoices shall provide a detailed breakdown in the invoice which includes documentation delineating the gross advertising revenues, itemization of all other costs and expenses, and any outstanding advertiser contracts.

4. The Term of this Agreement shall commence upon full and complete execution by the Parties, and shall continue for three (3) years, unless sooner terminated as provided in this Agreement. The parties may mutually agree to renew the term of this Agreement for two (2) additional one (1) year terms, subject to the approval of the CITY's City Commission, and the execution by both parties of a written amendment to this Agreement providing for the renewal term.

5. The CONTRACTOR shall hold all licenses and certifications, obtain and pay for all permits and inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the required Services. Damages, penalties or fines imposed on the CITY or CONTRACTOR for failure to obtain and maintain required licenses, certifications, permits or inspections shall be borne by the CONTRACTOR. The CONTRACTOR shall comply with all laws and regulations applicable to provide the Services. The CONTRACTOR shall be familiar with all federal, state, and local laws that may affect the goods and services being provided.

6. The CONTRACTOR shall not subcontract any portion of the work without the prior written consent of the CITY. Subcontracting without the prior consent of the CITY shall constitute a material breach of the agreement and may result in termination of the Agreement.

7. The CONTRACTOR shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest, or its power to execute such contract to any person, company, or corporation without the prior written consent of the CITY, which shall not be unreasonably withheld. Assignment without the prior consent of the CITY may result in termination of the Agreement.

8. CONTRACTOR's Employees.

8.1 The employee(s) of the CONTRACTOR shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the CITY or any of its departments.

8.2 CONTRACTOR shall provide competent employee(s) capable of performing the work as required. CONTRACTOR shall obtain complete background checks on all drivers, including driving records, criminal records checks, and employment references, conduct initial drug testing, and provide a training program for newly hired drivers. CONTRACTOR will not hire a driver with more than three (civil or criminal) traffic infractions relating to driving a motorized vehicle within the previous 24 months. CONTRACTOR shall review each driver's driving and criminal records at least annually.

8.3 CONTRACTOR shall prohibit drivers from texting or using smartphones, or other mobile device, eating, wearing headphones, and engaging in any activity that may cause the driver to become distracted while driving the vehicle. The Parties acknowledge and agree that (i) drivers will only be permitted to wear Bluetooth enabled device, or similar technology, while operating the vehicles for the service provided pursuant to this Agreement, and in accordance with all laws governing such devices; and (ii) drivers may use smart phones mounted to the dashboard or windshield of the vehicles only in accordance with all laws governing such devices.

8.4 All employees of the CONTRACTOR shall wear proper identification and a uniform.

8.5 The CITY reserves the right to require the immediate dismissal of any of CONTRACTOR's employees who fail to meet the requirements of this Agreement. Relief personnel shall be readily available throughout the term of the Agreement.

8.6 It is the CONTRACTOR's responsibility to ensure that all its employees and subcontractors comply with the employment regulations required by the US Department of Homeland Security. The CITY shall have no responsibility to check or verify the legal immigration status of any employee of the CONTRACTOR.

9. Indemnification. CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents, and contractors from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the CITY or its officers, employees, agents, or contractors may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from any unlawful, willful, negligent, or reckless acts or omissions by CONTRACTOR or its employees, agents, servants, partners, principals, or subcontractors in the performance of the Services to be provided pursuant to this Agreement. CONTRACTOR shall pay all claims and losses, and shall investigate and defend all claims, suits, or actions of any kind or nature arising out of, relating to, or resulting from any unlawful, willful, negligent, or reckless acts or omissions by CONTRACTOR or its employees, agents, servants, partners, principals, or subcontractors in the performance of the Services to be provided pursuant to this Agreement in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred. The CONTRACTOR expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the CITY or its officers, employees, agents, and contractors. This paragraph shall survive the expiration or termination of this Agreement

10. Modifications or Amendments. This Agreement may only be modified by mutual consent, in writing, through the issuance of an amendment executed by the CITY and the CONTRACTOR or their authorized representative. Amendments to the Contract Price and the Term shall require the approval of the CITY's City Commission. Amendments to other provisions including Services, Service Area, and Core Service Area may be approved by the CITY's City Manager.

11. Termination.

11.1 Mutually Agreed Upon Termination: The Parties, by mutual written agreement executed by both parties, may agree to terminate this Agreement for convenience at any time without cause.

11.2 CITY's Right to Terminate For Convenience: The CITY, at its sole discretion, reserves the right to terminate this Agreement for convenience upon providing ninety (90) days' written notice to the CONTRACTOR. Notwithstanding, if at any time the City Manager determines that termination of the Agreement is necessary to protect public health, safety, or welfare, the City Manager may terminate the Agreement upon providing such written notice as the City Manager deems appropriate under the circumstances.

11.3 Termination for Cause: If either party believes that the other party has failed in any material respect to perform its obligations under this Agreement or any addendums, then that party shall provide written notice to the other party describing the alleged failure in reasonable detail. If the breaching party does not, within fifteen (15) calendar days after receiving such written notice, either: (a) cure the material failure, or (b) reach a satisfactory compromise with the non-breaching party if the breach is not one that can reasonably be cured within fifteen (15) calendar days, then the non-breaching party may terminate this Agreement, in whole or in part, for cause by providing written notice of termination to the breaching party.

11.4 Termination for Bankruptcy: The CITY shall have the immediate right to terminate this Agreement, by providing written notice to the CONTRACTOR, in the event: (i) the other party enters into receivership or is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the CONTRACTOR's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.

11.5 Payments Due: The termination of this Agreement shall not release either party from its obligation to make payment of any and all amounts then or thereafter due or payable including credit or refunds.

11.6 Continuation of Services: CONTRACTOR will continue to perform Services during the notice period unless otherwise mutually agreed upon between the Parties in writing. In the event that the CITY provides notice of termination and directs CONTRACTOR not to perform the services during the notice period, the CITY agrees to pay CONTRACTOR for all

services performed in connection with the services provided under this Agreement and any addendum through the date of termination.

## 12. Effect of Default

12.1 In the event the CONTRACTOR defaults in the performance of the Agreement, and does not cure any such default within the notice period provided in Section 11, the CITY reserves the right to suspend or debar the CONTRACTOR in accordance with the appropriate CITY ordinances, resolutions or policies. In the event of termination for default, the CITY may procure the required Services from any source and use any method deemed in its best interest.

12.2 The acceptance of all or part of monies due for any period after a default shall not be deemed as a waiver of any of these options, or a waiver of the default or subsequent default of the same or any other term, covenant, and condition. The CONTRACTOR agrees that the CITY shall not be responsible or have any liability whatsoever for any alleged damages, claim of lost profits, or otherwise in the event the CITY declares the CONTRACTOR in default, provided that the CITY has articulable grounds for doing so.

13. Any individual, corporation, or other entity that attempts to meet its contractual obligations with the CITY through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The CITY, as a further sanction, may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

14. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

15. The CONTRACTOR shall at all times comply with all rules, regulations, and ordinances of the City and other governmental agencies having jurisdiction. The CONTRACTOR shall further take all precautions and extreme care to conduct its activities in a safe, professional, and prudent manner.

## 16. INSURANCE

16.1 The CONTRACTOR shall not commence any performance pursuant to the terms of this Agreement until certification or proof of insurance has been received and approved by the CITY's City Manager or their designee.

16.2 The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Pompano Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the CONTRACTOR's obligation to fulfill the insurance requirements.

16.3 Prior to commencing any work pursuant to this Agreement, the CONTRACTOR must submit a current Certificate of Insurance, naming the City of Pompano Beach as an additional insured and listed as such on the insurance certificate. New certificates of insurance are to be provided to the CITY upon expiration. The CONTRACTOR shall provide insurance coverage as prescribed in **Exhibit "D,"** which is attached and incorporated to this Agreement.

17. CONTRACTOR's Responsibilities.

17.1 The CONTRACTOR shall be responsible for ensuring that all its employees are in compliance, at all times, with the Terms, Conditions and Specifications outlined in **Exhibit "E,"** RFP P-29-20 and Contractor's Response, which is attached and incorporated into this Agreement, and the applicable Terms and Conditions outlined in the Public Transportation Grant Agreement between Florida Department of Transportation and the City of Pompano Beach dated August 27, 2020, which is attached as **Exhibit "F."**

17.2 The CONTRACTOR shall be responsible for obtaining all necessary permits, licenses, and/ or registration cards in compliance with all applicable Federal, State, and Local statutes pertaining to the services as specified or required.

17.3 The CONTRACTOR will be responsible for securing its own office space and storage space. Alternatively, the CITY, in its own discretion, may provide alternative office space and storage to the CONTRACTOR.

17.4 The CONTRACTOR will be responsible for costs associated with operating and maintaining its own fleet of vehicles, including but not limited to fueling, maintenance, registration, and insurance. The CONTRACTOR shall ensure that all items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), and the National Institute of Occupational Safety Hazards (NIOSH), and any other applicable federal, state, or local law, ordinance, regulation, or policy.

17.5 If any of the goods or services to be acquired under this solicitation are to be purchased, in part or in whole, with Federal funding, it is agreed and understood that Section 60-250.4,

Section 60-250.5, and Section 60-741.4 of Title 41 of the United States Code, which addresses Affirmative Action requirements for disabled workers, is incorporated into the solicitation and the resultant contract by reference.

17.6 If the CONTRACTOR is found noncompliant with Paragraph 17, such noncompliance shall constitute an event of default

18. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

19. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect so far as is possible.

20. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, EACH PARTY EXPRESSLY WAIVES ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

21. In the event of any litigation involving the provisions of this Agreement, both parties agree that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred by the prevailing party in such litigation through all appellate levels.

22. The CONTRACTOR further acknowledges and agrees to provide the CITY with all information and documentation that may be requested by the CITY from time to time regarding the solicitation, selection, treatment, and payment of subcontractors, suppliers, and in connection with this contract.

23. Prior to hiring a contract employee or contracting with a CONTRACTOR, the CITY may conduct a comprehensive criminal background check by accessing any Federal, State, or

local law enforcement database available. The contract employee or CONTRACTOR will be required to sign an authorization for the CITY to access criminal background information. The costs for the background checks shall be borne by the CITY.

24. Unless specified elsewhere in the solicitation or resultant contract, all labor, materials, and equipment required for the performance of the requirements of the contract shall be supplied by the CONTRACTOR.

25. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, epidemic, pandemic, governmental order, accident, flood, acts of nature or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall economic hardship or lack of funds be considered an event of Force Majeure. If either party is unable to perform or delayed in their performance of any obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance is prevented by such event and during the period afterwards as may be reasonably necessary for either party to correct the adverse effect of such event of Force Majeure. CONTRACTOR must follow all Federal, State, County, and City safety guidelines, including all CDC safety guidelines in effect during the term of the program, including but not limited to social distancing, and personal protection equipment. Inability to conduct the Services and follow any and all required safety guidelines from the COVID-19 crisis or other similar emergency, or failure to follow such requirements, including but not limited to, social distancing, shall constitute grounds for immediate cancellation of this Agreement unilaterally by the City upon written notice, which may be provided via electronic mail. The parties, by mutual agreement, may reschedule the performance of the services to a later date pursuant to the terms of this agreement.

26. Precautions shall be exercised at all times for the protection of persons and property. All CONTRACTOR's Services provided pursuant to this Agreement shall conform to all relevant OSHA, State, and County regulations during the course of such effort. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the CONTRACTOR.

27. The Services provided pursuant to this Agreement include various functions and classes of work required as necessary for the provision of the Services. Any omissions of inherent technical functions or classes of work within the specifications or statement of work shall not relieve the CONTRACTOR from furnishing or performing such work where required to the satisfactory provision of Services.

28. The CITY's obligation pursuant to any contract or agreement entered into in accordance with this solicitation is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement. A non-appropriation event shall not

constitute a default or breach of this Agreement by the CITY.

29. The CITY, at all times and as it relates to this Agreement, shall be responsible for ensuring its compliance with the Terms and Condition of the Public Transportation Grant Agreement between Florida Department of Transportation and the City of Pompano Beach dated August 27, 2020, which is attached as **Exhibit “F”**.

30. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, and a copy of such notice sent by electronic mail, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Pompano Beach  
c/o City Manager  
100 W. Atlantic Boulevard, 4<sup>th</sup> Floor  
Pompano Beach, Florida 33060

With copy to:

Mark Berman, City Attorney  
City of Pompano Beach  
100 W. Atlantic Blvd., 4<sup>th</sup> Floor  
Pompano Beach, Florida 33061  
mark.berman@copbfl.com  
954-786-4614 office  
954-786-4113 fax

Suzette Sibble, Assistant City Manager  
100 W. Atlantic Blvd., 4<sup>th</sup> Floor  
Pompano Beach, FL 33062  
suzette.sibble@copbfl.com  
Telephone: 954-786-4606

Jeff Lantz, Parking Manager  
City of Pompano Beach  
3460 NE 3rd Street  
Pompano Beach, Florida 33062  
jeff.lantz@copbfl.com  
(954) 786-5580

For CONTRACTOR:



James Mirras  
Circuit Transit Inc.  
777 S. Flagler Drive  
Suite 800W  
West Palm Beach, FL 33401  
[james@ridecircuit.com](mailto:james@ridecircuit.com)  
(631) 903-4448

Jason Bagley  
Circuit Transit Inc.  
1305 SW 8<sup>th</sup> Avenue  
Fort Lauderdale, FL 33315  
[jason@ridecircuit.com](mailto:jason@ridecircuit.com)  
(305) 494-1612

31. CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, CONTRACTOR shall:

- a. Keep and maintain public records required by the City in order to perform the service;
- b. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City; and
- d. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service.

If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

**Failure to comply with said statutory requirements may subject Contractor to penalties under 119.10, Florida Statutes, as amended.**

**PUBLIC RECORDS CUSTODIAN  
IF THE CONTRACTOR HAS QUESTIONS REGARDING**

**THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

32. Approvals - Whenever CITY approval(s) shall be required for any action under this Agreement, such approval(s) shall not be unreasonably withheld.

33. Absence of Conflicts of Interest – Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder

34. Sovereign Immunity - Nothing in this Agreement shall constitute a waiver by the City of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

35. Entire Agreement - This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

36. The documents listed below are a part of this Agreement and are incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided in this Agreement, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement;
- b. Public Transportation Grant Agreement between Florida Department of Transportation and the City of Pompano Beach dated August 27, 2020;
- c. Exhibit "E," RFP P-29-20 and Contractor's Response; and

- d. Any subsequent information submitted by CONTRACTOR during the evaluation and negotiation process.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

**CITY OF POMPANO BEACH**

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

By: \_\_\_\_\_  
REX HARDIN, MAYOR

(SEAL)

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO DEPARTMENT HEAD:

By: \_\_\_\_\_

**"CONTRACTOR"**

**CIRCUIT TRANSIT INC.**

Witnesses:

[Signature]

Zachary Levine  
(Print or Type Name)

[Signature]

Oguz Kiran  
(Print or Type Name)

By: [Signature]  
JAMES MIRRAS

STATE OF ~~FLORIDA~~ NY  
COUNTY OF SUFFOLK

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 11 day of FEBRUARY, 2021, by JAMES MIRRAS, as OWNER of CIRCUIT TRANSIT INC., a Florida corporation on behalf of the corporation He is personally known to me or who has produced NYS DRIVER'S LICENSE (type of identification) as identification.

NOTARY'S SEAL:



[Signature]  
NOTARY PUBLIC, STATE OF ~~FLORIDA~~ NY  
ERIC REDIN  
(Name of Acknowledger Typed, Printed or Stamped)  
01RE 6367333  
Commission Number

:jrm  
2/8/21  
L:agr/manager/2021-316