

**First Transit, Inc. Agreement No. C-4-1737
Proposed Scope of Work Revisions**

Effective June 14, 2020 unless otherwise noted

A. Performance Metrics Clarifications

1. On Time Performance (OTP) effective December 1, 2020

As detailed in the Quarterly Performance Measures Report that was transmitted to the Board of Directors in October 2020, the performance standard methodology to calculate the OTP has been modified to include early departures from scheduled time points to provide a more thorough overall measure of OTP. To keep data consistent throughout the fiscal year, effective July 1, 2020, with the inclusion of both early and late trips in the calculation, the OTP performance standard was adjusted from 85 percent to 80 percent. The contractor was notified of this performance standard change in September 2020 and was provided a sixty-day period before the new standard would become effective for purposes of calculating performance penalties/incentives earned under this agreement. To memorialize this change in the agreement, the language below is proposed to be included in the amendment under consideration:

- Amend Scope of Work, SECTION12: PERFORMANCE STANDARDS, page 48
 - On Time Performance (OTP) Standard delete 85 percent and insert 80 percent,
 - Under OTP Incentive delete above 86 percent and insert above 81 percent, and
 - Under OTP Penalty delete below 84 percent and insert below 79 percent.

2. Preventive Maintenance.

There are penalties in the Scope of Work (SOW) to encourage the timely conduct of preventive maintenance inspections. In the event a vehicle is in operation past the interval at which a preventive maintenance inspection is due, a penalty is assessed. Page 49 of the SOW lists the Preventive Maintenance performance standard of 100 percent of PMIs done within required intervals, with a Penalty of \$100 per day for each vehicle operated after scheduled PMI, and \$200 per day for vehicles operated more than three days or 500 miles past the scheduled PMI interval. In addition, on page 18 of the SOW, a sentence states that a vehicle out of compliance with the preventive maintenance standards may result in nonpayment of the service hours operated by that vehicle from the time the preventive maintenance was due.

After an evaluation of recent contractor performance in this area, a review of similar penalties at peer agencies, and a review of Federal Transit Administration recommended guidelines, the following revisions are recommended in response to the contractor's request and to provide clarity of preventive maintenance penalties in this agreement. An increase in the frequency of penalties is not anticipated.

- Amend Scope of Work, Vehicle Fleet and Vehicle Maintenance Program, A. Preventive Maintenance, page 18, second paragraph from top, delete final sentence: “Failure to comply with these standards may result in nonpayment of the service hours operated by that vehicle from the time the last inspection was due, along with any penalties as specified in the SOW.”
- Amend Scope of Work, SECTION 12: PERFORMANCE STANDARDS, page 49, Preventive Maintenance Penalty to retain the existing penalties, and add the following sentence: “In addition, nonpayment of the service hours shall apply at such time Contractor’s PMI maintenance program falls below 90 percent of on-time compliance.”

B. Perform Other Work as Directed by OCTA

Due to unexpected circumstances, decisions were made administratively to request the Contractor provide unscheduled service. This would include providing Metrolink Bus Bridges, the recent evacuation of the base due to the Silverado fire, and the request to provide unscheduled tripper service to ensure appropriate social distancing on-board OC Bus vehicles in response to the coronavirus pandemic. In all cases, the Contractor has been compensated using the revenue vehicle hour rate from the time the vehicle departed the base until it returned to the base (gate to gate). Currently, the agreement is silent on how to provide compensation for such unplanned requests. The language proposed to be included in this amendment will memorialize how payment for the provision of such a service. Based on the premise that such payments will be for unscheduled service, it is not feasible to estimate future costs. The amendment provides documentation of the authorized method of payment for requests that are operational necessities.

- Amend Contract, Article 6. PAYMENT, Page 5 of 32, to rename Sections C and D, as D and E, respectively, and insert as C: “AUTHORITY shall pay CONTRACTOR a variable rate for the provision of unscheduled service at the direction of AUTHORITY, based on the time a vehicle leaves base to when the vehicle returns to base. Unscheduled service at the direction of the AUTHORITY is inclusive of such requests as additional unscheduled service provided in support of scheduled routes, emergency response, bridge service and similar.”

C. Compensation

This amendment would further clarify the definition of the revenue vehicle hour (RVH) in the agreement, which defines the conditions under which the Contractor would be paid. Billable hours are defined in the agreement as RVHs. Per Article 7, RVHs are when a vehicle is available to transport passengers within the Contractor’s established hours of service (schedule), including layover time. However, there are times a vehicle is unable to provide service during scheduled service hours for reasons beyond the Contractor’s control. Instances beyond the Contractor’s control may include mechanical breakdowns and accidents only when classified by OCTA to be non-preventable, on-board passenger incidents, police activity, and heavy traffic not anticipated in the scheduling process. For these instances, only incidents that could be confirmed/verified through an independent means, such as Transit Police Services, Central Communications log, automated vehicle location (AVL) reports, traffic reports, or similar, would be eligible for consideration to be compensated. Instances within the Contractor’s control such as preventable mechanical failures, preventable accidents, driver errors, manpower shortages, and equipment shortages, would not be eligible for consideration.

The current maximum obligation assumes an estimated number of RVH based on the service schedule developed by OCTA. Clarification of the RVH definition as proposed would likely increase the amount of RVH paid to the contractor, but ineligible expenses time would be deducted as it is currently. Based on a review of three (3) sample months after the June service change, the amount of lost time deductions and missed trip penalties would have been reduced by less than \$1,500 per month with removal of incidents that were due to factors beyond the contractor's control.

In a manner that is similar to the process used to deduct ineligible RVHs from each invoice, OCTA staff will implement a process using independent sources of information to verify and approve payment of the RVHs impacted by elements that are truly beyond the Contractors control.

- Amend Contract, ARTICLE 7. REVENUE VEHICLE HOURS, page 7 of 32, to add the following: "When passenger service is not provided for part or whole of a route due to verifiable factors beyond the CONTRACTOR's control, the service time as defined by scheduled start time for a route to end of a scheduled route shall be paid to the CONTRACTOR and shall not be subject to penalties."