



## Memphis Area Transit Authority

*MATA'S MISSION:* To provide a reliable, safe, accessible, clean and customer-friendly Public Transportation System that meets the needs of the community.

### Board of Commissioners

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Chairman – Sean Healy

Commissioners

Charles “Chooch” Pickard

John C. Vergos

Andre Gibson

Lauren Taylor

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#### Board of Commissioners Meeting

Monday, June 2, 2014

3:30 pm

- |      |   |                               |
|------|---|-------------------------------|
| I.   | CALL TO ORDER   | Sean Healy                    |
| II.  | BOARD ROLL CALL   | Linda Eskridge                |
| III. | APPROVAL of April 28, 2014 Board Minutes  | Sean Healy                    |
| IV.  | ACTION ITEMS:   | Sean Healy                    |
| A.   | <u>FINANCE COMMITTEE</u>  |                               |
|      | 1. Resolution to Award a Contract to Mid-South Bus Center for the purchase of 16 Wheelchair-Accessible Vans -Res. No. 14-27               | Glen Lockhart<br>Ashley Best  |
|      | 2. Resolution to Approve Contracts to Ambassador Worldwide Protection Agency and CDA/MaxSent for Security Guard Services - Res. No. 14-28 | Willie Lewis<br>Shelia Maclin |
| B.   | <u>SERVICE AND DEVELOPMENT</u>  |                               |
|      | 1. Resolution to Authorize a Lease with the Downtown Parking Authority for the Parking Lot at the Hudson Transit Center – Res. No. 14-29  | Tom Fox                       |

**V. REPORTS:**

- **FINANCIAL REPORT** **Gilbert Noble**
- **MARKETING REPORT** **Niketa Reed**
- **PERFORMANCE MEASURES REPORT** **Tom Fox**
  - **April, 2014**
  - **MATApplus Presentation**
- **INTERIM GENERAL MANAGER'S REPORT** **Tom Fox**

**VI. SPEAKERS**

*(See sign-in cards for speakers)*

- VII. OLD/NEW BUSINESS** **Sean Healy**

**MINUTES OF BOARD MEETING**  
**MEMPHIS AREA TRANSIT AUTHORITY**  
**April 28, 2014**

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**CALL TO ORDER:** A regular meeting of the MATA Board of Commissioners was called to order at 3:30 p.m. on Monday April 28, 2014 in the MATA Board Room at 1370 Levee Road by Chairman Sean Healy.

**BOARD ROLL CALL:**

**Present:** Chairman, Sean Healy  
Commissioners: Charles Pickard; Lauren Taylor; John Vergos; Andre Gibson (via phone)

**Absent:** Mattie Carter, Karl Birkholz, Marion McClendon

**Quorum:** Yes

**Staff:** Lawson Albritton; Frances Boyland; Yuri Chambers; Darryl Covington; Linda Eskridge; Lavelle Fitch; Don Forsee; Tom Fox; John Lancaster; Willie Lewis; Glen Lockhart; Shelia Maclin; Maury Miles; Gilbert Noble; Glenda Wade; Tommy Wallace

**Guests:** **MCIL Attendees:** Terrance Brown; Brittany Carter; Christina Clift; Eloise Collins; Janice Craven; Deborah Cunningham; Bobbie Fields; Michelle Ivery; Russell Jones; Savannah Morrison; Tena Murphy; Vonnie Peeler; Josue Rodriguez; Sher Stewart; Tara Tate, (also with Memphis Federation of Blind); Rosetta Turner

**Memphis Bus Riders Union:** Bennett Foster; Stevie Johnson; Schaeffer Mallory; Shahin Samiei; Brad Watkins; Shelia Williams

**Others:** Kwasi Agyakwa, MPO; Ryan Alpert, University of Memphis; Ryan Bratney, University of Memphis; Samantha Bryson, The Commercial Appeal; Ricky Burns; Lyndia Crawford, City of Memphis Law Division; WREG-TV; Sabrina Hall, WREG-TV; Stanley Holland, Bus Rider; Yalonda James, The Commercial Appeal; Aury Kangelos, TDOT; Johnnie Mosley, Citizens for Better Services; James Robinson; Eddie Settles, backinrivercity.com; Henry Wilson, MATA Retiree;

**APPROVAL OF MINUTES:** Mr. Vergos made a motion for approval of the March 24, 2014 Board Minutes. Ms. Taylor seconded the motion and the minutes were unanimously approved.

## ACTION ITEMS:

### A. FINANCE COMMITTEE

#### 1. Resolution to Authorize the Purchase of Diesel Fuel – Res. No. 14-22

**Discussion:** Mr. Maury Miles, Sr. Manager of Grants and Procurement, presented this resolution to the MATA Board. At the February Board Meeting, the Board authorized staff to go through a new procurement process for fuel. Staff asked vendors to provide quotes on a weekday basis for a period from April 29 – July 31, 2014 in order to lock in up to 1.5MM gallons of diesel fuel. MATA estimates annual usage for next fiscal year will be 1.8MM gallons. Staff is looking at the potential for buying the difference of 300,000 gallons off the spot market during the next fiscal year. Seven companies were interested in participating in the new process. MATA's current contract expires on June 30, 2014. Staff is asking Board for authorization to beginning watching the quotes, and if the prices do not exceed \$3.05, staff will look at the possibility of locking in the contract at 1.5MM gallons with one of the seven pre-certified companies. **Mr. Vergos moved that Resolution No. 14-22 be approved. Mr. Pickard seconded the motion and the resolution was unanimously approved.**

#### 2. Resolution to Authorize the Purchase of Unleaded Gasoline – Res. No. 14-23

**Discussion:** Mr. Maury Miles presented this resolution to the MATA Board. Staff estimates a usage of 50,000 gallons for the year. Three of the seven companies chose not to participate in the fixed-price for 50,000 gallons of unleaded gasoline. From April 29 – July 31, 2014 staff will be looking at hopefully locking in a fixed price for 50,000 gallons of unleaded gasoline with the four companies that agreed to participate in the new procurement process. Again, if additional gallons are needed, staff will look at purchasing it on the spot market from whoever is lowest. **Mr. Vergos moved that Resolution No. 14-23 be approved. Ms. Taylor seconded the motion and the resolution was unanimously approved.**

### B. SERVICE AND DEVELOPMENT

#### 1. Resolution to Approve Service Changes - Res. No. 14-24

**Discussion:** Mr. Darryl Covington, Manager of Scheduling, presented the five regular fixed route changes that staff solicited public comments on. Mr. Covington showed a presentation on each of the five routes, and the proposed changes as well as maps on each proposed route change. Dr. Fox talked about the proposed elimination of game shuttles for basketball and football games. Ridership averages about 1% of attendance at these events. Dr. Fox stated that we operated 70 games this year from six locations. We varied from 3 buses to 19 buses. Total estimated loss per season for all shuttle service combined was \$86,000. The fare for the service is \$8.00 per round trip. With budget situation and the constraints on the fares we can charge, staff is recommending elimination of all game shuttles. This is a service that staff feels can be provided in other ways, such as by private charter bus companies. Staff did review other peer transit agencies in regards to game shuttles, and found none that do basketball shuttles, and only a couple that do football shuttles.

MATA received numerous comments in favor of keeping the shuttles. **Mr. Pickard moved that Resolution No. 14-24 be put on the floor for discussion. Ms. Taylor seconded the motion.**

Chairman Healy recognized Mr. Stanley Holland, who requested to speak on this resolution. Mr. Stanley Holland resides 228 Holland Avenue, Memphis, TN 38109. He stated that his concern is with the #57.

The #12 route will allow for some of the people to ride; however, the passengers will be more served if MATA would add 10,000 more feet to the route, which it would allow for the people that live along First Street, Davant and part of the Fairview area. This would be the old #31 route. There is more ridership in that area than any other area. Mr. Holland stated that from his understanding they would have to catch three buses to get to the #42, which is a real problem. He asked if the Board and staff could propose something better. Mr. Covington stated that this request would create additional mileage, and ridership did not support this. Mr. Vergos asked if we could get the route changes in context with the entire city, as well as enhance the graphics more on the maps. Mr. Pickard stated in regards to the game shuttle, did we propose a \$45,000 advertising package to the Grizzlies. Dr. Fox stated there has been conversation with them off and on throughout the year; however we did not propose it on this time. **Mr. Pickard made a motion to amend Res. No. 14-24 to remove the recommendation to cancel all game shuttles. Ms. Taylor seconded the motion.** Mr. Pickard suggested a \$45,000 advertising package to the Memphis Grizzlies and a \$30,000 package to the University of Memphis, as well as with Liberty Bowl and Southern Heritage Classic. Ms. Taylor stated that perhaps MATA staff, Grizzlies and University of Memphis could get together to discuss this matter and talk about what the options are, as all responsibilities should not fall on MATA. Mr. Gibson suggested that staff put something together to show what it would look like for weekend service only for game shuttles, and provide some alternatives for the purchase of advertising. Ms. Taylor asked if we received any funding from Bartlett or Germantown, and if not, could staff consider reaching out to those areas. Dr. Fox stated that we do not receive funding, but could reach out to them as well. Mr. Vergos wanted to disclose the fact that the Rendezvous Restaurant does have a contract with the Grizzlies, but he feels comfortable voting on this matter unless the Board has any objection. There was no objection. Mr. Ryan Alpert with University of Memphis was present and stated that he is in support of the Board tabling the discussion and bringing all the parties together to come up with a timely resolution for all parties, if at all possible. Chairman Healy first called for the Board's approval to amend Res. No. 14-24 to remove the recommendation to cancel all game shuttles. The Board unanimously approved. Chairman Healy then called for the vote on Res. No. 14-24 as amended. The resolution was unanimously approved. Chairman Healy's recommended to staff that we have this done by the end of June, 2014.

## **2. Resolution to Award a Contract to Trends Group, LLC for the Cleaning and Maintenance of Trolley Stations Alvin Pearson - Res. No. 14-25**

**Discussion:** Ms. Frances Boyland, Sr. Contract Administrator presented this resolution to the Board. This was advertised in the Daily News, and on our MATA web site. Four bids were received and three were determined responsive. Out of three responsive bids, staff recommended Trends Group, LLC, who submitted the lowest and responsive and responsible bid in an amount not to exceed \$160,500 for five years. The DBE goal was set at 5% and Trends Group exceeded that goal at 100%. **Mr. Vergos moved that Res. No. 14-25 be put on the floor for discussion. Mr. Pickard seconded the motion.** Mr. Vergos commented on the fact that the lowest bidder was so significantly lower than the top bidder. Mr. Pearson stated that he is currently doing the work, and apparently feels that they can continue to do it at this rate. They have an excellent record thus far, as staff has not had any complaints. Resolution No. 14-25 was unanimously approved.

## **3. Resolution Authorizing Free Fares for all Customers with Bicycles on May 16, 2014 - Res. No. 14-26**

**Discussion:** Ms. Niketa Reed, Marketing Manager, presented this resolution to the Board. This is an annual event hosted by the Downtown Memphis Commission. MATA generally serves as sponsors offering free bike rides on that day. On an average day, we usually have about 70 riders and on that particular day last year, it was about 75-76 riders who had an opportunity to ride free. **Ms. Taylor moved that this resolution be put on the floor for discussion. Mr. Vergos seconded the motion.** Chairman Healy asked if any different marketing is being done to get those numbers higher on the free fare day than we see on a regular day.

Niketa stated that Ms. Burton is working on some new marketing strategies. Chooch also stated that he believes the numbers have increased significantly every year. Resolution No. 14-26 was unanimously approved.

## **FINANCIAL REPORT**

**Mr. Gil Noble**

**March 2014 (Nine months of the fiscal year)**

Revenues are reflecting an accurate position compared to budget. Because the federal preventive maintenance funds did not come in March, the City did have to bridge the \$3MM gap from April 2 until April 16, 2014. This enabled us to proceed and not run out of money. Expenses for March were within \$27,000 of budget, so we continue to run about \$1MM unfavorable to budget. This is still attributed to the \$700,000 that we did not budget for emissions retrofit of several buses. During the month of April, we did receive the funds that were outstanding for this initiative. Revenue funds were received and we budgeted for March in April. On a year-to-date basis, we will be close to budget in April.

Salary/Wages and Healthcare costs combined for the quarter were over budget by \$174,000. Services and material cost were favorable to budget by \$43,000. These constitute roughly 80% of the out of pocket dollars budgeted for the fiscal year. All three quarters combined were showing that we are roughly \$1MM above budget so far this year. Mr. Healy mentioned the big jump in the healthcare cost for the March quarter compared to the previous two fiscal years. Mr. Noble stated that healthcare cost is hard to predict because MATA is self-insured. Ms. Taylor inquired about the high December service and material costs. Mr. Noble stated this is due to the \$700,000 that we did not budget for the emission retrofit. Mr. Vergos mentioned the discussion from the last Board Meeting regarding low ridership for January and February and hoped to see a change for March as well. However, in looking at passenger fares, we seem to be failing below in revenues for March. Mr. Noble stated that line item has been unfavorable to budget consistently all year. He stated he believes it is more likely the service reduction in October and under-estimated the impact when we did the budget.

## **MARKETING REPORT**

**April 2014**

A copy of the marketing report was forwarded to the MATA Board prior to the Board Meeting. Ms. Niketa Reed presented the marketing report to the Board.

### **Mobile Apps**

Niketa stated that staff issued an RFP for a mobile application development. Deadline for offers is Friday May 9, 2014. This will bring real time data into a trip planning tool.

### **Hybrid Buses**

MATA received 15 hybrid electric buses, and staff ordered them in green. This is part of our new campaign that we are still in the process of developing.

**Trolley Unplugged** - Local artists will be on the Main Street Trolley from now to the end of the summer. Passengers can ride free every Friday and Saturday from 6:00 p.m. until 8:00 p.m.

**Car-Free Challenge** - MATA was selected as feature participants in this challenge. Employees rode buses, carpooled, and some bike riding took place as well. Dr. Fox, Interim general manager committed 15 days to the challenge and succeeded. Dr. Fox rode the bus to work and biked to work as well. Pictures are posted on the car-free Memphis blog. MATA riders got a chance to participate as well by submitting a picture of themselves on the bus, the trolley, or at a bus or trolley stop. Their names were entered into a drawing for a 31-day pass. MATA wanted to make sure they were involved as well.

### **PERFORMANCE MEASURES REPORT (March)**

Dr. Fox stated for the month of March, 11 out of the 20 measures exceeded the target, and two were within 10% of the target. We would have had one more, but because of the accident on the trolley line with the truck hitting the catenary wire we lost a little ridership in the first week of March. Of the 20 measures, seven did not meet their target. Eleven measures are the highest number that we have achieved within the last few months, so we are showing some progress. Within the next couple of months, staff will give the Board a six-month trend on the progress in the performance measures. Chairman Healy mentioned a concern with wait time on customer calls, as it is continually heading in the wrong direction.

Dr. Fox stated it has been a staffing issue. Within the next couple of months the staffing issue should be resolved, and we should see the wait time improve. The other part of the performance measures consisted of a power point presentation on miles between chargeable road calls. Glen Lockhart, Director of Bus Maintenance, presented from the bus side and Warren Henderson, Manager of Trolley Maintenance presented from the trolley side. Mr. Vergos stated that MATA has to put these vehicles out every day, no matter what. He feels that staff is doing a good job and the Board appreciates that, and hopes the general public appreciates it as well.

Dr. Fox addressed Mr. Gibson on his request for a presentation on the customer service aspect of operator training. Ms. Burton will make this presentation upon her return, hopefully by next Board Meeting or the end of June meeting.

## INTERIM GENERAL MANAGER'S REPORT

Dr. Fox forwarded a copy of the general manager's report prior to the Board Meeting. He went over some highlights of the report. Board Members received a copy a Commercial Appeal article showing that the Airways Transit Center received another architectural award from the Memphis Chapter of AIA. This is the 3<sup>rd</sup> architectural award the project has won.

MATA received some good media coverage to show off our transit signal priority project on Poplar Avenue. We have demonstrated a 20% improvement in travel time on Poplar Avenue.

The Goodlett Farms route started Monday, (May 21, 2014), but ridership has been very light. However, Conduit Global has not moved in their building yet. Timetables and informational materials have been sent to the apartment complexes and other employers along the route.

MATA will have our budget hearing with the Memphis City Council Committee on April 29, 2014 at 1:45 to 2:30pm. The mayor has recommended a \$1.5MM increase from last year's budget, which will basically bring us back to FY13 levels.

Dr. Fox participated in a bus tour with Secretary Foxx with U.S. DOT and EPA Administrator McCarthy. There was also an afternoon roundtable, in which Mr. Andre Gibson participated in the roundtable as well. We drove them by the Airways Transit Center, and we showed off our transit signal priority project as part of the tour that was taken on a MATA hybrid bus.

Alvin Pearson, Asst. GM, talked about the trolley fleet situation. Federal inspectors from TDOT and an inspector hired by FTA will be on the property April 29, 2014 to inspect the last trolley fire. Mr. Pearson stated they also reached out to APTA and they are going to send antique trolley experts in at a later date. The insurance company has inspected the trolley, and it will probably be totaled. Mr. Pearson gave a brief report last month on when the incident where the truck hit the catenary line. We lost approximately \$35,000 during that time period, along with loss of ridership as well. A written report or an email report will be given next month or perhaps earlier, to let the Board know what the findings will be. Mr. Pickard inquired about a report on the first trolley fire. Mr. Pearson stated that TDOT has signed off on it, and he would get the Board a copy of the report, as well as the corrective actions.

John Lancaster gave a brief presentation, which is a follow up to the service standards presentation given by him a few months ago. This presentation showed the eight proposed service standard concepts as it relates to the service changes that were approved by the MATA Board today (4/28/14).



The next step is to propose the service standards in more detail to the Board and advertise for public comment, and hopefully in either June or July get these adopted.

**SPEAKERS:**

Several speakers requested to speak. Each having three minutes to express themselves.

**Ms. Bobbie Fields -3751 Prescott Road, Memphis, TN 38118** – Ms. Fields is part of the Specialized Transportation Advisory Committee (STAC). Ms. Fields presented a list of recommendations relating to MATApplus from the committee for the MATA Board and staff to review and address. A meeting will be scheduled with STAC members to go over the recommendations before the end of the month.

**Mr. Josue Rodriguez** – Ms. Fields addressed most of the concerns from Mr. Rodriguez. He asked for a timeline from the Board on when they would receive a reply on the recommendations. Mr. Pickard is the chairman of the ADA Committee, and will plan to meet with MATA staff and STAC members to address the concerns. A STAC Committee meeting is scheduled for early June, 2014, and MATA staff will commit to a meeting with the STAC committee by the end of May, 2014.

**Ms. Christina Clift, 4824 Tamarock, Millington, TN 38053** – Representing the Memphis Federation for the Blind, which is a national organization of people who are blind or visually impaired. Her concern is the poor service that individuals with disabilities are receiving when riding MATApplus. We know that MATA is under tremendous funding constraints. We are very patient when it comes to riding the bus. She stated they are here today because they don't want to have to contact FTA to get better service. At times the service has gotten better but in past week or so it has gone down. She is not speaking for herself, but on behalf of those that have to wait on buses for 2 hours and not making it to their jobs on time. Ms. Clift stated she took note of the discussion of the improvements on the trolleys, they would like to have that same attention to be put toward MATApplus, and maybe they could get some improvements and better service.

**Savannah Morris, 273 Johnson Circle, Memphis, TN 38112** – Ms. Morris' concerns are with the MATApplus service. Ms. Morris has been riding MATApplus for over 30 years, and it was much better then, than now. She stated she is always ready to go, but the bus is never there on time. She has waiting up to 3 hours for a pick up. It really needs a lot of improvements. If you just look back to where we started from, perhaps you can see the difference in how MATApplus service has gone down tremendously.

**Mr. Russell Jones - 3295 Woodhollow Dr., Memphis, TN 38118** - Mr. Jones stated that they will provide staff with all of the recommendations they are recommending. However, one in particular is we would like for the managers of MATApplus to assure that current and future operators be given the opportunity to go through a refresher course on sensitivity training. There are a lot of operators that do not have compassion for persons with disabilities, as well as visually impaired individuals. He stated that during the week he gets fairly good service; however, on Sundays he was informed that he would not be able to ride MATApplus to church. However, it has been noted that MATApplus buses have been seen in the same apartments in which he lives. He asked Dr. Fox and Mr. Albritton to check into this.

**Ms. Tena Murphy - 6580 Poplar Avenue, Memphis, TN 38138** - Ms. Murphy voiced some concerns about MATApplus to include late buses. They are either too early or too late. They have even been more than 1 ½ hours late. Her other concern is the air on the buses needs to be turned down, the bus is too cold. She asked the Board and staff to look into that as well.

Chairman Healy thanked all of the speakers for attending today and voicing their concerns with MATA, specifically with MATApplus. Chairman Healy asked staff to include MATApplus as a focus on our service update for next month's performance measures.

Mr. Vergos asked if staff is aware of how long a MATApplus rider has been waiting on a bus, or do the riders have to make a complaint before staff becomes aware of it? Dr. Fox stated that staff is aware before the rider makes the complaint. Mr. Vergos also asked if there is some type of refund or incentive given the rider considering how long of a wait time they experience. He also asked is this part of MATA's policy, or could we consider it, or is it even legal? Dr. Fox stated that we can give this some consideration. Chairman Healy suggested this be part of the discussion at the STAC meeting that will be scheduled with staff and Chooch before the end of May.

**Ms. Vonnie Peeler, representing MCIL and University of Memphis** - Ms. Peeler was basically trying to understand where the MATApplus late issues are really coming from. Is it staff, management, or is it the times that the customers are calling in to schedule trips. She posed this question because she is a former Memphis City Schools bus driver, and is familiar with this type of issue. There were times, as drivers, they were labeled as being late, however, that was not always the case, and they were not always at fault. She felt this is something that should be looked at more closely. Chairman Healy stated those are great questions and concerns. Again these are questions that can be discussed at the STAC committee meeting as well.

## OLD/NEW BUSINESS

The Board Retreat is on hold due to some changes to the MATA Board of Commissioners. Also Chairman Healy stated we are in the continuing process of selecting a new general manager. A meeting will be scheduled for May 9, 2014 with the search firm and they are working to narrow the candidates down to 3 to 5 candidates.

The next regular Board Meeting falls on Memorial Day holiday. Ms. Eskridge polled the MATA Board earlier to see if they were in agreement for the May meeting to be held on Monday June 2, 2014. Having the meeting later rather than earlier would allow staff ample time to prepare necessary resolutions for the meeting. The Board agreed to this date.

Chairman Healy called for a motion to adjourn. Mr. Vergos motion that the meeting be adjourned. Ms. Taylor seconded the motion and the meeting was adjourned.

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Mr. Sean Healy  
Vice Chairman of the Board

**MEMPHIS AREA TRANSIT AUTHORITY  
BOARD OF COMMISSIONERS**

**RESOLUTION NO. 14-27**

**RESOLUTION TO AWARD A CONTRACT TO MID-SOUTH BUS CENTER FOR THE  
PURCHASE OF 16 WHEELCHAIR-ACCESSIBLE VANS**

**WHEREAS, The Memphis Area Transit Authority (MATA) is a public agency responsible for providing public transportation services within the City of Memphis and the Memphis Urbanized Area; and**

**WHEREAS, This procurement is the result of a Request for Proposals issued by MATA soliciting projects to be funded under the New Freedom program as approved by the MATA Board of Commissioners in Resolution No. 13-30; and**

**WHEREAS, MATA solicited proposals from vendors for purchasing up to 16 wheelchair-accessible vans with 10 of those to be used by Checker Cab Company for taxi service and six to be used by MATA for MATApplus service; and**

**WHEREAS, Proposals for the vans were solicited in accordance with MATA's Procurement Policies including formal advertisement; and**

**WHEREAS, MATA has funds available for the Federal (80%), State (10%) and Local (10%) share of this project with Checker Cab Company providing the 10% local match for their 10 vans; and**

**WHEREAS, MATA staff has reviewed the single proposal received and recommends that a contract be awarded to Mid-South Bus Center for the purchase of 16 wheelchair-accessible vans at a price of \$34,299 each for a total of \$548,784 (\$205,794 for MATA and \$342,990 for Checker Cab) and a delivery time of 90 days from Notice to Proceed.**

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMPHIS AREA TRANSIT AUTHORITY BOARD OF COMMISSIONERS, That a contract is awarded to Mid-South Bus Center for the purchase of 16 new wheelchair-accessible vans (10 for Checker Cab and six for MATA) at a contract price of \$548,784 (\$205,794 for MATA and \$342,990 for Checker Cab) and a delivery time of 90 days from Notice to Proceed.**

**BE IT FURTHER RESOLVED, That Checker Cab Company shall provide the 10% local share for their 10 vans and enter into a lease with MATA for the vehicles.**

**BE IT FURTHER RESOLVED That the President/General Manager, Interim General Manager, Chairman or Vice-Chairman be authorized to execute the necessary contract.**

**\* \* \* \* \***



**TO:** MATA Board of Commissioners  
**FROM:** Thomas Fox, Interim General Manager  
**SUBJECT:** Purchase of 16 Wheelchair-Accessible Vans  
**DATE:** May 20, 2014

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MATA has funds in a Section 5317 New Freedom grant to purchase 16 wheelchair-accessible vans. Resolution 13-30 authorized MATA to purchase 10 vans for Checker Cab to use as wheelchair-accessible taxis. The resolution also authorized MATA to purchase up to 10 vehicles with a ramp that has a higher capacity than is required by the Americans with Disabilities Act (ADA). These vehicles will be used for MATApplus service to replace vehicles that have met their useful service life.

MATA solicited proposals four times from vendors for the wheelchair-accessible vans. MATA received three proposals during one of the solicitations, but all three were deemed non-responsive. Two of the proposers did not meet MATA's specifications while the third proposer did not meet the Buy America regulations. MATA re-solicited; however, none of the vendors submitted a proposal by the due date. When MATA re-solicited for the third time, Mid-South Bus Center (Mid-South) was the only vendor to submit a proposal. The Evaluation Committee found it to be responsive and Mid-South to be a responsible proposer. The price of the proposed vans (\$34,299 each) was determined to be fair and reasonable.

All of the vans will have the capacity to transport two passengers in wheelchairs with two ambulatory passengers. If only one wheelchair is in use, four ambulatory passengers can be transported besides the passenger in the wheelchair. If no wheelchairs are in use, the vehicle can transport a maximum of six ambulatory passengers. The ramp will support 700 pounds which exceeds the ADA's 600 pound threshold.

Federal Section 5317 funds will cover 80% of the vans' cost with TDOT providing another 10%. Checker Cab has stated that they will provide the 10% local match for their 10 vans, and the City of Memphis will provide the 10% match in CIP funds for MATA's six vans.

Mid-South indicated that the vans can be delivered within 90 days of a Notice to Proceed. MATA's staff is recommending that a contract be awarded to Mid-South for all 16 vans.

Please let me know if you have questions or would like to discuss.

**MEMPHIS AREA TRANSIT AUTHORITY  
BOARD OF COMMISSIONERS**

**RESOLUTION NO. 14-28**

**RESOLUTION TO APPROVE CONTRACTS TO AMBASSADOR WORLDWIDE  
PROTECTION AGENCY AND CDA/MAXSENT FOR SECURITY GUARD SERVICES**

**WHEREAS, The Memphis Area Transit Authority (MATA) requires the services of a professional security service company to protect its passengers, personnel, equipment and facilities at the William Hudson Transit Center, the American Way Transit Center, Central Station, the Bus Operations, Maintenance & Administration Facility and the Trolley Maintenance and Storage Facility; and**

**WHEREAS, MATA advertised and solicited proposals for a five-year contract in accordance with MATA's Procurement Manual; and**

**WHEREAS, Eight responsive proposals were evaluated by the Evaluation Committee; and**

**WHEREAS, Ambassador Worldwide Protection Agency (Ambassador) and CDA/MaxSent were the two highest rated responsive and responsible proposers; and**

**WHEREAS, The Best and Final hourly rates proposed by the two companies are attached; and**

**WHEREAS, The Evaluation Committee recommends awarding two contracts for the period of July 1, 2014 – June 30, 2019 as follows:**

- Ambassador for security at the William Hudson Transit Center at a cost of \$785,689 over the five-year period**
- CDA/MaxSent for security at the American Way Transit Center, the Bus Operations, Maintenance & Administration Facility, the Trolley Maintenance and Storage Facility, and special events at Central Station at a cost of \$559,753 over the five-year period; and**

**WHEREAS, The recommended contracts total \$1,345,442 or an average of \$269,089 per year for the five-year period; and**

**WHEREAS, the DBE goal has been exceeded on both contracts.**

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMPHIS AREA TRANSIT AUTHORITY BOARD OF COMMISSIONERS That contracts for the period of July 1, 2014 – June 30, 2019 be awarded to Ambassador Worldwide Protection Agency for security guard service at the William Hudson Transit Center at a cost of \$785,689 over the five-year period and to CDA/MaxSent for security guard service at the American Way Transit Center, the Bus Operations, Maintenance & Administration Facility, the Trolley Maintenance and Storage Facility, and special events at Central Station at a cost of \$559,753 over the five-year period for a grand total of \$1,345,442 over the five-year period.**

**BE IT FURTHER RESOLVED, That the President/General Manager or the Interim President/General Manager be authorized to reduce or increase the hours and cost of either contract if necessary for budgetary or security reasons.**

**BE IT FURTHER RESOLVED, That staff has the discretion to utilize either company at locations other than those stated above if required to maintain adequate security.**

**BE IT FURTHER RESOLVED That the President/General Manager, Interim President/General Manager, Chairman or Vice-Chairman be authorized to execute the necessary contracts.**

**\* \* \* \* \***

**AMBASSADOR WORLDWIDE PROTECTION AGENCY HOURLY RATES**

**ARMED SERVICE**

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Sunday Hourly Rate	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00
Weekday Hourly Rate	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00
Saturday Hourly Rate	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00
Holiday Hourly Rate	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
Central Station Rate	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00

**CDA/MAXSENT HOURLY RATES**

**ARMED SERVICE**

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Sunday Hourly Rate	\$16.79	\$16.79	\$16.79	\$16.79	\$16.79
Weekday Hourly Rate	\$16.79	\$16.79	\$16.79	\$16.79	\$16.79
Saturday Hourly Rate	\$16.79	\$16.79	\$16.79	\$16.79	\$16.79
Holiday Hourly Rate	\$25.19	\$25.19	\$25.19	\$25.19	\$25.19
Central Station Rate	\$16.79	\$16.79	\$16.79	\$16.79	\$16.79

**UNARMED SERVICE**

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Sunday Hourly Rate	\$13.14	\$13.14	\$13.14	\$13.14	\$13.14
Weekday Hourly Rate	\$13.14	\$13.14	\$13.14	\$13.14	\$13.14
Saturday Hourly Rate	\$13.14	\$13.14	\$13.14	\$13.14	\$13.14
Holiday Hourly Rate	\$19.71	\$19.71	\$19.71	\$19.71	\$19.71
Central Station Rate	\$13.14	\$13.14	\$13.14	\$13.14	\$13.14





## MEMO

**TO:** MATA Board of Commissioners  
**FROM:** Tom Fox, Interim President/General Manager  
**SUBJECT:** Security Guard Services Procurement  
**DATE:** May 20, 2014

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This memo summarizes the procurement and evaluation process for Security Guard Services. This procurement covers security services for various MATA facilities including:

- Operations, Maintenance, and Administration Facilities (1330-1370 Levee Road, 1364 and 1370 Watkins Street)
- William Hudson Transit Center (444 North Main Street)
- American Way Transit Center (3921 American Way)
- Central Station (special events only] (545 South Main Street)
- Trolley Maintenance and Storage Facility (547 North Main Street)

The proposed contracts are for a period of five years for the period of July 1, 2014 – June 30, 2019.

The Evaluation Committee consisted of three MATA staff members. The following technical criteria were established for evaluating proposals:

- a. Experience and Past Performance
- b. Qualifications of Employees
- c. Understanding of the Project
- d. Conformance with the Request for Proposal

The Best Value method was used in the evaluation process. Under the Best Value approach, prices are not scored but are presented alongside technical qualifications, and committee members judge the trade-off between cost and technical merit to arrive at a decision on the best value to MATA. The hourly rates for Armed and Unarmed guards over the five-year period were used as the primary measure of cost.

The Disadvantaged Business Enterprise goal was 5%.

MATA received 13 proposals; however, five of these were deemed non-responsive. The Evaluation Committee reviewed and rated the eight responsive proposals on each of the four technical criteria with Experience and Past Performance having a maximum score of 30 points; Qualifications of Employees having a maximum score of 25 points;

Understanding of the Project having a maximum score of 20 points and Conformance to the RFP having a maximum score of five points.

After compiling the technical scores and considering cost, the following three proposers were determined to be in the competitive range for negotiations:

Ambassador Worldwide Protection Agency (Ambassador)  
CDA/MaxSent  
Dynamic Security

The Evaluation Committee decided to reduce the number of hours for the security guard patrolling MATA's Operations, Maintenance and Administration facilities to reduce costs. The daily hours were reduced from 8:00 p.m. – 4:00 a.m. to 12:00 a.m. – 4:00 a.m. which is a total of four hours daily. The Committee also recommended that the proposers provide their hourly rates based upon (1) receiving a contract for all of the security services and (2) receiving a contract for one of the following:

- A. Security service for the William Hudson Transit Center only, or
- B. Security service for the remaining facilities only.

All three proposers were given an opportunity to resubmit their hourly rates based on the reduced scope and potential for receiving a contract based upon Scenarios A and B stated above. The final hourly rates received from the three companies are shown below (the rates are the same for all five years).

	<u>Weekday, Saturday, Sunday</u>		<u>Holiday</u>	
	Armed	Unarmed	Armed	Unarmed
Ambassador (both scenarios)	\$17.00	\$15.00	\$25.00	\$21.00
CDA/MaxSent (Scenario A)	\$16.68	\$13.05	\$25.02	\$19.58
CDA/MaxSent (Scenario B)	\$16.79	\$13.14	\$25.19	\$19.71
Dynamic (both scenarios)	\$16.98	\$14.98	\$19.00	\$17.00

Ambassador's and CDA/MaxSent's hourly rates for special events at Central Station were the same as their hourly rates for Weekday, Saturday and Sunday service while Dynamic's hourly rates for special events at Central Station were the same as their hourly rates for holidays.

Ambassador exceeded the DBE goal at 100%. CDA/MaxSent exceeded the DBE goal by proposing to use Clarion Security for 20% of the security work. Dynamic Security was not able to meet the DBE goal, but their good faith efforts were deemed acceptable by MATA's DBE Officer. When MATA asked the proposers for their revised hourly costs based upon a reduced number of hours for the security guard patrolling MATA's Operations, Maintenance and Administration facilities and for the possibility of receiving a contract under Scenarios A or B stated above, CDA/MaxSent was asked to indicate their revised DBE participation and to identify the number of hours for Clarion. CDA/MaxSent stated that Clarion's participation would be 19.3% if they received the contract for all of the security services, 10.8% of the contract hours if they received a contract under Scenario A, and 10.3% of the contract hours if they received the contract under Scenario B.

The Evaluation Committee recommended that the Best Value to MATA would be to award two contracts for the period of July 1, 2014 – June 30, 2019 as follows:

**Ambassador:** William Hudson Transit Center (armed)  
**CDA/MaxSent:** Operations, Maintenance, and Administration Facility (armed and unarmed); American Way Transit Center (unarmed); Trolley Maintenance and Storage Facility (armed and unarmed); and Central Station [special events only] (unarmed)

Based on Ambassador's final hourly rates and the planned number of hours for security service at the William Hudson Transit Center, their cost over the five-year period will be \$785,689 for an average annual cost of \$157,137.80.

Based on CDA/MaxSent's final hourly rates and the planned number of hours for security service at the remaining facilities, their cost over the five-year period will be \$559,753 or an average annual cost of \$111,951.

The grand total for the two contracts is \$1,345,442 or an average annual cost of \$269,089.

The DBE goal was exceeded on both contracts: Ambassador at 100%, CDA/MaxSent at 10%, and 63% overall.

It should be noted that the cost may vary slightly depending on the needs for security at Central Station and other unforeseen circumstances. Also, staff may wish to reduce the number of hours if necessary to close a budget shortfall or increase the number of hours for security reasons. It is recommended that staff be given the flexibility to assign contract personnel to any MATA facility in situations where additional manpower is needed on a short term basis.

Please let me know if you would like to discuss.

**MEMPHIS AREA TRANSIT AUTHORITY  
BOARD OF COMMISSIONERS**

**RESOLUTION NO. 14-29**

**RESOLUTION TO AUTHORIZE A LEASE WITH THE DOWNTOWN PARKING  
AUTHORITY FOR THE PARKING LOT AT THE HUDSON TRANSIT CENTER**

**WHEREAS, The William Hudson Transit Center (formerly the North End Terminal) includes approximately 160 surface parking spaces that are used by patrons of the facility;**

**WHEREAS, The majority of the parking spaces were leased by the Workforce Investment Network (WIN) as part of their building lease until WIN moved out recently; and**

**WHEREAS, There is now an opportunity to generate revenue from occasional users of the lot, particularly the riders of Megabus; and**

**WHEREAS, Staff has negotiated a three year lease with Downtown Parking Authority (DPA) under which DPA will contract with Premier System Parking, Inc. to manage the lot; and**

**WHEREAS, DPA will be responsible for regular maintenance of the parking lot to include striping, signage, pay machines and other equipment necessary to properly operate the lot; and**

**WHEREAS, DPA estimates monthly revenues to average \$3,432 and monthly expenses to average \$1,740 per month after initial startup for an average monthly surplus revenue of \$1,692; and**

**WHEREAS, MATA will receive 80% of the surplus revenue, projected to be about \$16,243 per year after initial start-up expenses; and**

**WHEREAS, the lease agreement is for a period of three years with a one year option and may be terminated by either party at any time upon 30-days notice.**

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MEMPHIS AREA TRANSIT AUTHORITY That a Lease Agreement between Memphis MATA and Downtown Parking Authority for the parking lot at Hudson Transit Center be approved for a period of three years plus a one year option.**

**BE IT FURTHER RESOLVED, That the lease is contingent on approval by the Federal Transit Administration.**

**BE IT FURTHER RESOLVED That the President/General Manager or Chairman of the MATA Board of Commissioners be authorized to execute the Lease.**

**\* \* \* \* \***

## **PARKING LOT LEASE AGREEMENT**

THIS PARKING LOT LEASE AGREEMENT (the "Lease Agreement"), is made and entered into as of the \_\_\_ day of May 2014, by and between **The Downtown Parking Authority of the City of Memphis and County of Shelby, Tennessee**, a Tennessee non-profit Corporation, with principal offices at 114 North Main Street Memphis, Tennessee 38103, hereinafter called "**DPA**" and **Memphis Area Transit Authority**, an authority of the City of Memphis, Tennessee, with principal offices at 1370 Levee Road, Memphis, Tennessee 38108 hereinafter called "**MATA**".

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and legal sufficiency of which is hereby acknowledged, DPA and MATA agree as follows:

1. Engagement of DPA. MATA owns property located at 444 North Main Street, Memphis, Tennessee 38107, a part of which is designated as a parking lot, commonly known as William Hudson Transit Center Parking Lot, containing approximately 160 spaces (hereinafter referred to as the "Parking Facility"), and hereby leases only the Parking Facility to DPA under the terms, conditions, and provisions hereinafter set forth pursuant to this Lease Agreement. It is understood and agreed that DPA will enter into a separate management agreement (the "PLM Agreement") by and between DPA and Premier System Parking, Inc. (hereinafter called "Manager") for the day to day management and operation of the Parking Facility.
2. Term and Compensation. The term of this Lease Agreement shall commence on June 1, 2014 and shall continue in effect for a period of thirty-six (36) months from said date to May 31, 2017. MATA shall have the right to extend this contract by one (1) year under the same terms and conditions by giving DPA ninety (90) days written notice. Compensation to be paid hereunder shall be based on Operating Surplus (as defined herein). For all services rendered hereunder, the Operating Surplus shall be divided eighty percent (80%) to MATA and twenty percent (20%) to DPA.
3. Use of Parking Facility and Reservation of Employee Spaces. The Parking Facility is to be operated as a commercial parking facility and in accordance with the provisions of the Lease Agreement, and shall be used for no other purpose without prior written approval of MATA. During the term of the Lease Agreement, including any extensions thereof, MATA hereby reserves thirty (30) parking spaces for employees of MATA, which spaces shall be at no charge to MATA as evidenced by Exhibit "1" attached hereto.
4. Compliance with Lease Agreement Between DPA and MATA. The terms hereof shall be incorporated and adhered to by the Manager of the Parking Facility. The Manager acknowledges that it has been made aware of and agrees to comply with and be bound by the provisions of the Lease Agreement by and between the DPA and MATA, as the same may, from time to time, be amended or modified. The Manager hereby acknowledges receipt of a copy of the Lease Agreement and acknowledges that during the term of the Lease Agreement, including any extensions thereof, MATA has reserved, and DPA has agreed to provide, thirty (30) parking spaces for employees of MATA at no charge.

5. Record Keeping and Privity of Contract. The Manager agrees to provide to DPA accurate financial reports, data and space counts for usage and demand of the Parking Facility. Reports of such data shall be provided by the Manager to DPA, with a copy to MATA, on a monthly basis at the time the monthly financial reports are delivered to the DPA as required by Paragraph 10 of the Lease Agreement. Utilizing the information, the Manager shall use its best efforts to accommodate the demand of the patrons (tenants and visitors) for use of the Parking Facility. The Manager agrees to cooperate fully with DPA to create alternative means of projecting usage of the Parking Facility and enhance the revenue therefrom. Manager acknowledges and agrees that, notwithstanding the provisions of the Lease Agreement and the rights of MATA thereunder, Manager's responsibilities under the Lease Agreement run to and for the benefit of DPA and Manager shall answer solely to DPA regarding the management of the Parking Facility.
  
6. Definitions. Gross Revenues, Operating Expenses and Operating Surplus are defined as follows:
  - a. "Gross Revenues" shall include all revenues received by Manager from the operation of the Parking Facility. "Gross Revenues" shall include but not be limited to income from parking fees and any revenues collected and shall be accurately reported to DPA.
  
  - b. "Operating Expenses" shall include all ordinary direct expenses of Manager incurred while operating the Parking Facility (other than those of a capital cost nature as set forth below) including but not limited to the following:
    - i. Monthly management fee;
    - ii. Business taxes, other than franchise taxes on income, profits or assets;
    - iii. Licenses and permits necessary to operate the Parking Facility;
    - iv. Insurance cost to the extent required of Manager in this Agreement;
    - v. Sundry items such uniforms, tickets and janitorial supplies for employees assigned to the Parking Facility;
    - vi. Normal and timely maintenance and repairs to the Parking Facility including snow removal, repainting of stall markings, replacement or repair of signs, revenue control equipment, security equipment, lighting, cost of maintenance contracts approved or requested by DPA;
    - vii. Legal or audit charges directly attributable to the operation of the Parking Facility other than those performed by the staff of DPA or Manager, except to the extent covered in paragraph 9 below, if approved in advance by the DPA;
    - viii. Amortization of equipment purchased by Manager with the prior written approval of and on behalf of the DPA, amortized over an agreed period at an assumed interest rate; and
    - ix. Cost of utilities for the Parking Facility, if any.
  
  - c. "Operating Surplus" shall be defined as "Gross Revenues" less "Operating Expenses" and sales taxes.

7. Collection of Revenues, Manager's Fees.

- a. DPA covenants that it will collect or cause to be collected all of the Gross Revenues from the operation and use the Parking Facility, which Manager agrees to hold in trust for the benefit of DPA. The Gross Revenue for each month's operation shall thereafter, on or before the fifteenth (15<sup>th</sup>) day of the succeeding month, be disbursed by Manager as follows:
  - i. Manager shall pay all Operation Expenses as defined in Section 6 of this Agreement exclusive of management fee specified in Section 6(b)(i) of this Lease Agreement.
  - ii. Manager shall then pay to itself out of said Gross Revenues commencing with the Term of the PLM Lease Agreement, a monthly management fee of Five Hundred Dollars (\$500), and
  - iii. After payments of the amounts as directed in (i) and (ii) above and any sales taxes, the balance of the Gross Revenues shall be paid to DPA monthly, as Operating Surplus.
- b. If the Gross Revenues for any month are insufficient to make the payments required under subparagraphs (a)(i) and (a)(ii) above, MATA agrees to remit to DPA, and DPA agrees to remit to Manager, the amount of such deficit within thirty (30) days after receipt of Manager's report. In the event MATA and/or DPA fails to reimburse Manager within said thirty (30) day period, and MATA and/or DPA does not remedy such failure with thirty (30) days of receipt of written notice from Manager, then Manager shall have the right to terminate the PLM Agreement with immediate effect and to take whatever action is necessary to collect amount due Manager. Within thirty (30) days of such termination, MATA shall pay to DPA, which shall pay to Manager the unamortized portion of the purchase price of any equipment purchased by Manager pursuant to Paragraph (6)(b)(x) of the PLM Agreement.

8. Operation of Parking Facility. Manager agrees to operate the Parking Facility in an efficient manner and to operate same twenty-four hours a day, seven days a week on an unattended basis. DPA, with the consent of the MATA, may change this schedule of operation from time to time upon ten (10) days prior written notice to Manager. Manager shall ensure that the Parking Facility shall be open for business on an unattended basis at all times. Manager shall employ honest, competent and courteous personnel who are adequately trained and capable of performing the job duties assigned to them. All staff shall wear neat and clean uniforms and shall wear badges which have a photo of the employee, identify the staff member's name, and display Manager's name and logo.

9. Rates. The charges for parking in the Parking Facility shall be as set forth below, and any parking rate changes shall be subject to the approval of the DPA in its sole discretion. Manager shall provide the free employee parking required by the Lease Agreement.

- a. [All Handicap or disabled parkers receive free daily parking provided that valid handicap placard or license plate is displayed].

- b. General Rates: Hourly rates \$ \_\_\_ per hour for the first \_\_\_ ( ) hours and \$ \_\_\_ per hour for each hour thereafter. Maximum charge of \$ \_\_\_ for 24 hours.
- c. Rate Adjustments: Rates are to be adjusted only by mutual agreement between the DPA and MATA.

10. Records, Reports to MATA; Right to Audit. DPA agrees that it will cause Manager to keep complete and accurate records of all receipts and disbursements pertaining to the operation of the Parking Facility and on or before the fifteenth (15<sup>th</sup>) day of each month (beginning with the second month of term of this Lease Agreement and continuing through and including the fifteenth (15<sup>th</sup>) day of the month following the termination thereof) shall, at the time of the payment to MATA, render to the MATA a complete and accurate accounting of all receipts and disbursements for the preceding month including reports to reflect all daily activity and revenue of the Parking Facility and the Gross Revenues, Operating Expenses and Operating Surplus for such month and such other information as MATA shall reasonably request.

DPA will contract with Manager to insure that all of Manager's books and records relating to the Parking Facility shall be kept at the local Memphis office of Manager, and shall be available for inspection, audit and copying at all reasonable times by DPA or its duly authorized representatives. Vouchers, receipts or other records of the Manager shall support disbursements for Operating Expenses and shall be maintained by the Manager for a minimum of four (4) years after final payment under the Agreement. The acceptance by DPA and/or MATA of any payments pursuant to this Agreement shall not prevent DPA or MATA from thereafter disputing the accuracy of any report showing Gross Revenues or the amounts due DPA and/or MATA under this Agreement.

If any audit of such books and records reveals that Manager has underpaid the amount due to DPA pursuant to the Agreement, Manager shall pay the amount of such underpayment within ten (10) days of notice thereof from DPA. Should such audit confirm that Manager has underpaid the amounts due to DPA pursuant to the terms of the Agreement during any twelve (12) month period so audited by ten percent (10%) or more, Manager shall pay the cost of such audit.

Moreover, where Manager conducts an internal audit of its operation under this Agreement which shows any significant failures by Manager to meet its obligations hereunder, Manager shall provide to DPA a written summary describing in reasonable detail such findings of such internal audit. If Manager determines at any time that it has overcharged DPA, then Manager shall promptly provide to DPA a credit equal to the amount of such overcharge.

Notwithstanding anything to the contrary in this Section 10, DPA or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in this Section 10 for purposes of conducting an in-depth audit of Manager's performance under this Agreement more than once per calendar year; however, any follow-up reviews or other investigations related to an audit initiated under this Section may be conducted at any time and from time to time.

11. Budget. On or before October 31 of each year, the DPA shall submit to the MATA a proposed budget for the next year or applicable portion thereof. The budget shall be



subject to the approval of MATA in its discretion. The proposed budget shall be provided in the form of Exhibit “2” attached hereto.

12. Independent Contractor. In performing its responsibilities pursuant to this Lease Agreement, it is understood and agreed that DPA is at all times acting as an independent contractor and that MATA is not a partner, joint venture, or employee of MATA. It is expressly agreed that DPA will not for any purpose be deemed to be an agent, ostensible or apparent agent, or servant of MATA, and DPA agrees to take any and all such action as may be reasonably requested by MATA to inform the public, patrons of the Parking Facility, and others utilizing the services of MATA of such fact. DPA acknowledges and agrees that neither it nor its employees or agents have any right, power or authority to incur and will not incur any financial obligation, legal obligation or liability, or other obligation on behalf of, or binding upon MATA.

13. Maintenance, Cleaning.

- a. The Parking Facility shall be maintained in a manner comparable with other first class parking facilities located in Downtown Memphis and shall be kept clean and in good order, appearance and repair.
- b. DPA shall provide oversight and be responsible for regular maintenance of the Parking Facility to include striping, signage, pay machines and other equipment necessary to properly operate the Parking Facility.
- c. DPA agrees to use reasonable diligence in the care and protection of the Parking Facility during the term of this Lease Agreement and to surrender said premises at the termination of this Lease Agreement in as good condition as received, ordinary wear and tear and other casualty excepted.
- d. DPA agrees to cause the Parking Facility, at all times, to be kept in a clean, presentable and sanitary condition and maintain a regularly scheduled cleaning of the Parking Facility, to include, but not be limited to:
  - i. Emptying of trash containers daily or more frequently if needed; and
  - ii. Removal of large dirt and debris daily.
- e. DPA has the right to shut down any or all of the Parking Facility for repair at its reasonable discretion.

14. Insurance.

- a. DPA agrees to cause to be carried the insurance in such amounts as shown below, to cause all the premiums thereon to be paid when due and to cause such insurance to name the DPA, MATA and affiliates thereof designated by the DPA as additional insured thereunder.
  - i. Worker’s Compensation Insurance pursuant to State Law according to Statutory Limits.
  - ii. Comprehensive General Liability and Property Damage Insurance. Comprehensive General Liability shall include Operation and Premises, Independent Contractors, Blanket Contractual, Fire Legal Liability and Broad Form Property Damage coverage. DPA shall cause to be taken out and maintained during the life of the Lease Agreement such

Comprehensive General Liability including Property Damage Insurance as shall protect DPA and MATA from any subcontractors performing work covered by the Lease Agreement and DPA, MATA and their affiliates and their agents and employees from any claims of any nature, whether meritorious or otherwise, including property damage which may arise from operations under the PLM Agreement, whether such operations be by itself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the minimum amounts of such insurance shall be as follows:

“Comprehensive General Liability Insurance for Bodily Injury (including death) and Property Damage \$1,000,000.00 – Combined Single Limits.

- iii. Garage Keeper’s Liability in the amount of no less than \$1,000,000.00 Combined Single Limit, providing Comprehensive Coverage. However, the deductible may not exceed \$1,000.00 per claim.
- iv. Excess or Umbrella Insurance to be provided in the amount no less than \$4,000,000.00 per claim.

b. Manager and DPA agree that all insurance coverage, except Workers Compensation, shall be subject to a deductible amount not to exceed \$1,000.00 per occurrence and that the payment of the deductible amount(s) will be considered as an Operating Expense of the Parking Facility unless such loss arises in whole or in part from the recklessness, carelessness, negligence or willful misconduct of Manager or any of its agents, servants or employees. Any losses not covered by the above insurance shall constitute expenses of MATA, provided that such loss did not arise in whole or in part from the recklessness, carelessness, negligence or willful misconduct of DPA or any of its agents, servants or employees.

c. Certificates evidencing all insurance coverage listed above shall be furnished by DPA to MATA and affiliates thereof designated by MATA and such certificates shall contain and endorsement requiring the insurance carrier to provide at least thirty (30) days’ written notice to MATA and any additional insured under such policies in the event of cancellation or material change in coverage. In addition to the other requirements of this Subsection (c), each certificate or policy shall state in writing that thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to DPA and MATA. Premiums with respect to such policies required shall be caused by DPA to be carried and shall constitute Operating Expenses. Such policies shall be subject to the prior written approval of DPA for adequacy of form and protection. DPA shall be responsible for causing to be maintained fire and extended coverage insurance covering the Parking Facility and the equipment contained therein.

15. Inspection by MATA. MATA shall have the right to enter and inspect the Parking Facility at all times.

16. Compliance with Laws. DPA shall cause the Parking Facility to be managed, operated, promoted and used in accordance with all applicable laws, ordinances and regulations, including without limitation, those pertaining to the conduct of MATA's business therein.
17. Severability; Amendment. If any section of this Lease Agreement is found unlawful or illegal or becomes so, the remainder of the contracted terms shall remain in full force and effect. The terms of this Lease Agreement may be modified or amended only in writing signed by both MATA and DPA.
18. Force Majeure. If it shall become impossible on account of Force Majeure for DPA or MATA to fulfill its obligations under this Lease Agreement, such party shall be excused from the performance of said obligation for the period that said performance is impossible. However, either party shall have the right to terminate this Lease Agreement immediately upon the occurrence of a Force Majeure which prevents the other party from performing thirty (30) or more consecutive days. The "Force Majeure" as used in this paragraph shall include fire, earthquake, flood, tornado, acts of God, strike or other labor disturbance beyond the reasonable control of DPA, riot or civil commotion, failure of power, restrictive government laws or regulation, court order, insurrections, war or any other matter or situation of a like nature, including hostility, with or without formal declaration of war.
19. Notices. Notice to both DPA and MATA shall be sent by hand delivery or overnight courier services, signature required for delivery, registered or certified mail, return receipt requested, to the following addresses:

If to DPA:

The DPA of the City of  
Memphis and County of Shelby, Tennessee  
114 N. Main Street  
Memphis, Tennessee 38103  
Attn: President and CEO

With Copy to:

Charles E. Carpenter, A Professional Corporation  
Three Eight Six Beale Street  
Memphis, Tennessee 38103  
Charles E. Carpenter, Esquire

If to Memphis Area Transit Authority:

Memphis Area Transit Authority  
1370 Levee Road  
Memphis, Tennessee 38108  
Attn: Thomas D. Fox, Interim President/General Manager

Either party shall have the right to change its address by notice to the other party of such change.

20. Governing Law. This Lease Agreement shall be construed and governed according to the laws of the State of Tennessee, without giving effect to its conflict of laws provision. Any suit, action, or proceeding with respect to this Lease Agreement, or any judgment entered by any court in respect thereof shall be brought in the Courts of the State of Tennessee, County of Shelby or in the United States courts located in said county and the parties hereby submit to the exclusive jurisdiction and venue of such courts for the purpose of any such suit, action, or proceeding.
21. Changes to Parking Facility. The operation and essential structure of the Parking Facility must remain intact. Any visual appearance changes, signage changes, name changes, and structural changes will be subject to review and advance written approval by the MATA, which approval may be withheld in its sole discretion.
22. Termination for Breach. In the event DPA shall fail to fully and faithfully carry out its obligations hereunder, MATA may serve written notice thereof to DPA of its intention to terminate this Lease Agreement, such notices to generally outline the reasons for such intention to terminate this Lease Agreement, and unless within ten (10) days after the actual receipt or overnight delivery of such notice upon DPA, such violation, failure or default shall cease and satisfactory arrangement for correction be made by DPA, this Lease Agreement shall, upon the expiration of the said ten (10) days, cease and terminate.
23. Headings. That the heading in this Lease Agreement are inserted for identification only, and shall not govern the construction, nor alter, vary, limit or change any of the terms, conditions, or provisions of this Lease Agreement.
24. Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.
25. Termination Without Cause. This Lease Agreement may be terminated by either party at any time during this Agreement upon thirty (30) days prior written notice to the other.

IN WITNESS WHEREOF, DPA and MATA have caused this instrument to be executed in their corporate name by their duly authorized officers and Manager has caused this instrument to be acknowledged in its corporate name by its duly authorized officer, all as of the day and year first above written.

THE DOWNTOWN PARKING AUTHORITY OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY,  
TENNESSEE

BY: \_\_\_\_\_  
Paul Morris, President

MEMPHIS AREA TRANSIT AUTHORITY

BY: \_\_\_\_\_  
Thomas D. Fox, Interim President/ General Manager

ACKNOWLEDGEMENT:

PREMIER SYSTEM PARKING, INC.

BY: \_\_\_\_\_  
Joseph L. Moore, President