

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”), dated as of _____, 2022, sets forth certain nonbinding understandings and binding agreements between the Duluth Transit Authority of the City of Duluth (the “**Buyer**”), a public authority created by the statutes of the State of Minnesota, and FirstGroup Management, Inc. (the “**Seller**”), a Delaware corporation, relating to the proposed sale of 100% of the issued and outstanding shares of common stock (the “**Shares**”) of ATE Management of Duluth, Inc., a Minnesota corporation (the “**Company**”) (such proposed sale, the “**Proposed Transaction**”). The Buyer and the Seller are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

1. MOU Subject to Definitive Agreement. This MOU is for discussion purposes only, and is not intended to constitute a legally binding or enforceable agreement or commitment on either Party, except for Section 3 which shall be binding on the Parties in accordance with its terms.

2. Nonbinding Understandings. This Section 2 sets forth the nonbinding understandings of the Parties with respect to the Proposed Transaction. It is the present intention of the Parties that Buyer would purchase and Seller would sell the Shares on the terms and conditions substantially similar to those set forth in this Section 2. These terms do not reflect all of the material terms of the Proposed Transaction but provide a basis for negotiating the Definitive Agreement (as defined below).

(a) Definitive Agreement. The Parties intend to negotiate a formal written agreement that would govern the Proposed Transaction (“**Definitive Agreement**”). Binding obligations with respect to the Proposed Transaction shall only arise upon the execution of the Definitive Agreement by both Parties.

(b) Price. The proposed price for the Shares would be \$250.00.

(c) Seller will use reasonable efforts to deliver to Buyer true and complete copies of governing documents of the Company, books records and other financial materials relating to the Company, existing or prospective contracts or agreements to which the Company is a party or a third party beneficiary and other documents or records relating to the operations of the Company as Buyer may reasonably request.

(d) Buyer and Seller intend cooperate in good faith to effectuate an orderly transition and to minimize interruptions to the services provided to Buyer by Seller pursuant to the Management Agreement between the Duluth Transit Authority and First Transit dated November 1, 2016 (as amended from time to time, the “**Management Agreement**”)

(e) Indemnification of Seller. In accordance with Section 13(d) of the Management Agreement, Buyer acknowledges that it shall retain any obligations, liability, responsibility, whether known or known by Buyer or Seller, whether arising before or after the closing date of the Proposed Transaction (the “**Closing**”) arising from the Company’s employment of any personnel and the resulting employment relationship,

including, but not limited to, wages, benefits, pension or profit sharing plans, labor contracts, and any other contractual obligations (collectively, “**Employment Obligations**”). Buyer will agree to indemnify Seller from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, liabilities, interest, attorney’s fees, costs and expenses suffered or incurred by them, directly or indirectly, to the extent arising out of, in connection with or resulting from (i) the management or operation of the Company subsequent to the Closing or (ii) the Company’s employment of the employees and the employment relationship, including but not limited to (x) the Employment Obligations (y) any amount paid, incurred or contributed by, or assessed to, Seller or any of Seller’s affiliates with respect to a pension plan, including any withdrawal liability and (z) with respect to any claim, notice and demand for payment, action, arbitration, audit, hearing, inquiry, examination, proceeding, litigation or suit (whether civil, criminal or administrative) commenced, brought, conducted, or heard by or before, or otherwise involving any pension plan trustee or administrator, governmental authority or arbitrator in respect of any pension plan. The indemnity provision in the Definitive Agreement will survive the Closing of the Proposed Transaction.

(f) Customary Provisions. The Definitive Agreement would contain such covenants, conditions, indemnities, representations and warranties as are customary for this type of transaction and as the Parties would mutually agree.

3. Binding Agreements. This Section 3 shall constitute a legally binding and enforceable agreement between the Parties. In consideration of the significant expenses that the Parties will incur in pursuing the Proposed Transaction and drafting and negotiating the Definitive Agreement, the Parties agree as follows:

(a) Good Faith Negotiations. The Parties shall negotiate in good faith and use their best efforts to bring about the execution and delivery of the Definitive Agreement at the earliest practicable time.

(b) Costs and Expenses. Each Party shall be responsible for all of its costs and expenses associated with pursuing the Proposed Transaction, including without limitation (i) the performance of its obligations under this MOU, (ii) conducting its due diligence investigation, and (iii) drafting and negotiating the Definitive Agreement.

(c) Confidentiality.

During the term of this MOU, The Seller (as the “**Disclosing Party**”) may disclose or make available to the Buyer (as the “**Receiving Party**”) information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, “**Confidential Information**”).

Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 3(d) by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by, or in the possession of, the Receiving Party or its representatives before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.

The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this MOU; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this MOU. The Receiving Party shall be responsible for any breach of this Section 3(d) caused by any of its representatives.]

(d) Term and Termination. The rights and obligations of the Parties contained in this MOU shall expire upon the execution of the Definitive Agreement. Either Party may terminate this MOU after 90 days from the date of this MOU without any obligation or liability to the other Party, provided however that Section 3(d), Section 3(f), and Section 3(g) shall survive such termination.

(e) Governing Law. This MOU shall be governed by and construed in accordance with the internal laws of the state of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the state of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the state of Delaware.

(f) No Third-Party Beneficiaries. Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this MOU.

(g) No Assignment. Neither this MOU, nor any rights or obligations hereunder may be assigned, delegated or conveyed by either Party without the prior written consent of the other Party.

(h) Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date set forth above.

Duluth Transit Authority of the City of Duluth

FirstGroup Management, Inc.

By_____

By_____

Name:

Name:

Title:

Title: