

**SERVICES AGREEMENT
FOR DEMAND RESPONSE TRANSIT SERVICES**

THIS AGREEMENT is made and entered into this 3rd day of September 2013, by and between the City of Maricopa ARIZONA, an Arizona municipal corporation (“City”), and Total Transit Inc., an Arizona corporation (“Company”), for the project titled Demand Response Transit Services.

WHEREAS, City desires to retain a company to furnish Demand Response Transit Services and to make payment for the same in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda, including the Request for Proposal (Exhibit A) and Company’s response (Exhibit B), which are appended hereto by mutual agreement of the parties; and

WHEREAS, in procuring these services, City has complied with the open market procedures set forth in Section 3-215 of the City of Maricopa’s City Code.

NOW, THEREFORE, City agrees to retain and does hereby retain Company and Company agrees to provide the services required according to the terms and conditions and for the consideration hereinafter set forth:

1. COMPANY’S DUTIES: Company agrees to perform the following services in connection with the Project:

See attached Exhibit A, which is incorporated into this Agreement.

Company specifically agrees the services described in Exhibit A may be subsequently expanded, modified or reduced by City. Company is prohibited from operating the services herein with any other transit services the Company may offer.

The City may, at any time, request changes within the general scope of this Agreement. If any such requested change would cause an anticipated increase in the cost of, or the time required for, the performance or any part of the work under this Agreement, or would result in an anticipated increase or decrease of ten percent (10%) or more to Company's estimated annual vehicle service hours of 1,269 hours, the parties shall meet to negotiate an equitable adjustment to Company's rate and the Agreement will be amended accordingly by written change order.

Notwithstanding the foregoing, after the first forty two (42) service days of the term of this Agreement, the parties will calculate the actual vehicle service hours operated during the first forty two (42) service day period. In the event the actual vehicle service hours operated were less than 276 vehicle service hours, the parties shall meet to negotiate an equitable adjustment to Company's rate and the Agreement will be amended accordingly by written change order. In no event shall City be penalized if Company operates for longer hours than agreed upon due to scheduling conflicts by the Company or its staff. To avoid these circumstances, Company shall not schedule trips past a time that allows the driver to complete their drop-offs no later than 5:00pm. Delays in service due to inclement weather or operator error will not be the fault of the City. At no time will Company directly bill the City for an overage that occurred for the previous month. As described above, a meeting will be scheduled to discuss future billings.

2. COMPENSATION: In accordance with the terms and conditions of this Agreement, City shall compensate Company for its services in an amount not to exceed Ninety Thousand and 00/100 Dollars (\$90,000.00) as follows:

See attached Exhibit B, which is incorporated into this Agreement.

In no event shall such monthly payments exceed Ninety Thousand and 00/100 Dollars (\$90,000.00). Exhausting the total amount payable for activities described in Section 1 above shall not relieve Company of its obligations to perform such services. Should City request additional services beyond those specified in Section 1, Company shall charge, and City shall pay, a rate as mutually agreed upon in writing prior to Company performing the additional services.

3. PAYMENT: City will make monthly payments to Company based on the number of service days in each month. In no event shall such monthly payments exceed Ninety Thousand and 00/100 Dollars (\$90,000.00).

4. TERM. The term of this Agreement will commence October 1, 2013, and continue through September 30, 2014. The City shall have the option to renew this Agreement for an additional one (1) year term upon the expiration thereof. Upon termination, expenses to date, according to the terms of the Agreement, will be paid.

5. CITY'S STANDARD OF PERFORMANCE: City shall furnish the Company with all data, information, and other supporting services specified in Exhibit A. Without the consent of Company, City reserves the right to make such changes as it deems appropriate with respect to the Demand Response Transit Services specified herein including, but not limited to, number of buses, hours of operation, routes, schedules, fares, operating policy and promotional programs.

6. COMPANY'S STANDARD OF PERFORMANCE: While performing the services, Company shall exercise the reasonable care and skill customarily exercised by reputable members of Company's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its skill and expertise. Company shall be responsible for all errors and omissions Company commits in the performance of this Agreement.

Company shall not employ as a driver (i) any person who does not have a minimum of two (2) years licensed driving experience; (ii) any person who has been convicted of a crime involving moral turpitude or narcotics within five (5) years immediately preceding the date of this Agreement; (iii) any person who has been convicted of driving recklessly within two (2) years immediately preceding the date of this Agreement; or (iv) any person who has been convicted of driving a vehicle while under the influence of intoxicating liquors and/or drugs within five (5) years immediately preceding the date of this Agreement. Company shall develop, maintain and enforce a driving performance and safety evaluation system for its drivers and shall provide necessary training to drivers and dispatchers throughout the term of this Agreement. City reserves the right to have Company modify, expand or revise said performance and safety evaluation system and/or training.

7. NOTICES: All notices to the other party required under this Agreement shall be in

writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:

City of Maricopa
Attn: City Manager
P.O. Box 610
Maricopa, AZ 85139

If to Company:

Total Transit, Inc.
Attn: Bill Blair, Director of Operations
4600 W. Camelback Rd.
Glendale, AZ 85301

8. TERMINATION WITHOUT CAUSE: The City may at any time and for any reason or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto upon thirty (30) days written notice to Company. Immediately after receiving such notice, Company shall discontinue performing the work under this Agreement. If this Agreement is terminated, Company shall be paid for services performed to the date of receipt of such termination notice.

9. TERMINATION WITH CAUSE: The City reserves the right to terminate the whole or any part of this Agreement due to failure by Company to carry out any obligation, term or condition of this Agreement. The City will issue written notice to Company for acting or failing to act as in any of the following:

- a. The Company fails to adequately perform the services set forth herein;
- b. The Company fails to complete the work required within the time required;
- c. The Company fails to make progress in the performance of this Agreement and/or gives the City reason to believe that the Company will not or cannot perform the requirements herein.

Upon receipt of the written notice of concern, Company shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of Company to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:

- a. Cancellation of this Agreement;
- b. Collection of liquidated damages at the rate of \$500.00 per day which shall be collected by reducing the monthly compensation due to Company pursuant to Section 2 above;
- c. Reserve all rights or claims to damage for breach of any covenants of this Agreement;
- d. In case of default, the City reserves the right to complete the required work. The City may recover any actual excess costs from Company by deduction from an unpaid balance or any other remedies as provided by law.

The City's right of termination for cause as set forth herein shall be in addition to, and not a limitation of any and all other remedies available to City at law, equity, or under the terms and provisions of this Agreement. In the event of termination for cause, City shall not be liable to Company for any amount and Company shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

10. SUBCONTRACTORS: Company shall, within ten (10) days after the execution of this Agreement and before awarding any subcontract, furnish City with a list of proposed subcontractors, if any, and shall not employ any that City may object to for any reason. Company agrees that it is as fully responsible to City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Company. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and City.

11. RECORDS: Records of Company's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Company shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

12. INSURANCE:

12.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of the Company, the Company shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Company. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the Company from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City of Maricopa, City of Chandler, City of Casa Grande and the Arizona Department of Transportation and their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. The Company's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the Company. The Company shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Company shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Company shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and the Company. The Company shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the Company shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Company's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be the Company's responsibility to forward renewal

certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) The Company's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the Company under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

12.2 Required Insurance Coverage.

a. Commercial General Liability. The Company shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$5,000,000 for each occurrence, \$5,000,000 Products and Completed Operations Annual Aggregate and a \$5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. The Company shall maintain Automobile Liability insurance with a limit of \$5,000,000 each occurrence on the Company's owned, hired and non-owned vehicles assigned to or used in the performance of the Company's work or services under this Agreement.

c. Professional Liability (Errors and Omissions Liability). Company shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Company, or anyone employed by the Company, or anyone for whose negligent acts, mistakes, errors and omissions the Company is legally liable, with an unimpaired liability insurance limit of \$5,000,000 each claim and \$5,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, Company warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

d. Workers' Compensation Insurance. Company shall maintain Workers' Compensation insurance to cover any applicable obligations imposed by federal and state statutes having jurisdiction of Company's employees engaged in the performance of work or services under this Agreement.

13. RIGHT OF CITY TO CONTRACT WITH OTHERS: Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Company.

14. UNCONTROLLABLE FORCES: City and Company shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

15. INDEMNIFICATION BY COMPANY: Company shall defend, indemnify, and hold City, its officers and employees harmless from any and all losses, damages, claims for damage, liability, expense, fines, decrees, judgments, and cost, including attorneys' fees, which arise out of, or is in any way connected with the performance or nonperformance of duties and obligations under this Agreement by Company, or any of Company's employees, agents or subcontractors, and from all claims by Company's employees, subcontractors and agents for compensation for services rendered to Company in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Company or Company's employees, subcontractors or agents. This section shall survive the expiration or early termination of the Agreement.

16. INDEMNIFICATION BY CITY: City shall defend, indemnify, and hold Company, its officers and employees harmless from any and all loss, damage, fine, claim for damage, liability, expense, fine, decree, judgment, and cost, including attorneys' fees, which arise out of, or is in any way connected with the performance or nonperformance of duties and obligations under this Agreement by City, or any

of City's employees, agents or subcontractors, and from all claims by City's employees, subcontractors and agents for compensation for services rendered to City in the performance of this Agreement, notwithstanding that Company may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of City or City's employees, subcontractors or agents. This section shall survive the expiration or early termination of the Agreement.

17. WAIVER OF TERMS AND CONDITIONS: The failure of City or Company to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

18. INDEPENDENT CONTRACTOR: Company shall at all times during Company's performance of the services retain Company's status as independent contractor. Company's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Company.

19. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

20. ARBITRATION. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Company and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Company shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between City and Company. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

21. LICENSE: Company represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Company understands that the activity described herein constitutes "doing business in the City of Maricopa" and Company agrees to obtain a business tax license pursuant to Article 8-1 of the City of Maricopa's City Code and keep such license current during the term

of this Agreement. Any activity by subcontractors within the corporate city limits, will invoke the same business tax regulations on any subcontractors, and Company ensures its subcontractors will obtain any required business tax license.

22. NONASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise and qualifications of Company. Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Company shall not assign any monies due or to become due to it hereunder without the prior written consent of City.

23. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Company and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

24. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

25. CONFLICTS OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

26. AMERICANS WITH DISABILITIES ACT: This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101-12213) and all applicable federal regulations under the Act, including 28 C.F.R. Parts 35 and 36. (Non-Discrimination: The Company shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Company shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

27. FEDERAL REGULATIONS: Non-federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Company acknowledges, by signature to this Agreement, that: Company is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; Company's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

28. UNDOCUMENTED WORKERS: Company understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. § 41-4401, Company hereby warrants to the City that the Company and each of its subcontractors (“Subcontractor”) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter “Immigration Warranty”). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Company to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of any Company or Subcontractor employee who works on this Agreement to ensure that the Company or Subcontractor is complying with the Immigration Warranty. Company agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Company and any of subcontractors to ensure compliance with Immigration Warranty. Company agrees to assist the City in regard to any random verification performed.

Neither the Company nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

The provisions of this paragraph must be included in any contract the Company enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. “Services“ is defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

29. NO KICK-BACK CERTIFICATION: Company warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the Company. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid Company hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

COMPANY:

Total Transit, Inc., an Arizona corporation

By: _____

Title: _____

CITY OF MARICOPA
An Arizona municipal corporation

Christian Price
Mayor

ATTEST:

APPROVED AS TO FORM:

Vanessa Bueras
City Clerk

City Attorney

EXHIBIT A
REQUEST FOR PROPOSAL

EXHIBIT B
COMPANY'S RESPONSE