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Attorneys for Plaintiff, First Transit, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

FIRST TRANSIT, INC., a Delaware
corporation,

Plaintiff,

vs.

REGIONAL TRANSPORTATION
COMMISSION OF SOUTHERN
NEVADA, a political subdivision of the
State of Nevada,

Defendant.

Case No. A-11-646931-C

Dept. No. XXXII

**EX PARTE MOTION FOR ORDER
SHORTENING TIME FOR HEARING OF
PLAINTIFF FIRST TRANSIT, INC.'S
MOTION FOR WRIT OF MANDAMUS
OR, IN THE ALTERNATIVE
FOR PRELIMINARY INJUNCTION**

Date of Hearing: N/A
Time of Hearing N/A

Pursuant to EDCR 2.26, Plaintiff First Transit Inc., ("First Transit") moves ex parte for an order shortening time for hearing of its motion for injunctive and/or writ relief (the "Injunction/Writ Motion") based upon the Affidavit of Nick Promponas, Senior Vice President (West Region) of First Transit, a copy of which is attached as Exhibit 1 to the Injunction/Writ Motion and hereto, and the Affidavit of Fred D. "Pete" Gibson III attached hereto as Exhibit 2.

By the Injunction/Writ Motion, First Transit seeks to compel the defendant, the Regional Transportation Commission of Southern Nevada (the "RTCSN") to comply with its own specifically drawn "Request for Proposal No. 11-029" (the "RFP") concerning the solicitation of

1 proposals for the award of Contract No. 11-029 (the "Contract") for operation and maintenance
2 of fixed route public transit in Clark County. More particularly, by its Injunction/Writ Motion,
3 First Transit seeks relief breaking the impasse that the eight-voting member RTCSN finds itself
4 in and compelling the RTCSN to complete the contract process by executing the Contract
5 already negotiated by the RTCSN and signed by First Transit and the RTCSN's General Counsel
6 as "approved as to form" and issue its Notice to Proceed in accord with its own processes.
7

8 Exigent circumstances justifying an order shortening time for the hearing of First
9 Transit's Injunction/Writ Motion exist because

10 (1) the contract under which fixed route public transit operations and maintenance
11 services are currently being provided to Clark County expires on September 25, 2011;

12 (2) the expiring contract is, in the words of the RTCSN's General Manager, "at its
13 end" with "no other options to execute;" and the Federal Transit Administration ("FTA"), which
14 supplies part of the funding for the fixed route operations, "will not allow [the RTCSN] to
15 indefinitely keep the same contract;"¹
16

17 (3) Plaintiff First Transit was selected as the successful proposer under the evaluation
18 criteria in the RTCSN's RFP and its proposal is \$50 million less than that of the losing proposer,
19 Veolia Transportation Services, Inc. ("Veolia");
20

21 (4) First Transit executed a Contract negotiated and prepared by the RTCSN staff at
22 the direction of its Chairman, with no objection from any member of the Governing Body;

23 (5) on May 23, 2011, the RTCSN issued a Notice of Award to First Transit requiring
24 it to provide the RTCSN proof First Transit's insurance, proof of a performance bond,
25 identification of Key Personnel ready to perform the Contract, and an organizational chart
26 evidencing First Transit's readiness to immediately undertake Transition and Start-up activities
27

28 ¹ See 8/11/11 Transcript, Complaint Ex. 39, at p. 137, ll. 15-21.

1 under the RFP and Contract and to being Revenue Service on September 26, 2011;

2 (6) at the August 11, 2011, meeting, the RTCSN General Counsel, Zev Kaplan,
3 commented that he had successfully negotiated with Veolia a 180-day extension of its expiring
4 contract;² and
5

6 (7) the RTCSN eight-voting-member Governing Body is, and for months has been,
7 hopelessly deadlocked and has defied its own RFP process, Nevada statutes, and Nevada law,
8 and used its own stalemate as a contrivance for extending the expiring contract of the losing,
9 highest proposer, Veolia without public notice, without public discussion, and without a vote
10 authorizing such action.

11 For these reasons, First Transit's Injunction/Writ Motion seeks that the Court:

12 1. Issue and enter a writ of mandamus directing the RTCSN to complete the RFP
13 contract process by providing First Transit with an executed copy of the Contract and a Notice to
14 Proceed; and
15

16 2. Issue and enter a preliminary injunction enjoining the RTCSN from taking any
17 action regarding the Contract other than to complete the RFP contract process by providing First
18 Transit with an executed copy of the Contract and a Notice to Proceed.

19 This motion for an order shortening time is based on the Complaint on file herein, the
20 exhibits attached thereto, the Injunction/Writ Motion on file herein, Mr. Promponas's Affidavit
21 attached hereto, Mr. Gibson's Affidavit attached hereto, and on the following memorandum of
22

23 ///

24 ///

25 ///

26 ///

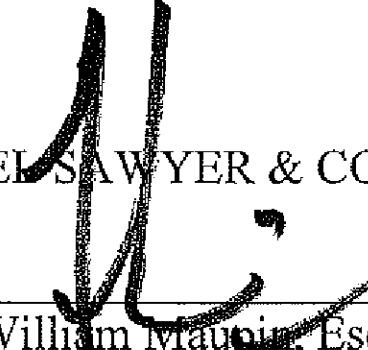
27

28 ²

See 8/11/11 Transcript, Complaint Ex. 39, p. 87, l. 11 - p. 88, l. 17.

1 following points and authorities.

2 LIONEL SAWYER & COLLINS

3 By 
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11 Attorneys for Plaintiff, First Transit, Inc.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 First Transit, is the successful proposer in response to an RFP published by the RTCSN
14 on September 21, 2010, for a contract to provide fixed route public transportation operation and
15 maintenance services in Clark County. RFP, Complaint Ex. 1. Veolia, the incumbent provider
16 and the lone competitor in the final RFP process, lost the RFP, largely because its pricing
17 exceeded that of First Transit by a sum approximating \$50,000,000 for the \$600,000,000
18 Contract. It is important to note that the RTCSN staff evaluation process, involving both
19 technical and pricing criteria for prospective proposals, was conducted by experienced senior
20 staff and described as one of the best in the entire country. It was also vetted by an independent
21 analyst retained by the RTCSN. On March 10, 2011, the RTCSN selected First Transit as the
22 successful proposer and the Chair, with no objection from any member of the Governing Body,
23 directed RTCSN staff to negotiate a Contract with First Transit. 3/10/11 RTCSN Minutes,
24 Complaint Ex. 10. That Contract was successfully negotiated and signed by First Transit's
25 President on April 5, 2011, and also by RTCSN General Counsel, Zev Kaplan, as "approved as
26 to form." Contract, Complaint Ex. 2. Thereafter, on May 19, 2011, the RTCSN, with eight
27 members voting on RTCSN matters, voted 4-3 (with one member, Councilwoman Tarkanian,

1 absent) to approve the Contract negotiated on the proposal, which complied with the exacting
2 terms of the RFP in every respect. 5/19/11 RTCSN Minutes, Ex. 14. From that time, an
3 agonizing repetitive exercise described by RTCSN members and staff as "ground hog day [over
4 and over]," after a popular movie of that title, has unfolded, with the RTCSN Governing Body
5 tied 4/4 on both motions to approve the First Transit Contract and to reject it. 8/11/11 RTCSN
6 Meeting Transcript, Complaint Ex. 41.
7

8 In the midst of the most profound economic downturn in recent American history, one
9 that has devastated the Southern Nevada community more than most, the RTCSN's primary
10 consideration in issuing the RFP and obtaining proposals was pricing. The resulting RFP
11 process accordingly sought significant cost savings from the final proposers, Veolia and First
12 Transit. To the apparent surprise (and perhaps disappointment) of some members of the RTCSN
13 Governing Body, the incumbent provider, Veolia, overbid First Transit on price by some
14 \$50,000,000.
15

16 Although now stating that they are "not in favor of Veolia," the members of the
17 Governing Body who originally supported Veolia in the losing end of the May 19, 2011, 4-3 vote
18 in favor of First Transit would spend the extra \$50,000,000 by awarding Veolia the contract.
19 Eventually, even Veolia has had to abandon insistence that the RTCSN award it the Contract, at
20 least not in the form of its losing proposal.³ However, with Veolia out of the picture as to this
21

22 ³ At the beginning of the August 11, 2011, meeting, Veolia, through its counsel,
23 Chris Kaempfer, Esq., and in the presence of its president, Mark Joseph, stated that Veolia did
24 not expect the RTCSN to award the Contract to Veolia:

25 MR. KAEMPFER: Good morning, Mr. Chairman, Commissioners. I'm
26 Chris Kaempfer here on behalf of Veolia Transportation.

27 So let me make something crystal clear right now. Regardless of what
28 anybody writes, what anybody says, what anybody believes, *we are not asking
you to approve a bid that is \$50 million more than another bid*, whether that 50
million is over one year or seven years, whatever. Nobody is asking that. I would
be crazy to ask you, and you would be crazier to approve it.

1 particular RFP, these four members of the RTCSN Governing Body would scrap the entire
2 proposal process (largely because of stated concerns that are irrelevant to the actual RFP adopted
3 by the RTCSN) rather than save the \$50,000,000 over the life of a new contract and its optional
4 (at the RTCSN's sole discretion) extensions.⁴ Unfortunately this new direction de facto awards
5 the Contract to the losing, highest proposer, Veolia, because public transportation cannot stop
6 while the RTCSN Governing Body remains imbedded in Groundhog Day.
7

8 To explain, four members of the RTCSN Governing Body (Chairman Brown,
9 Commissioner Giunchigliani, Councilman Ross, and Councilwoman Tarkanian) have determined
10 to reconsider the RFP on its pricing, while four members of the Governing Body (Mayor Tobler,
11 Councilwoman March, Councilman Eliason, and Councilman Hafen) remain in favor of the
12 award to First Transit. But there is nothing to revalue here — on June 9, 2011, Veolia lost its
13 protest based on evaluation, First Transit's proposal saves \$50,000,000 over that submitted by
14 Veolia and the figures have been tested by at least two renowned local independent economic
15 analysts. Thus, an impasse has been created which has in turn created the need to extend the
16 existing Veolia contract at a price that is undisclosed to the public, but supposedly close to that
17 proposed by First Transit. The RTCSN, according to its General Counsel, has therefore
18 unilaterally extended the existing Veolia contract, per terms contained within it, without public
19 disclosure, discussion or vote authorizing it.
20
21

22 But what we are respectfully asking is that today, you please reject all
23 bids, and you take this process back to the drawing board where the rules can be
24 better defined, more people can participate, and the playing field can be made
25 level. [Emphasis added.]

26 8/11/11 Transcript, Complaint Ex. 39, p. 92, l. 11 - p. 93, l. 7; *see also id.*, at p. 95, ll. 7-9 (Mr.
27 Kaempfer speaking: "Again, *I'm not here asking you to do that*. Please. *I'm not asking that
you award this contract to Veolia.*" (emphasis added)).

28 ⁴ Veolia wants the entire RFP process to begin anew. This is not surprising since it
has lost this RFP and now has access to the proprietary information it obtained when the RTCSN

1 In sum, while First Transit won the RTCSN's own evaluation process, was identified the
2 successful proposer, and was awarded the Contract, while Veolia lost the \$600,000,000 contract
3 because of the \$50,000,000 over-bid, an impasse has developed over whether to scrap the RFP
4 rather than accept the very beneficial proposal by First Transit, and the existing contract has been
5 extended with price provisions similar to those proposed by First Transit while staff takes "a
6 year" to re-build the RFP. This results in giving the losing incumbent at least the first year of
7 First Transit's award—an award won under the very specific and exacting evaluation process
8 described below.
9

10 To re-iterate, when the RTCSN asked the question--can a pair of major transportation
11 companies propose quality mass transportation services at a reduced cost? One company said
12 "yes" and the other said "no"—to the tune of \$50,000,000 savings. This Court should intervene
13 to enforce the terms of the RFP as well as to prevent the ultimate irony, that the losing proposer
14 by \$50,000,000 gets the lion's share of the new contract.
15

16 The Injunction/Writ Motion seeks to overcome the RTCSN's apparent resistance to
17 saving public monies. First Transit would like to save the taxpayers of Clark County Nevada
18 some \$50 million over the course of the next seven years in connection with county-wide
19 transportation services provided via statutory mandate by the defendant, RTCSN. First Transit
20 has literally had to fight its way to this result, now being obstructed by a four-to-four vote
21 impasse by its members. One might wonder how all this has come to pass—why a proposer
22 should have to literally fight a public body to complete adoption of a proposal that saves a
23 financially struggling community massive sums of money. That is why First Transit's
24 Injunction/Writ Motion should be heard on shortened time and granted.
25

26 On June 20, 2011, First Transit filed a petition for emergency writ relief in the Nevada
27
28 inadvertently released this vital information on its website. *See* Complaint, ¶42.

1 Supreme Court. Complaint Ex. 30. On July 13, 2011, the Supreme Court denied First Transit's
2 Writ Petition on the grounds First Transit should have sought relief in the District Court in the
3 first instance: "because we conclude that *petitioner should first seek relief from the district*
4 *court, we deny the petition based on the availability of that plain, speedy, and adequate legal*
5 *remedy.*" 7/13/11 Order, Complaint Ex. 34 (emphasis added).
6

7 EDCR 2.26 authorizes shortening time for hearing of the Injunction/Writ Motion, stating:

8 Ex parte motions to shorten time may not be granted except upon an
9 unsworn declaration under penalty of perjury or affidavit of counsel describing
10 the circumstances claimed to constitute good cause. If a motion to shorten time is
11 granted, it must be served upon all parties promptly. An order which shortens the
12 notice of a hearing to less than 10 days may not be served by mail. In no event
13 may the notice of the hearing of a motion be shortened to less than 1 full judicial
14 day.

15 Absent this Court's intervention, both First Transit and the citizens of Southern Nevada
16 will suffer irreparable harm. An order shortening time for hearing of First Transit's motion for
17 writ and/or injunctive relief is proper under the circumstances.

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19 By 

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27 Attorneys for Plaintiff, First Transit, Inc.

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF NICK PROMPONAS

State of Ohio)
) ss:
County of Hamilton)

Being first duly sworn, Nick Promponas deposes and says that:

1. I am and since 2004 have been the Senior Vice President (West Region) of First Transit, Inc. ("First Transit"), Plaintiff before the Clark County District Court in the case entitled First Transit, Inc., a Delaware corporation, Petitioner, vs. Regional Transportation Commission of Southern Nevada, a political subdivision of the State of Nevada, Respondent." I am familiar with First Transit's Verified Complaint for Injunctive, Writ, and Declaratory Relief (the "Complaint"). I am also familiar First Transit's Motion for Writ of Mandamus, or, in the Alternative, for Preliminary Injunction (the "Motion"). Except as to matters stated on information and belief, I have personal knowledge of the matters stated herein and would be competent to testify as to them if called upon to do so. As to matters stated on information and belief, I am informed and believe them to be true.

2. First Transit is a Delaware corporation with its principal place of business in Cincinnati, Ohio. First Transit and its predecessor companies have been in the public transportation business since 1955. First Transit currently does business in forty one (41) states and serves over 235 customers and transports over 300 million passengers annually. It operates a fleet of approximately seven thousand vehicles.

3. First Transit has been doing business in Nevada since 1978. By contract awarded in 2001, First Transit serves the Regional Transportation Commission of Southern Nevada (the "RTCSN") with paratransit services in Clark County. By contract awarded in 2006, First Transit provides rental car shuttle services at McCarran Field. First Transit also serves Washoe County Regional Transportation Commission with a paratransit contract (set to expire in 2015).

4. On September 21, 2010, the RTCSN issued its Request for Proposals, RFP No. 11-029, RTC Fixed Route Services -- Operations and Maintenance, inviting proposals to provide services for a three-year contract with two two-year options, RFP No. 11-029 (the "RFP", a true and correct copy of which is attached to First Transit's Complaint as Exhibit 1.

5. The RFP begins by stating that the RTCSN is requesting "proposals to select a firm to operate and maintain its fixed route services" as described therein. At §103, the RFP sets out a Schedule of Events spanning nearly a year, beginning with the September 21, 2010, issuance of the RFP and ending on September 26, 2011, with commencement of Revenue Service by the Successful Proposer. The Schedule of Events provides:

9/21/10	Issuance of the RFP
9/29/10	Pre-Proposal Conference at the RTC Conference Room and Site Visit
9/30/10	Facility Visits
10/13/10	Deadline for written questions and requests for addenda
11/9/10	RTC responses and/or addenda
12/15/10	Proposals due
12/16-1/7/11	First Round Evaluation Process
1/7/11	Competitive Range Determination and Notice to Proposers
1/12-21/11	Interviews with Proposers in competitive range

1/24/11	Requests for BAFOs issued
2/7/11	BAFOs due to RTC
2/8-21/11	Evaluation of BAFOs and site visits (if applicable)
3/10/11	Approval of recommended Contractor by the RTC Governing Body
3/14-4/1/11	Finalize Contract Documents
4/14/11	Approval of contract by RTC Governing Body and Notice of Award
5/2/11	Anticipated Notice to Proceed date
5/2-9/25/11	Transition and Start-up Period
9/26/11	Commencement of Revenue Service

6. The RFP is for a fixed price contract with competing proposals (in the form of Best and Final Offers, or "BAFOs") to be evaluated by an Evaluation Committee based on technical qualifications and price. The RFP specifies that technical qualifications will account for 45% of a proposer's total score and that price will account for 55% of the total score. RFP, Complaint Ex. 1, at §205(A). According to §205(C) of the RFP, "[t]he Proposer with the lowest total price will receive the maximum number of points available, and the other Proposers will receive points based on their price to the lowest price." *Id.* at §205(C).

7. Although three proposers responded to the RTCSN's RFP, one, MV Transportation, did not meet the competitive range and the RTCSN did not invite it to submit a BAFO. Only First Transit and Veolia Transportation Services, Inc. ("Veolia") submitted BAFOs.

8. On December 15, 2010, First Transit submitted its Proposal in response to the RFP. On February 7, 2011, First Transit submitted its BAFO in response to the RTCSN's invitation to do so. First Transit's BAFO represented a detailed undertaking. The RFP is for a three-year Contract with two two-year optional renewals. By its BAFO First Transit proposed a \$600,000,000 cost to the RTCSN based on First Transit's

analysis undertaken by its staff. Including option years, First Transit's Proposal was approximately \$50,000,000 lower than that of its competitor, Veolia Transportation Services, Inc. ("Veolia"), the unsuccessful proposer.

9. At the March 10, 2011, meeting of the RTCSN, it was announced that the RTCSN Evaluation Committee had identified First Transit as providing the RTC with "best value" of the competing proposals submitted in response to the RFP. At that meeting, the Chair (Commissioner Larry Brown), without objection from any member of the Governing Body, directed RTCSN staff to negotiate and prepare a Contract with First Transit.

10. First Transit and the RTCSN staff negotiated the Contract, executed by the RTCSN's General Counsel as "Approved as to Form," and presented it for execution to First Transit. First Transit's President, Bradley Thomas, executed the Contract that the RTCSN had prepared on April 5, 2011. A true and correct copy of that Contract, with Mr. Bradley's signature, is attached as Exhibit 2 to the Complaint.

11. The RTCSN's evaluation process in reviewing the competing proposals was rigorous. Aside from its own staff, the RTCSN employed an independent outside expert economist, Jeremy Aguero of Applied Analysis, to test First Transit's proposal. Mr. Aguero's May 18, 2011, report to the RTCSN concludes:

First Transit's proposal clearly reflects a belief that its management can achieve labor and maintenance savings compared to current costs and compared to other would-be service providers. Importantly, the overall cost provided in First Transit's proposal is not inconsistent with comparable costs in other markets and makes the cost assumptions at its own risk. To the extent it cannot achieve these savings, the company would be expected to bear any and all additional cost, including the potential of operating at a loss if the achieved savings were less than the built-in profit. It follows that a reasonable question to ask is whether any difference in proposed cost versus actual cost could be weathered by First

Transit. Based on a review of historical audited financial statements, it appears that First Transit could withstand a loss equal to the difference between its proposed cost and Veolia's proposed cost.

We appreciate the opportunity to assist the RTC with this important project.

A true and correct copy of Mr. Aguero's report is attached as Exhibit 16 to First Transit's Complaint.

12. Approval of the RTCSN's Contract with First Transit was originally set for the April 14, 2011, meeting of the Governing Body. The April agenda item was pulled at the meeting and reset for the May 19, 2011, meeting, with the May 19 agenda item reflecting the recommendation of RTCSN staff that the Contract with First Transit be approved. Agenda Item #30 for the May 19, meeting states:

GOAL: SECURE FUNDING FOR EXPANSION, OPERATION AND MAINTENANCE OF SYSTEMS AND ROUTES

FISCAL IMPACT: Funds in the amount of \$2,790,530.00 for start up costs are budgeted in the Transit Fund for Fiscal Year 2012. Funds for the fixed route service are budgeted in the Transit Fund for Fiscal Year 2012 and will be budgeted in the Transit Fund for Fiscal Years 2013-2014. A portion of the express fixed route service will be reimbursed through Federal Transit Administration Congestion Mitigation and Air Quality Improvement grant NV-95-X004.

BACKGROUND: At the regularly scheduled meeting of the [RTC] on March 10, 2011, the Commission directed staff to negotiate an agreement with First Transit, Inc. for Operation and Maintenance of Fixed Route Transit Services, as a result of Request for Proposals No. 11-029. Staff has met with representatives of First Transit, Inc., and developed an acceptable agreement which is included in the backup.

Staff recommends approval.

13. At the May 19, 2011, meeting, RTCSN General Manager Snow explained that the RTCSN's 2012 budget was based on the award of the fixed route services contract to First Transit and that if the award were made to Veolia, there would be a

resulting additional five percent cut in the fixed route services area and that the smaller the fixed route area became, the smaller the paratransit service area would also have to become. 5/19/11 Minutes, Ex. 14, p. 14. The May 19, 2011, minutes also reflect the General Manager's acknowledgement that the First Transit and Veolia proposals had been the result of "furious competition" and that "the proposers had much at stake and their proposals had been expensive ventures." *Id.* Mr. Snow explained that "senior-level staff members had been selected to share their expertise in the areas of finance, service hours provided or vehicle maintenance," concluded that the RTCSN staff had been involved in "these types of procurements for decades," and that the handling of the fixed route transit procurement had been "one of the best." *Id.*

14. Before presentations from Veolia and First Transit at the May 19 meeting, the Chair and General Counsel explained that voting would proceed in accord with the RTCSN's customary practice, with a majority of the quorum sufficient to take action. The May 19, 2011, minutes provide:

Chairman Brown hoped that the Board could take some action despite the fact that Councilwoman Lois Tarkanian was not present. Chairman Brown stated that the Board had seven voting members present (Director Susan Martinovich, NDOT, serves on the RTC Board of Commissioners in an *ex officio* capacity. She would not be voting on this item.) and *five members were the customary majority to make a quorum. The chairman was of the understanding that the quorum would now be four members. Mr. Kaplan confirmed, explaining that in light of the seven voting members, four members would constitute a quorum. He went on to say that if at least four members stayed, action could be taken.* [Emphasis added.]

Ex. 14, p. 18.

15. The disclosures made by Chairman Brown and General Counsel Kaplan comported with the RTCSN's written policies governing voting and the RTC's 46 year

history. *See* §1.04 of the RTCSN's Policies and Procedures, Ex. 3 ("Motions and resolutions require a majority vote of the members present, including the Chairman"); and Clark County Ordinance 4.04.70 ("A majority of the membership of the commission shall constitute a quorum for the transaction of business, and all decisions, acts and resolutions shall be by a majority vote of the quorum").

16. After presentations by Veolia and First Transit at the May 19, 2011, meeting of the RTCSN Governing Body, the Governing Body voted 4-3, with Councilwoman Tarkanian absent, Commissioners Bennett, March, and Tobler voted to approve the Contract with First Transit, and Commissioners Ross, Brown, and Giunchigliani voting against approval. Veolia's presentation at that meeting encompassed objections based on the evaluation of the competing BAFOs, including objections based on benefits to employees, wages to employees, price components, maintenance, taxes and fuel. *See* 5/13/11 memo of Veolia counsel (Lee Roberts) submitted to board and minutes of the 5/19/11 RTC Meeting, Exs. 12 and 14.

17. On May 20, 2011, Veolia wrote the RTCSN protesting the May 19, 2011, vote approving the Contract with First Transit, arguing that the vote of five members was required for the Governing Body to take action.

18. On May 23, 2011, the RTCSN sent First Transit its Notice of Award of the Contract (the "Notice of Award") stating that "[o]n May 19, 2011, the RTC Commission authorized the award of the above-referenced contract to your company." A true and correct copy of the RTC's May 23, 2011, Notice of Award is attached to the Complaint as Exhibit 18. The Notice of Award continued, requiring prompt performance by First

Transit, in return for which the RTCSN would within three days supply First Transit with a fully executed copy of the Contract and a Notice to Proceed:

This Notice of Award directs First Transit, Inc. to submit the following to the RTC within seven (7) Days:

- (1) the insurance policies as specified in Section 405;
- (2) the performance bond as specified in Section 402B(5);
- (3) the list of the Contractor's Key Personnel (as identified in the Contractor's response to the RFP);
- (4) the Contractor's complete organizational chart

Please return the above requested contract documents to the attention of Lydia Bilynsky, Sr. Purchasing and Contracts Analyst and Sharon Hauht, Manager of Purchasing and Contracts, 600 South Grand Central Parkway, suite 350, Las Vegas, NV 89106, by sending the originals to the address specified above. Please have your insurance agent email proof of insurance requirements to both bilynskyl@rtcsonv.com and haughts@rtcsonv.com.

Notice to Proceed will be issued within three days after receipt of the documentation requested above. A copy of the fully executed contract will be forwarded with the Notice to Proceed. [Emphasis added.]

19. On May 25, 2011, the RTCSN's General Counsel, Zev Kaplan, wrote Veolia's counsel rejecting Veolia's May 20, 2011, protest letter challenging the voting procedure employed at the May 19, 2011, meeting.

20. On May 26, 2011, First Transit complied with the RTCSN's May 23, 2011, Notice of Award and submitted to the RTCSN the insurance policies as specified in section 405, the performance bond as specified in Section 402B(5), a list of Key Personnel as identified in First Transit's Response to the RFP, and First Transit's complete organizational chart. A true and correct copy of First Transit's 5/26/11 response to the RTCSN's Notice of Award is attached to the Complaint as Exhibit 21.

21. First Transit incurred expenses in supplying the items required by the RTCSN's Notice of Award. For example, the performance bond cost \$16,500.00.

22. In order to comply with the Notice of Award and to be ready to undertake its responsibilities under the Contract, First Transit has also moved or will be moving to Las Vegas various employees responsible for management, including the General Manager, who has already signed a local lease, incurred relocation expenses and is currently paying temporary housing as his prior lease has been let to expire, as well as relocating its maintenance manager from the United Kingdom. First Transit has incurred notable visa expenses and expended considerable time in these efforts.

23. In order to be ready for the September 26, 2011, Transition and Start-up activities required under the RFP and Contract, First Transit was required to mobilize and incur expense to be able to commence revenue services on September 26. For example, in order to be ready for the September 26 start up, First Transit was required to undertake the following:

- * Hire 1100 employees who all must go through a very comprehensive hiring process that includes filling out applications, undergoing background checks, drug tests and MVR (motor vehicle registration) checks. First Transit will need to bring in at least 20 employees to process the applications around the clock.

- * All hired drivers must go through an extensive orientation program that includes 120 hours (per driver) of driver training. First Transit will need to bring in over 20 people to conduct this training.

- * As part of the new hiring initiative, First Transit will have to schedule and conduct numerous job fairs.

* From a fleet maintenance standpoint, all existing parts will need to be inventoried in order that First Transit has time to coordinate parts purchases in time for the September 26 rollout. This will involve the inventorying of over 400 vehicles.

* First Transit will need to purchase approximately 64 non-revenue support vehicles.

* First Transit will need to commence negotiations on a new collective bargaining agreement.

* First Transit will need to develop new "run cuts" to accommodate RTC's new schedule of service which is earmarked to go into effect in September of this year.

* Facility security will need to be coordinated, which will include ensuring that all employees are properly badged.

* Facility maintenance and security third party vendor contracts will need to be finalized.

* Bus technologies such as Zonar and DriveCam, will need to be installed on all buses.

Had the Contract been signed and the Notice to Proceed issued on May 19, 2011, when the Board awarded First Transit this work, all of the above listed initiatives would have been completed or at least well underway by now. As evidenced by the massive scale of mobilization discussed above, any further delay places the start of service in serious jeopardy.

24. Despite First Transit's May 26, 2011, response in conformity with the RTCSN's Notice of Award, the RTCSN has not issued its Notice to Proceed or provided

a fully executed copy of the Contract as it promised to do within three days of receipt of the four items required of First Transit.

25. On May 31, 2011, Veolia lodged a written protest with the RTCSN challenging the RTCSN's evaluation process in considering the competing proposals and the RTCSN Governing Body's May 19, 2011, voting procedure resulting in the award of the Contract to First Transit. A true and correct copy of Veolia May 31, 2011, protest letter is attached to First Transit's Complaint as Exhibit 22.

26. The RTCSN gave First Transit until June 6, 2011, to respond to Veolia's protest and on June 6, 2011, First Transit lodged its response with the RTC. A true and correct copy of First Transit's June 6, 2011, response is attached to the Complaint as Exhibit 23.

27. The RTC Governing Body met on June 9, 2011, and Veolia's protest was not accepted.

28. On June 10, 2011, First Transit, through its counsel, wrote the RTCSN demanding delivery to it of the fully executed Contract and Notice to Proceed as promised by the RTC in its Notice of Award. A true and correct copy of that letter is attached to the Complaint as Exhibit 29.

29. The RTCSN did not respond to First Transit's letter or provide to it a copy of the fully executed Contract or the Notice to Proceed as promised by the RTCSN in its May 23, 2011, Notice of Award.

30. On June 21, 2011, Veolia filed an Open Meeting Law Complaint with the Office of the Nevada Attorney General. Veolia challenged whether the vote of 4 members of the Governing Body had been sufficient to award the Contract to First

Transit on May 19, 2011. On July 8, 2011, the Nevada Attorney General's office responded to Veolia's Open Meeting Law Complaint with an informal letter requesting that the RTCSN explain whether its June 9, 2011, actions were intended as corrective of the May 19, 2011, vote, or rescind the May 19, 2011, vote in order to avoid an OML complaint to be filed by the Attorney General's Office by July 18, 2011 (Ex. 33 to First Transit's Complaint).

31. On July 14, 2011, the RTCSN Governing Body met and, in response to the Attorney General's informal letter, voted to rescind the May 19, 2011, vote awarding the Contract to Veolia.

32. On August 11, 2011, the RTCSN Governing Body met with only a single item on the Agenda, Item #41, which recommended approval and stated:

RECOMMENDATION BY PETITIONER:

THAT THE [RTCSN] APPROVE AN AGREEMENT BETWEEN THE RTC AND FIRST TRANSIT, INC., FOR OPERATION AND MAINTENANCE OF FIXED ROUTE TRANSIT SERVICES FROM THE DATE OF NOTICE TO PROCEED THROUGH SEPTEMBER 30, 2014 WITH TWO, TWO-YEAR OPTION PERIODS, AND AUTHORIZE THE CHAIRMAN TO SIGN; OR TAKE OTHER ACTION AS APPROPRIATE (FOR POSSIBLE ACTION)

GOAL: SECURE FUNDING FOR EXPANSION, OPERATION AND MAINTENANCE OF SYSTEMS AND ROUTES

FISCAL IMPACT: Funds in the amount of \$2,790,530.00 for start up costs are budgeted in the Transit Fund for Fiscal Year 2012. Funds for the fixed route service are budgeted in the Transit Fund for Fiscal Year 2012 and will be budgeted in the Transit Fund for Fiscal Years 2013-2014. A portion of the express fixed route service will be reimbursed through Federal Transit Administration Congestion Mitigation and Air Quality Improvement grant NV-95-X004.

BACKGROUND: At the Commission's regularly scheduled meeting on March 10, 2011, the Regional Transportation Commission of Southern Nevada (RTC) directed staff to negotiate an agreement with First Transit, Inc. for Operation and Maintenance of Fixed Route Transit Services, as a result of Request for Proposal No. 11-029. Staff has met with representatives of First

Transit, Inc., and developed an acceptable agreement which is included in the backup. Staff recommends approval, or direction to take other action as appropriate.

Agenda Item #41, Exhibit 38.

33. At the August 11, 2011, meeting, eight members of the Governing Body were present: Chairman Brown, Commissioner Giunchigliani, Mayor Tobler, Councilwomen March and Tarkanian, and Councilmen Ross, Eliason, Hafen.

34. At the August 11, 2011, meeting, Veolia, through its counsel, Chris Kaempfer, Esq., and in the presence of its president, Mark Joseph, stated that Veolia did not expect the RTCSN to award the Contract to Veolia:

MR. KAEMPFER: Good morning, Mr. Chairman, Commissioners. I'm Chris Kaempfer here on behalf of Veolia Transportation.

So let me make something crystal clear right now. Regardless of what anybody writes, what anybody says, what anybody believes, we are not asking you to approve a bid that is \$50 million more than another bid, whether that 50 million is over one year or seven years, whatever. Nobody is asking that. I would be crazy to ask you, and you would be crazier to approve it.

But what we are respectfully asking is that today, you please reject all bids, and you take this process back to the drawing board where the rules can be better defined, more people can participate, and the playing field can be made level.

8/11/11 Transcript, Ex. 39, p. 92, l. 11 - p. 93, l. 7; *see also id.*, at p. 95, ll. 7-9 (again Mr. Kaempfer speaking: "I'm not asking that you award this contract to Veolia.").

Veolia's presentation then returned to objections to the evaluations that were made on May 19, 2011, then made again by written protest on May 20 and May 31, discussed at the June 9, 2011, meeting of the RTCSN, and then rejected by vote of the Governing Body.

35. At the August 11, 2011, meeting, two motions were made. The first motion was made by Commissioner Giunchigliani, who first stated her motion as follows:

COMMISSIONER GIUNGLIGLIANI: Thank you, Mr. Chair. I don't know if you wish to accept it, but I'd like to put a motion out there that we can debate one way or another, and it would be to reject staff's recommendation, with no disrespect, and direct that staff ...rebid -- look at splitting the contracts. It doesn't have to even just be in two, but take a look at how that would be and that the bidding would be resubmitted and brought back to this Board within a year.

Included in that, I would suggest that we continue with the -- both Veolia, to ask them to continue with their extension of their contract as permitted, as well as First Transit on the Paratransit component, because I believe that's coming up, as well. That would then give us time to fully vet the issues.

So I would throw that out there as a motion....

8/11/11 Transcript, Ex. 39, p. 122, l. 25 - p. 123, l. 18. Later, Commissioner Giunchigliani restated her motion as follows:

COMMISSIONER GIUNGLIGLIANI:My motion was to reject staff's recommendation, with respect, and direct that the contract be divided and rebid with intent to bringing recommendations back -- for the selection back to us within a year.

Further, that staff negotiate extensions with Veolia on the fixed route, and First Transit with regard to Paratransit, until that -- the procurement has been -- the new procurers have been selected.

Id., p. 163, ll. 4-13. Councilwoman Tarkanian requested that Commissioner Giunchigliani restate the first part of her motion, and Commissioner Giunchigliani responded:

COMMISSIONER GIUNGLIGLIANI: Certainly. That I would move to remove staff's recommendation and to split the contracts, basically, and go back to bid."

COUNCILWOMAN TARKANIAN: And you're not saying in two, to three, to four, or anything?

COMMISSIONER GIUNGLIGLIANI: No.

Id., p. 163, ll. 15-24.

RTCSN General Counsel Kaplan then stated that as the RTCSN's legal advisor, that should the Governing Body want to consider splitting the contract, he suggested that there be an alternative for entire services or split services "[b]ecause we really don't know what the costs are going to be, whether it's really more efficient and cost-effective to split it or not." *Id.*, p. 166, ll. 7-16. Commissioner Giunchigliani then stated:

COMMISSIONER GIUNGLIGLIANI: As the maker of the motion, I would have no problems, but I don't think the motion needs to speak to that. I think you're absolutely correct we would need to bring back an agenda item to do that conversation so this board can make that decision. So I understand that completely."

Id., p. 167, ll. 5-11.

The discussion continued and then Chairman Brown called for a vote (*id.*, p. 170, ll. 23-25), and Commissioner Giunchigliani stated:

COMMISSIONER GIUNGLIGLIANI: ... Mr. Chair, Parliamentary-wise, you can take it by rejecting and then giving the direction to do it in one, and that's what my suggestion is.

Id., p. 171, ll. 12-16.

36. The second motion was made by Mayor Tobler to accept staff recommendation and reconsider splitting the contract in the next couple of years. *Id.* p. 174, ll. 12-16.

37. Both motions failed 4-4, with Chairman Brown, Commissioner Giunchigliani, Councilman Ross, and Councilwoman Tarkanian voting against staff

recommendation and Councilwoman March, Councilmen Eliason and Hafen, and Mayor Tobler voting in favor of staff recommendation. *Id.*, p. 172, l. 11- p. 173, l. 9; p. 173, l. 23- p. 147, l. 9.

38. At the August 11, 2011, meeting, RTCSN General Counsel, Mr. Kaplan, in response to questions from the Governing Body, commented that he had successfully negotiated with Veolia a 180-day extension of its expiring contract, apparently pursuant to Veolia's May 24, 2011, letter to the RTCSN:

MR. KAPLAN: Mr. Chairman? Can I just -- based on what the Councilwoman just said, just for clarification so you all understand where we are.

The current contract with Veolia would have expired towards the end of September. The -- we have already -- there was an opportunity for the RTC to extend that on a month-to-month basis for up to 180 days. That has taken place.

So we're really looking at the existing contract potentially expiring the end of March. At that point, we're faced with the issue -- hopefully, we'd be far enough along in a procurement that, as you've heard in the past about concerns about FTA's approval of continuing on.

My advice to you is, if we[]re in the procurement process or have already completed it, I don't think there would be a concern with the FTA for some short extension period of time to implement any transition that may occur.

Obviously, if Veolia were to prevail in the reprocurement, there would be no transition period. If it is a new contractor or new multiple contractors, which is something that's potentially been discussed, then some reasonable extension to complete the procurement and move forward, I don't think this Commission would face any issues with the Federal agency, just so you're all aware of that.

8/11/11 Transcript, Ex. 39, p. 87, l. 11 - p. 88, l. 17. Mr. Kaempfer confirmed the point, speaking for Veolia at the August 11, 2011, meeting: "Veolia's contract, as you heard, has

already been extended for six months. ... You will not be paying a dime more than you are paying now." *Id.*, p. 104, ll. 9-15.

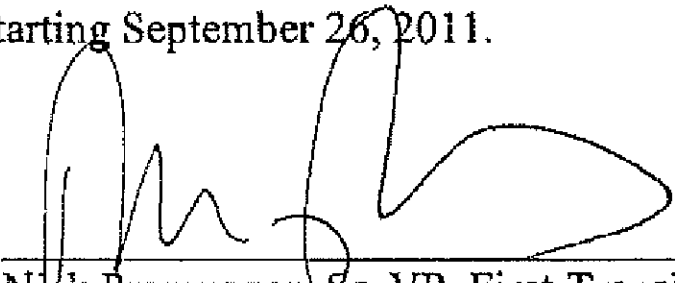
39. The RTCSN did not advertise, notice on its agenda, or solicit public comment regarding any extension of the expiring contract with Veolia. The RTCSN did not make public any finding of an emergency or other circumstances that may justify such action under NRS 332.112. In response to Commissioner Giunchigliani's question, "Why did we decide to bid this time around?" with regard to the fixed route operations and maintenance contract, RTCSN General Manager Snow responded:

MR. SNOW: The contract was at its end. There were no other options to execute. And there, in the past and going forward, the Federal Transit Administration, since there are Federal funds involved in this contract, will not allow us to indefinitely keep the same contract.

8/11/11 Transcript, Ex. 39, p. 137, ll. 13-21.

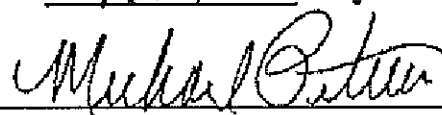
40. The August 11, 2011, meeting ended with it appearing that the RTCSN Governing Body wished to and was going to reconsider and/or reevaluate the cost component of the RFP process with regard to challenges that First Transit's \$50 million lower proposal must mean something is wrong. However, not only do the nay voters (Chairman Brown, Commissioner Giunchigliani, Councilman Ross, and Councilwoman Tarkanian) misunderstand that this is a fixed price contract backed up by a performance bond, but that the RFP leaves no room for adjustment in the scoring on the price issue, absent some mathematical mistake which has never even been alleged.

41. The RTCSN's delay and confusion has prejudiced and is prejudicing First Transit's preparation to undertake performance under the Contract it was awarded on May 19, 2011. The actions of the RTCSN have placed First Transit in an untenable position. First Transit's performance under the Contract is past-due and the RTCSN is preventing it from undertaking further start-up and transition preparation in order to begin service to Clark County fixed route bus riders starting September 26, 2011.



Nick Promponas, Sr. VP, First Transit, Inc.

Subscribed and Sworn to before me
this 18th day of August, 2011.



Notary Public



MICHAEL LOUIS PETRUCCI
Notary Public, State of Ohio
My Commission Expires no exp date

EXHIBIT 2

EXHIBIT 2

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1 (B) the expiring contract is, in the words of the RTCSN's General Manager,
2 "at its end" with "no other options to execute;" and the Federal Transit Administration ("FTA"),
3 which supplies part of the funding for the fixed route operations, "will not allow [the RTCSN] to
4 indefinitely keep the same contract;"¹

5 (C) Plaintiff First Transit was selected as the successful proposer under the
6 evaluation criteria in the RTCSN's RFP and its proposal is \$50 million less than that of the losing
7 proposer, Veolia Transportation Services, Inc. ("Veolia");

8 (D) First Transit executed a Contract negotiated and prepared by the RTCSN
9 staff at the direction of its Chairman, with no objection from any member of the Governing
10 Body;
11

12 (E) on May 23, 2011, the RTCSN issued a Notice of Award to First Transit
13 requiring it to provide the RTCSN proof First Transit's insurance, proof of a performance bond,
14 identification of Key Personnel ready to perform the Contract, and an organizational chart
15 evidencing First Transit's readiness to immediately undertake Transition and Start-up activities
16 under the RFP and Contract and to being Revenue Service on September 26, 2011;
17

18 (F) at the August 11, 2011, meeting, the RTCSN General Counsel, Zev
19 Kaplan, commented that he had successfully negotiated with Veolia a 180-day extension on a
20 month-to-month basis of its expiring contract;² and
21

22 (G) the RTCSN eight-voting-member Governing Body is, and for months has
23 been, hopelessly deadlocked and has defied its own RFP process, Nevada statutes, and Nevada
24 law, and used its own stalemate as a contrivance for extending the expiring contract of the losing,
25 highest proposer, Veolia without public notice, without public discussion, and without a vote
26

27 ¹ See 8/11/11 Transcript, Complaint Ex. 39, at p. 137, ll. 15-21.

28 ² See 8/11/11 Transcript, Complaint Ex. 39, p. 87, l. 11 - p. 88, l. 17.

1 authorizing such action.

2 For these reasons, First Transit's Injunction/Writ Motion seeks that the Court (1) Issue
3 and enter a writ of mandamus directing the RTCSN to complete the RFP contract process by
4 providing First Transit with an executed copy of the Contract and a Notice to Proceed; and (2)
5 Issue and enter a preliminary injunction enjoining the RTCSN from taking any action regarding
6 the Contract other than to complete the RFP contract process by providing First Transit with an
7 executed copy of the Contract and a Notice to Proceed.
8

9 4. First Transit, is the successful proposer in response to an RFP published by the
10 RTCSN on September 21, 2010, for a contract to provide fixed route public transportation
11 operation and maintenance services in Clark County. RFP, Complaint Ex. 1. Veolia, the
12 incumbent provider and the lone competitor in the final RFP process, lost the RFP, largely
13 because its pricing exceeded that of First Transit by a sum approximating \$50,000,000 for the
14 \$600,000,000 Contract. The RTCSN staff evaluation process, involving both technical and
15 pricing criteria for prospective proposals, was conducted by experienced senior staff and
16 described as one of the best in the entire country. It was also vetted by an independent analyst,
17 Jeremy Aguero, of Applied Analysis, retained by the RTCSN.
18

19 5. On March 10, 2011, the RTCSN selected First Transit as the successful proposer
20 and the Chair, with no objection from any member of the Governing Body, directed RTCSN
21 staff to negotiate a Contract with First Transit. 3/10/11 RTCSN Minutes, Complaint Ex. 10.
22 That Contract was successfully negotiated and signed by First Transit's President on April 5,
23 2011, and also by RTCSN General Counsel, Zev Kaplan, as "approved as to form." Contract,
24 Complaint Ex. 2. Thereafter, on May 19, 2011, the RTCSN, with eight members voting on
25 RTCSN matters, voted 4-3 (with one member, Councilwoman Tarkanian, absent) to approve the
26 Contract negotiated on the proposal, which complied with the exacting terms of the RFP in every
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1 respect. 5/19/11 RTCSN Minutes, Ex. 14. From that time, an agonizing repetitive exercise
2 described by RTCSN members and staff as "ground hog day [over and over]," after a popular
3 movie of that title, has unfolded, with the RTCSN Governing Body tied 4/4 on both motions to
4 approve the First Transit Contract and to reject it. 8/11/11 RTCSN Meeting Transcript,
5 Complaint Ex. 41.
6

7 6. Because of the difficult southern Nevada economy, the RTCSN's primary
8 consideration in issuing the RFP and obtaining proposals was pricing. The resulting RFP
9 process accordingly sought significant cost savings from the final proposers, Veolia and First
10 Transit. To the apparent surprise (and perhaps disappointment) of some members of the RTCSN
11 Governing Body, the incumbent provider, Veolia, overbid First Transit on price by some
12 \$50,000,000.
13

14 7. Although now stating that they are "not in favor of Veolia," the members of the
15 Governing Body who originally supported Veolia in the losing end of the May 19, 2011, 4-3 vote
16 in favor of First Transit would spend the extra \$50,000,000 by awarding Veolia the contract.
17 Eventually, even Veolia has had to abandon insistence that the RTCSN award it the Contract, at
18 least not in the form of its losing proposal.³ However, with Veolia out of the picture as to this
19

20 ³ At the beginning of the August 11, 2011, meeting, Veolia, through its counsel,
21 Chris Kaempfer, Esq., and in the presence of its president, Mark Joseph, stated that Veolia did
22 not expect the RTCSN to award the Contract to Veolia:

23 MR. KAEMPFER: Good morning, Mr. Chairman, Commissioners. I'm
24 Chris Kaempfer here on behalf of Veolia Transportation.

25 So let me make something crystal clear right now. Regardless of what
26 anybody writes, what anybody says, what anybody believes, ***we are not asking***
you to approve a bid that is \$50 million more than another bid, whether that 50
27 million is over one year or seven years, whatever. Nobody is asking that. I would
28 be crazy to ask you, and you would be crazier to approve it.

But what we are respectfully asking is that today, you please reject all
bids, and you take this process back to the drawing board where the rules can be
better defined, more people can participate, and the playing field can be made
level. [Emphasis added.]

1 particular RFP, these four members of the RTCSN Governing Body would scrap the entire
2 proposal process (largely because of stated concerns that are irrelevant to the actual RFP adopted
3 by the RTCSN) rather than save the \$50,000,000 over the life of a new contract and its optional
4 (at the RTCSN's sole discretion) extensions.⁴ Unfortunately this new direction de facto awards
5 the Contract to the losing, highest proposer, Veolia, because public transportation cannot stop
6 while the RTCSN Governing Body remains imbedded in Groundhog Day.⁵

8 8. Four members of the RTCSN Governing Body (Chairman Brown, Commissioner
9 Giunchigliani, Councilman Ross, and Councilwoman Tarkanian) have determined to reconsider
10 the RFP on its pricing, while four members of the Governing Body (Mayor Tobler,
11 Councilwoman March, Councilman Eliason, and Councilman Hafen) remain in favor of the
12 award to First Transit. But there is nothing to revalue here — on June 9, 2011, Veolia lost its
13 protest based on evaluation, First Transit's proposal saves \$50,000,000 over that submitted by
14 Veolia and the figures have been tested by at least two renowned local independent economic
15 analysts. Thus, an impasse has been created which has in turn created the need to extend the
16 existing Veolia contract at a price that is undisclosed to the public, but supposedly close to that
17 proposed by First Transit. The RTCSN, according to its General Counsel, has therefore
18 unilaterally extended the existing Veolia contract, per terms contained within it, without public
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20

21
22 8/11/11 Transcript, Complaint Ex. 39, p. 92, l. 11 - p. 93, l. 7; *see also id.*, at p. 95, ll. 7-9 (Mr.
23 Kaempfer speaking: "Again, *I'm not here asking you to do that.* Please. *I'm not asking that*
you award this contract to Veolia." (emphasis added)).

24 ⁴ Veolia wants the entire RFP process to begin anew. This is not surprising since it
25 has lost this RFP and now has access to the proprietary information it obtained when the RTCSN
inadvertently released this vital information on its website. *See* Complaint, ¶42.

26 ⁵ At pp. 60-64, the 8/11/11 Transcript (Complaint Ex. 39), refers to RTCSN
27 General Manager Jacob Snow's presentation of an excerpt of the movie *Groundhog Day* at the
beginning of the Governing Body's consideration of Agenda Item 41 and his analogy of the
28 RTCSN voting deadlock to the film's lead character's excruciating constant repetition of
Groundhog Day.

1 disclosure, discussion or vote authorizing it.

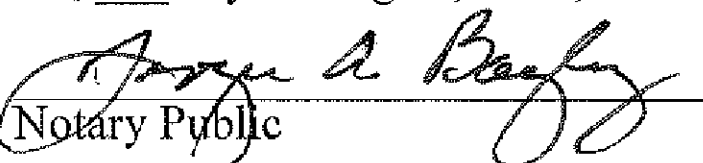
2 9. While First Transit won the RTCSN's own evaluation process, was identified the
3 successful proposer, and was awarded the Contract, while Veolia lost the \$600,000,000 contract
4 because of the \$50,000,000 over-bid, an impasse has developed over whether to scrap the RFP
5 rather than accept the very beneficial proposal by First Transit, and the existing contract has been
6 extended with price provisions similar to those proposed by First Transit while staff takes "a
7 year" to re-build the RFP. This results in giving the losing incumbent at least the first year of
8 First Transit's award—an award won under a very specific and exacting evaluation process.
9

10 11. On June 20, 2011, First Transit filed a petition for emergency writ relief in the
11 Nevada Supreme Court. Complaint Ex. 30. On July 13, 2011, the Supreme Court denied First
12 Transit's Writ Petition on the grounds First Transit should have sought relief in the District Court
13 in the first instance: "because we conclude that *petitioner should first seek relief from the*
14 *district court, we deny the petition based on the availability of that plain, speedy, and adequate*
15 *legal remedy.*" 7/13/11 Order, Complaint Ex. 34 (emphasis added).
16

17 13. Absent this Court's prompt intervention, both First Transit and the citizens of
18 Southern Nevada will suffer irreparable harm. An order shortening time for hearing of First
19 Transit's motion for writ and/or injunctive relief is proper under the circumstances.
20

21 
22 Fred D. "Pete" Gibson

23 Subscribed and Sworn to before me
24 this 22nd day of August, 2011,

25 
26 Notary Public

