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RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

This Subscription and Services Agreement is entered into on **February 26, 2024** (the "**Effective Date"**) by and between **RideCo US, Inc.**, a Delaware corporation having its registered office at 10880 Wilshire Boulevard, Suite 1101, Los Angeles, CA 90024 ("**RideCo**"), and **Lee County Board of County Commissioners of Lee County, Florida (**hereinafter referred to as the **"Customer"),** at the office located at LeeTran, 3401 Metro Parkway, Ft. Myers, FL 33901 and governs use by Customer of RideCo's on-demand software & solutions, also known as the Dynamic Transit System (as further defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, it is agreed by and between the parties as follows:

1. INTERPRETATION

1.01 Definitions: In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings:

"**Agreement**" means this subscription and services agreement and includes any amendments, supplements, schedules, exhibits or appendices attached, referencing this agreement, or expressly made a part hereof by agreement between the parties.

"**Approved Equipment/Third Party Software**" means the equipment and third-party software required to operate the Distributed Software, specified in Schedule "B" hereto, including all upgrades, enhancements, releases, additions, modifications, and replacements of same from time to time approved in writing by RideCo.

"**Distributed Software**" means the RideCo passenger mobile application and driver mobile applications and any other software tools or components made available by RideCo for download under this Agreement.

"**Dynamic Transit System**" means RideCo's proprietary software programs including optimization algorithms, data analysis algorithms, web application, passenger mobile application, driver mobile application, dashboards, graphical user interface, all documentation and end user manuals;

"Documentation" means any and all of the following that are provided by RideCo, in any form of media, in connection with the Service Offerings: (a) know-how, proprietary information and methodologies, document templates and best practice guides; (b) scripts and data analysis tools; (c) user manuals and guides, that explain or facilitate the use of the Software, including all updates thereto; and (d) data sheets, specifications and other technical documents and materials in respect of the Software.

"Downtime" is the total accumulated minutes during a calendar month that are part of Maximum Available Minutes and that has a critical failure of the Software (which for greater certainty means a majority of the functions of the Software are unavailable or inaccessible for a majority of end users of the Customer).

"**Fees**" means the fees due and payable to RideCo under this Agreement as specified and further defined in an applicable SOW and/or Exhibit attached thereto.

"Maintenance and Support Services" means the technical services provided by RideCo as further described in Section 2 of Schedule "B" to this Agreement.

"Maximum Available Minutes" is the total accumulated minutes during a calendar month when the Service Offerings are expected to be available to facilitate the booking and provision of passenger rides and for the use of operator dashboards.

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"Monthly Uptime Percentage" is calculated as Maximum Available Minutes less Downtime divided by Maximum Available Minutes in a calendar month for a given platform or program subscription. Monthly Uptime Percentage is represented by the following formula:

> Monthly Uptime % = (Maximum Available Minutes - Downtime) / Maximum Available Minutes

"Personal Data" has the meaning given in Schedule "C".

"Platform Software" means collectively the RideCo Dynamic Transit System (DTS) cloud platform technology and underlying software, including its dynamic routing technologies, ride-sharing technologies, algorithms, implementation architectures, operations dashboards, user interfaces, and application programming interfaces ("APIs") to third party systems.

"**Operational Data**" means data recorded by the Distributed Software and presented through export on the operations dashboard end-user interface, where such data is provided by Customer or passengers or partner drivers and operators of. For greater certainty, Operational Data includes, but is not limited to, passenger ride booking information (origin, destination, time, payment, status) and driver action data (location data, pickup/drop-off times) however Operational Data does not include System Log Data or any other data that is not provided as an export to an end user through the operations dashboard end-user interface.

"**Purchase Order**" means any purchase order signed by RideCo (or its agents or distributors or resellers) and the Customer respecting the Service Offerings, either attached to this Agreement or incorporated by reference.

"Service Offerings" means collectively the Software, Documentation, associated APIs and interfaces to third party systems provided by RideCo pursuant to any Statement of Work on the terms of this Agreement.

"Software" means collectively the Distributed Software, Platform Software, and any interfaces between the two.

"**Software Enhancements**" means an update or upgrade to the Distributed Software or to the Platform Software, which update, or upgrade may include new product features that change the character or structure of the software or its functional use or operation and will usually form part of an automatic update to the Software without any action being required from Customer.

"**Statement of Work**" means one or more work orders or schedules of Service Offerings and deliverables to be performed or provided under this Agreement, the first of which is attached as Schedule "A" . A Statement of Work may contain the agreed additional fees and payment criteria. Each Statement of Work shall be attached to this Agreement as a sequentially numbered exhibit, and shall expressly be deemed incorporated into this Agreement and subject to all the terms and conditions set forth herein.

"System Log Data" means data derived by RideCo from Operational Data which has been aggregated with other RideCo customer data, and which has been de-identified consistent with applicable legal definitions of de-identified information and in a manner so that it contains no Personal Data and does not, and cannot reasonably be used, to identify Customer or any individual. For greater certainty, System Log does not identify a specific passenger or driver, nor does it contain any Customer Confidential Information.

"Vehicle Hours" means the hours that a vehicle is scheduled to or actually travels from the time it pulls out from its garage to go into revenue service to the time it pulls in from revenue service.

"Vehicles in Operation" means the maximum number of vehicles actually operated to provide service on an average weekday.

1.02 Schedules: The schedules to this Agreement are set forth as follows:

Schedule “A”	Statement of Work
Exhibit 1 to Schedule “A”	Financial Terms
Schedule “B”	Service Level Agreement
Schedule “C”	Data Protection Undertaking
Schedule “D”	Insurance
Schedule “E”	Federal Provisions

2. SERVICE OFFERINGS LICENSE, INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY

2.01 License Grant: Subject to the terms of this Agreement, RideCo grants Customer a limited, revocable, non-exclusive and non-transferable license to: (a) access and use the Service Offerings in the geographic locations and for the use-cases set forth in the Purchase Order and in accordance with the applicable Statement of Work. The Distributed Software may only be used in combination with the Approved Equipment/Third Party Software. RideCo or its agents, resellers or distributors may release from time to time to Customer at no additional charge during the term of this Agreement, software bug fixes and patches and such releases shall be considered “Software” hereunder and subject to the terms of this Agreement unless otherwise specified by RideCo. This license does not imply any rights to Software Enhancements or technical or other support services, except as otherwise expressly set forth herein. As used herein the “Intended Purpose” means use of the Service Offerings for the purpose of providing dynamic routing and shared ride technologies relating to the Customer’s transportation operations.

2.02 Restrictions & End User Terms:

(a) *Restrictions*. Except as otherwise expressly permitted in this Agreement, Customer shall not, and shall not encourage any third party to: (a) customize, modify or create any derivative works of the Service Offerings; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software (except to the extent applicable laws specifically prohibit such restriction); (c) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Distributed Software; (d) publish or disclose any results of benchmark tests run on the Software to a third party without RideCo’s prior written consent; (e) redistribute, encumber, sell, rent, lease, sub-license or otherwise transfer rights to the Service Offerings; (f) copy, reproduce, distribute, modify or in any other manner duplicate the Software, in whole or in part and Customer may not copy any written materials (except for training materials and for internal use) accompanying any portion of the Service Offerings unless specifically authorized in writing to do so by RideCo. Customer shall not access the Service Offerings in order to: (i) build a competitive product or service; or (ii) copy any ideas, features, functions or graphics of the Service Offerings. For greater certainty, Customer will not be in breach of this Section 2.02 if Customer independently develops a competing product or service without use or reference to RideCo’s Confidential Information as described in Section 2.09 below.

(b) *End Users.* RideCo shall ensure that end users agree to mutually agreed terms of service and privacy policy in accordance with requirements of applicable law before using the service. RideCo will inform end users that the transportation services are provided by Customer (or its partner drivers, as appropriate); not RideCo.

2.03 RideCo Intellectual Property. All intellectual property created or developed by or on behalf of RideCo prior to or independently of this Agreement shall remain vested in RideCo, which background intellectual property of RideCo includes know-how,

processes, methodologies and all proprietary information and materials of RideCo, the RideCo micro transit technology and all software code and algorithms used in the provision of services hereunder. Except as specifically set out in this Agreement or a SOW, no rights whatsoever are granted to Customer in the patents, copyrights, trade secrets, trademarks or other intellectual property of RideCo whether created prior to, during or after the performance of this Agreement. For certainty, any improvements, modifications or customizations made to RideCo's background intellectual property, whether requested or suggested by Customer, will belong exclusively to RideCo and to the extent Customer acquires any right therein, Customer will assign the same immediately to RideCo and waive any moral rights in connection with the same. Any deliverables developed specifically for Customer as specified in a SOW and any Service Data will be assigned to Customer on completion or termination of the Services or this Agreement after payment of all undisputed outstanding fees invoiced by RideCo. Unless otherwise specified in a SOW, RideCo shall own all right, title and interest and all intellectual property rights to any deliverables created by RideCo pursuant to this Agreement or any SOW hereunder and such deliverables shall not be considered "works made for hire".

2.04 Operational Data. As between Customer and RideCo, Customer will own the Operational Data. Subject to the data protection undertakings set out in Schedule "C", Customer hereby grants to RideCo for the duration of this Agreement a worldwide and royalty-free right and license to access and use the Operational Data for the sole purposes of: (i) providing the Service Offerings to Customer, (ii) assessing the performance of the Service Offerings; and (iii) creating System Log Data (as defined in Section 2.06 below). Customer is not entitled to receive any compensation or re-imbursement of any kind from RideCo for use of said Operational Data. Except as otherwise expressly permitted in this Agreement, RideCo does not claim any right, title or interest in the Operational Data. Customer represents and warrants that Customer has all necessary consents (if any) relating to the collection, retention, use, processing and disclosure of Operational Data (including all underlying Personal Data) and that use of the Operational Data in the manner contemplated in this Agreement will not breach the rights of any third party. For the avoidance of doubt, RideCo is not responsible for any liability arising out of the collection, retention, use, operation and disclosure by Customer of Operational Data (including any Personal Data contained therein).

2.05 Data Protection Undertaking. RideCo hereby agrees and undertakes to comply with the data protection undertakings set out in Schedule "C".

2.06 System Log Data. As between RideCo and Customer, all right and title to RideCo System Log Data belongs to RideCo and accordingly RideCo is free to use RideCo System Log Data for any purpose including the improvement of RideCo's Service Offerings.

2.07 Suggestions. RideCo shall have a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into its products, services and business any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Service Offerings.

2.08 Reservation of Rights. Except for the rights and licenses granted in this Agreement, Customer acknowledges and agrees that RideCo owns and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and all other intellectual property rights therein) in and to the technology used to provide the Service Offerings) and all related RideCo IP and RideCo grants Customer no further licenses of any kind hereunder, whether by implication, estoppel or otherwise. Customer acknowledges that only RideCo shall have the right to maintain, enhance or otherwise modify the Service Offerings.

2.09 Confidentiality:

(a) *Confidential Information*. This Agreement is subject to Chapter 119, Florida Statutes, the Florida Public Records Law. As used herein, "**Confidential Information**" means all confidential information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party")** that is designated in writing as confidential or ought to be considered confidential based on the nature of the information and the circumstances of disclosure. For greater certainty**,** the Documentation and the functionality of the Software are all Confidential Information of RideCo. Confidential Information shall not include any information that the Receiving Party can demonstrate by its written records: (a) was known to it prior to its disclosure hereunder by the Disclosing Party; (b) is or becomes known through no wrongful act of the Receiving Party; (c) has been rightfully received from a third party without restriction or disclosure and without breach by such third party of a non-disclosure obligation; (d) is independently developed by the Receiving Party; (e) has been approved for release by the Disclosing Party's prior written authorization**.**

(b) *Obligations*. Neither party shall use any Confidential Information of the other party except as necessary to exercise its rights or perform its obligations under this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own Confidential Information of like nature. Neither party shall disclose the other party's Confidential Information to any person or entity other than its officers, employees, service partners, consultants and legal advisors who need access to such Confidential Information in order to effect the intent of the Agreement and who have entered into written confidentiality agreements with it at least as restrictive as those in this Section. Upon any termination of this Agreement, the receiving party will promptly return to the disclosing party or destroy, at the disclosing party's option, all of the disclosing party's Confidential Information.

(c) *Injunctive Relief*. Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party may not have an adequate remedy in money or damages if any unauthorized use or disclosure of its Confidential Information occurs or is threatened. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

(d) *Other Exemptions*. Notwithstanding the foregoing provisions in this Section 2.09, the parties may disclose this Agreement: (i) as otherwise required by law or the rules of any stock exchange or over-the-counter trading system provided that reasonable measures are used to preserve the confidentiality of the Agreement; (ii) in confidence to legal counsel; (iii) in connection with the requirements of a public offering or securities filing provided reasonable measures are used to obtain confidential treatment for the proposed disclosure, to the extent such treatment is available; (iv) in connection with the enforcement of this Agreement or any rights under this Agreement, provided that reasonable measures are used to preserve the confidentiality of the Agreement; (v) in confidence, to auditors, accountants and their advisors; and (vi) in confidence, in connection with a change of control or potential change of control of a party or an affiliate of a party, provided that reasonable measures are used to preserve the confidentiality of the Agreement; and fulfilling ay obligation under Section 2.09(e) below. For any legally compelled disclosure or disclosure pursuant to a court, regulatory, or securities filing or as required by statute, the parties shall reasonably cooperate to limit disclosure of this Agreement and Disclosing Party will not be in breach of its obligations of confidence by complying with such requirements. For greater certainty, nothing in this Section 2.09 will diminish a Receiving Party's obligations under this Agreement to comply with applicable privacy and personal information protection laws (including the obligations set out in the applicable Statement of Work).

(e) *Statutory Disclosure Requirements*. Any documents or work product that Customer receives from RideCo pursuant to this Agreement may be considered public records or

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records subject to access to information laws which govern Customer. If RideCo believes that any such documents or work product contain information exempt from disclosure, or, include confidential information which is otherwise subject to protection from disclosure, RideCo shall mark such documents and/or work product as "CONFIDENTIAL INFORMATION EXEMPT FROM DISCLOSURE."

(i) Customer shall immediately notify RideCo upon Customer's determination that a request for public disclosure of records has been made that includes any records that have been so marked, which shall in no event be later than ten (10) business days following receipt of such request;

(ii) Customer shall seek a formal legal opinion within the statutorily required time period regarding whether the requested records are exempt from disclosure under the specific legislation. RideCo may file a brief in support of its position. Until such opinion is delivered, Customer will maintain the confidentiality of such records; and

(iii) If the formal legal opinion concludes that the requested records are not exempt from disclosure and Customer agrees, in its sole discretion, to a request by RideCo to challenge this opinion in court pursuant to the procedures of applicable legislation, RideCo shall assist Customer in its defense of the same.

3. MAINTENANCE AND SUPPORT SERVICES

3.01 Maintenance and support for the Software will be provided in accordance with the terms of Schedule "B".

4. FEES AND PAYMENT

4.01 **Fees:** In consideration of the provision of the license and services under this Agreement to Customer, Customer agrees to pay RideCo the Fees in accordance with any applicable Statement of Work and/or Exhibit attached thereto.

4.02 **Taxes:** All charges and fees provided for in this Agreement are exclusive of and do not include any foreign or domestic governmental taxes or charges of any kind imposed by any federal, state, provincial or local government on the transactions contemplated by this Agreement, including without limitation excise, sales, use, property, license, value-added taxes, goods and services, harmonized, franchise, withholding or similar taxes, customs or other import duties or other taxes, tariffs or duties other than taxes that are imposed based on the net income of RideCo. Any such taxes that are imposed on the net income of RideCo shall be the sole responsibility of RideCo. Notwithstanding the generality of the foregoing, if Customer is a purely governmental organizations exempt from payment of any taxes, then Customer shall not be charged taxes under this Agreement.

5. TERM AND TERMINATION

5.01 **Term:** This Agreement commences on the Effective Date and shall run for an initial period specified in the applicable Statement of Work together with any agreed extensions, unless terminated sooner in accordance with the terms of this Section 5.

5.02 **Termination for Convenience:** Either Party may terminate this Agreement, in whole or in part, at any time by giving ninety (90) days written notice of termination. In the event such notice is given, RideCo shall cease all work in progress at the end of 90 day notice

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period. RideCo shall be paid its costs, including any outstanding subscription fees, on work performed up to the time of termination.

5.03 **Termination:** Either party may terminate this Agreement with written notice if the other party: (i) fails to correct a material breach of its obligations under this Agreement within thirty (30) days after receipt by such other party of written notification from the notifying party of such material breach; (ii) ceases to carry on business as a going concern; or (iii) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy reorganization or insolvency proceedings are instituted by or against the other party.

5.04 **Survival**. The following Sections shall survive the termination or expiration of this Agreement for any reason: 1. (Definitions), 2.02(a) (Restrictions), 2.03 (RideCo Intellectual Property), 2.06 (System Log Data), 2.07 (Suggestions), 2.08 (Reservation of Rights), 2.09 (Confidentiality), 5.03 (Survival), 5.04 (Effect of Termination), 6.02 (Disclaimer of Warranties), 6.03 (Service Disclaimer and Liability Waiver), 6.04 (Limitation of Liability), 7 (General Provisions) and all terms related to payment (until payments have been made in full) and any other terms herein which expressly state that such terms will survive or which by their nature are required to survive to give effect to the surviving terms stated to survive, shall survive the termination or expiration of this Agreement for any reason and will continue in full force and effect subsequent to and notwithstanding such termination, until such provisions are satisfied or by their nature expire.

5.05 **Effect of Termination.** On termination, Subject to Chapter 119, Florida Statutes, requirements, Customer shall destroy all copies of the Distributed Software, all accompanying Documentation and Confidential Information of RideCo and shall provide confirmation of having done so within 5 business days of the effective date of termination.

6. WARRANTIES, INDEMNIFICATION, LIABILITY

6.01 Warranties:

(a) *Representations and Warranties by Each Party*. Each party represents, warrants to the other party that: (i) it is a corporation or limited liability company, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) it has all requisite power and authority and approvals to execute, deliver and perform its obligations under this Agreement; (iii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by it and any necessary third parties;

(b) *RideCo Warranties.* RideCo represents and warrants to Customer that RideCo will perform its duties and obligations hereunder in a careful, diligent, professional, proper, efficient and business-like manner. RideCo further represents and warrants that:

(i) The Service Offerings do not to RideCo's knowledge infringe any patent, copyright or trademark or violate the trade secret or other proprietary rights of any third party;

(ii) RideCo owns or has exclusive or non-exclusive rights in all patents, copyrights, trademarks, trade secrets and other proprietary rights in and to the Service Offerings necessary to grant the licenses herein; and

(iii) RideCo possesses the legal right and authority to execute and perform this Agreement,

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(c) *Customer Warranties*. Customer represents and warrants to RideCo that Customer adheres to applicable privacy laws and has in place appropriate agreements with end users regarding the collection, processing and use of Customer Personal Data (as defined in Schedule "C") in accordance with the terms of this Agreement and subject to compliance with Schedule "C" by RideCo, will not violate any rights of a third party or breach applicable data protection laws.

6.02 Disclaimer of Warranties: The Service Offerings are provided 'as is' and RideCo does not warrant, however, that the functions performed by the Service Offerings will meet Customer's requirements or that the operation of the same will be uninterrupted or error-free. Except as set forth in this Agreement, there are no other warranties or conditions of any kind, including without limitation, the warranties that the Service Offerings are free of defects, merchantable or fit for a particular purpose. Specifically, RideCo makes no representation or warranty regarding the merchantability, fitness for a particular purpose of the Service Offerings. All Approved Equipment/Third Party Software is subject to the warranty of its respective manufacturer and no warranty whatsoever is provided by RideCo. RideCo makes no guarantee of the performance, accuracy and results of the Service Offerings with respect to Operational Data. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Service Offerings is authorized under this Agreement except under this disclaimer.

6.03 Service Disclaimer and Liability Waiver. Customer acknowledges that RideCo is a technology provider and not a provider of transportation services. To the fullest extent permitted by law, RideCo will not be responsible for: (i) the actions, inactions, errors, omissions, representations, warranties, breaches or negligence of any passenger or driver or for any personal injuries, death, property damage, or other damages of expenses resulting therefrom; or (ii) the actions, inactions, errors, omissions, representations, warranties, breaches or negligence of transportation providers or for any damages or expenses resulting therefrom including without limitation any personal injury or property damage and Customer expressly waives the right to bring any claim against RideCo, its successors, assigns or related companies, directors, officers or employees in respect of any and all actions, causes of action, damages, claims, cross-claims and demands of any kind in connection with the transportation, vehicular or driver related portions of the services.

6.04 Limitation of Liability:

(a) EXCEPT FOR BREACH OF CONFIDENTIALITY, MISAPPROPRIATION OF INTELLECTUAL PROPERTY, NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, IN NO EVENT SHALL RIDECO BE LIABLE TO THE CUSTOMER FOR ANY LOST PROFITS OR FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS), HOWEVER CAUSED AND WHETHER OR NOT RIDECO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

6.05 Indemnification:

(a) RideCo shall indemnify, defend and hold Customer and its affiliates (including their officers, directors, agents, and employees) harmless against any claims by a third party that any part of the Service Offerings infringes any patent, copyright, trademark or trade secret right of such third party, and RideCo will pay any damages and expenses relating thereto, provided that the actual or alleged infringement has not been caused by the use of a modification of the Software other than by RideCo, by the combination and/or use of the Distributed Software with third party software, hardware, data, and/or technology not approved by RideCo in writing or by Customer's failure to implement any update or

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upgrade provided by RideCo. Customer will promptly notify RideCo of any such claim and provide reasonable assistance to RideCo with respect to handling the claim. Customer's failure to provide timely notice or reasonable assistance will relieve RideCo of its obligations under this Section to the extent that RideCo has been actually prejudiced by such failure. RideCo will have the sole right to defend, negotiate and settle any claims provided however that Customer shall have the right, at its option and expense, to participate in the defense of any action or proceeding through counsel of its own choosing. RideCo may at any time and at its option and expense: (i) procure the right of Customer to continue to use the Service Offerings that may infringe a third party's rights; or (ii) modify the Service Offerings so as to avoid infringement; or (iii) terminate this Agreement and the licenses granted hereunder.

7. General Provisions:

7.01 Sub-Contract: RideCo may sub-contract the performance of aspects of the Maintenance and Support Services set forth herein. For the avoidance of doubt, RideCo shall remain fully responsible for the performance of all aspects of the Maintenance and Support Services and shall be liable for the acts and omissions of its sub-contractors.

7.02 Partial Invalidity: If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect.

7.03 Assignment: Either party may not assign this Agreement without the written consent of (but on notice to) the other party. Notwithstanding the generality of the foregoing, RideCo may freely assign this Agreement to a successor in interest upon a merger, acquisition, reorganization, change of control, or sale of all or virtually all of its assets, and any such assignment shall not require the consent of the Customer. This Agreement shall be binding on and shall inure to the benefit of the parties, their successors and permitted assigns.

7.04 Governing Law and Venue: Except to the extent applicable law, if any, requires otherwise, this Agreement shall be governed by the laws of Florida. All disputes relating to this Agreement shall be subject to in the courts of Lee County, Florida.

7.05 Publicity. RideCo shall be entitled to disclose and publicize in the form of customer lists and on its web site and marketing materials, the identity of the Customer as a client of RideCo, provided that the use of any trademark/logo of Customer shall be subject to Customer's prior written consent. RideCo shall be entitled to include a "*powered by RideCo*" statement in the white labeled versions of the Distributed Software.

7.06 Force Majeure: Except for payment obligations, neither party shall be liable for any delay or failure in performance due to such acts of God, earthquake, labor disputes, strikes, shortages of supplies, riots, war, fire, pandemics, epidemics, or transportation difficulties, to the extent not in control of such party. The obligations and rights of the excused party shall be extended on a week to week basis, provided, however, that a delay of thirty (30) days shall entitle the other party to terminate this Agreement without liability.

7.07 Miscellaneous: This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement may be amended only in writing signed by both parties. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. The relationship between RideCo and Customer is that of independent contractors and neither Customer nor its agents shall have any authority to

bind RideCo in any way. The headings to the sections of this Agreement are used for convenience only and shall have no substantive meaning.

7.08 **Compliance with Laws:** In performing under this Agreement, RideCo shall comply with all applicable laws and regulations of any federal, state, provincial or local government entity.

7.09 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. It is the intent of the Parties that the performance by RideCo of its duties and obligations for Customer shall be that of an independent contractor, and nothing herein shall create or imply an agency or employment relationship between Customer and RideCo. This Agreement shall not be deemed to constitute a joint venture or partnership between the Parties. RideCo agrees that as an independent contractor, Customer will not provide insurance coverage for it and it is not covered under the Customer's workers compensation insurance. RideCo also agrees that it will not be treated or seek to be treated as an employee of Customer for any purpose.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers in that behalf.

RideCo US, Inc.

Signature
I have authority to bind RideCo.

Prem Gururajan
Name (typed or printed)

CEO

Title

21 Feb 2024

Date

Lee County Board of County Commissioners of Lee County, Florida

DocuSigned by:

DB13981AE52C4B3...

Signature
I have authority to bind Customer.

Robert Codie
Name: (typed or printed)

Assistant County Manager on Behalf of LEE COUNTY BOARD OF COUNTY COMMISSIONERS
Title

2/27/2024 | 5:14 PM EST

Date

APPROVED AS TO FORM FOR THE RELIANCE OF LEE COUNTY ONLY

DocuSigned by:

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Assistant County Attorney

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RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

SCHEDULE "A"
PROJECT TERMS AND INITIAL STATEMENT OF WORK

Project Term: Commences on the Effective Date and shall run for an initial period of 12 months from the launch date to passengers, with two (2) additional options to extend by a 1-year term at Customer's discretion, subject to agreement of applicable terms including the appropriate Fees.

Zone: Two (2) zones. Additional zones may be added subject to the applicable fees.

Service model: To be mutually agreed upon.

Vehicles: Six (6) vehicles in daily services. Customer shall determine the types of vehicles in service. Additional vehicles may be added subject to the applicable fees.

Service Hours: To be determined by Customer.

Scope of Work:

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner.
2. RideCo shall coordinate with Customer to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential subsidization).
3. RideCo shall ensure adequate and complete training of initial operators, dispatchers, operations manager(s), and Customer staff that are involved in the operation or monitoring of the service. Additional training sessions may be requested for an additional fee.
4. RideCo will ensure that the functions listed in Software Functional Requirements (as outlined below) are met.
5. RideCo and Customer will agree upon data reporting expectations and shall include daily ridership information, stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with Customer to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a standard daily KPI report, including data mutually agreed upon by Customer and RideCo. Custom reporting is out of scope but may be requested for an additional fee.
8. RideCo will review data dashboard with Customer and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
9. RideCo will periodically provide Customer with any recommendations for changes in stops, service hours, or promotions to ensure meeting project goals.
10. RideCo will provide Customer with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to Customer staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. Customer will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise Customer in the marketing of the service to passengers, including providing examples of successful marketing materials from other Customer efforts.

3. RideCo will configure and manage referral and promotional codes throughout, during the Project.

Software Functional Requirements:

Passenger Application Requirements:

Rider Account

- Trip history menu to see trip details
  - Start & end time
  - Starting & ending address
  - Trip cost (if applicable)
  - Help menu to provide feedback, or report other issue
- Reserved trip details
- Recent destinations are automatically saved to rider account

Ride Booking and Tracking:

- Ability to enter an address or select current or specific location on the map
- Reserve multiple seats or seat types (e.g. accessible)
- Reserve trips up to 5 business days in advance
- Reserve multiple trips at once (same trip for multiple days in one week)
- Retain recently queried locations so they are easy to pull up even if rider does not designate them as a “favorite”
- Ability to restrict stop vs. doorstep drop-off and pick-up points
- Vehicle location, vehicle ID and driver information are displayed while waiting for pickup
- Ability to call and/or leave a note for driver

Payment

- Ability to hold credit card information and charge passengers for fares.
- Ability to record and report on cash payments made to driver as well as on-board validation such as passes, transfers and/or tickets.
- Place to enter optional promotional codes.

Rating System

- Ride rating (e.g., 1 to 5 stars)

Customer Support

- Legal/terms and conditions
- A place for Frequently Asked Questions (FAQs)
- In app requests for support
- Customer service system that creates trackable tickets for follow up and resolution
- Ability to mask phone number when contacting driver

Driver Application Requirements:

- Automatic trip dispatching
- Dynamic routing capabilities to adjust vehicle allocation efficiently.
- Make phone calls to a rider via anonymized phone number
- Ability to launch turn-by-turn driving directions

Operations Dashboard Requirements:

- Dashboards accessible to operations coordinators and authorized individuals by the Customer
- Dashboard displays real-time data on riders, vehicles, drivers and service performance/Key Performance Indicators (KPIs). Data available includes:

  - Ridership
  - Travel times
  - Trip denial rate
  - Booking abandonment rates
  - On-time performance
  - Trip and driver reviews
  - Trip and driver comments

- Ability to assign different user-level permissions and rights based on operator, seniority, or role.
- The data gathered will be shared with / available to the operator or Customer in multiple formats:
  - Dashboards to visualize rider, driver, and performance data, aggregated across a period or at an individual trip/driver level
  - Weekly and monthly performance reports provided in Excel, in a performance format to be mutually agreed upon
  - Exports of the raw data (rides, vehicles, times, locations etc.) in CSV format that can be further analyzed by the operator or Customer staff if they desire

Software Security, Reliability & Privacy Requirements:

- The passenger and driver apps are 'stateless' and do not store any confidential passenger data on the local device.
- All data is stored securely in the cloud (Amazon Web Services – 'AWS').
- The passenger and driver apps communicate securely with the cloud-based platform using RESTful APIs.
- The software platform has a 99.9%+ historical uptime performance record.
- Data is encrypted in transit.
- All public facing webservers have been hardened using industry standard practices.
- Internal networks are shielded by security groups which define allowable ports and IP addresses for internal services.
- APIs are all secured using token authentication using an identity management system. Tokens are only valid for one user and can only be acquired by successfully authenticating against an authentication API. APIs used by internal components are never exposed publicly. For certain API calls, throttling exists to prevent against DOS type attacks.
- Daily backups of production databases for disaster recovery.
- Software does not store any payment card or billing information on company's servers.
- The mobile applications and operations dashboards include their own terms of service to end users that include provisions relating to data privacy, confidentiality, and intellectual property rights.

EXHIBIT 1 TO SCHEDULE "A"

FINANCIAL TERMS

RFP240011SML - LeeTran - Mobility on Demand						
Inception (Year 1)						
Item	**Description**	**Estimated Quantity**	**Unit Price**	**Annual Rate (1) / Monthly Rate (12)**	**Extended Amount**	
1.1	Software / Current User Licenses (7)	7	0.000	1	$	-
1.2	Transit Services - Set Up Fee	1	5,000.000	1	$	5,000.00
1.3	Vehicle Management Fee / License (per vehicle per month)	6	300.000	12	$	21,600.00
1.4	Training Program Cost	1	0.000	1	$	-
1.5	Additional User Licenses	1	400.000	1	$	400.00
1.6	Additional Vehicle Licenses	1	300.000	12	$	3,600.00
1.7	Any Applicable Discounts	1	0.000	1	$	-
				SUBTOTAL: YEAR 1 MOBILITY ON DEMAND SERVICE	**$**	**30,600.00**
Optional Renewal #1 - Year 2						
Item	**Description**	**Estimated Quantity**	**Unit Price**	**Annual Rate (1) / Monthly Rate (12)**	**Extended Amount**	
2.1	Software / Current User Licenses (7)	7	0.000	1	$	-
2.2	Vehicle Management Fee / License (per vehicle per month)	6	300.000	12	$	21,600.00
2.3	Training Program Cost	1	0.000	1	$	-
2.4	Additional User Licenses	1	400.000	1	$	400.00
2.5	Additional Vehicle Licenses	1	300.000	12	$	3,600.00
2.6	Any Applicable Discounts	1	0.000	1	$	-
				SUBTOTAL: RENEWAL 1 - YEAR 2 MOBILITY ON DEMAND SERVICE	**$**	**25,600.00**
Optional Renewal #2 - Year 3						
Item	**Description**	**Estimated Quantity**	**Unit Price**	**Annual Rate (1) / Monthly Rate (12)**	**Extended Amount**	
3.1	Software / Current User Licenses (7)	7	0.000	1	$	-
3.2	Vehicle Management Fee / License (per vehicle per month)	6	300.000	12	$	21,600.00
3.3	Training Program Cost	1	0.000	1	$	-
3.4	Additional User Licenses	1	400.000	1	$	400.00
3.5	Additional Vehicle Licenses	1	300.000	12	$	3,600.00
3.6	Any Applicable Discounts	1	0.000	1	$	-
				SUBTOTAL: RENEWAL 2 - YEAR 3 MOBILITY ON DEMAND SERVICE	**$**	**25,600.00**

**Quantities are not guaranteed. Final payment will be based on actual quantities.

Other terms:

- SMS notifications included in licensing fees.
- Third-party payment processors (e.g., credit card related, including charge backs) are passed through directly to the customer.
- Three (3) Zendesk (Customer Service Software) licenses included in the price for support staff use.
- Three (3) Performance dashboard licenses included in the price for executive use.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

SCHEDULE "B"
SERVICE LEVEL AGREEMENT

1. APPROVED EQUIPMENT / THIRD PARTY SOFTWARE

Driver Mobile App Requirements:

- Android Device running the most recent Android OS major version release of and one previous major version release with Google Play Services
- GPS Enabled Phone
- High speed (4G recommended) data plan with a minimum of 2GB/month
- Minimum screen resolution 800x480
- Minimum recommended CPU: Mid-to-High range performance CPU based on ARMv8-A 64-bit Architecture
- 2GB RAM
- 1GB internal storage

Passenger Mobile App Requirements:

- iPhone running the most recent iOS major version release and two previous major version releases, or Android device running the most recent Android OS major version release of and two previous major version releases with Google Play Services
- Minimum screen resolution 800x480
- Minimum recommended CPU: dual-core 1.5GHz
- 1GB RAM
- 200MB internal storage

Browser requirements for operations dashboards:

- Google Chrome (the most recent major version release and one previous major version release)
- Firefox (the most recent major version release and one previous major version release)
- Safari (the most recent major version release and one previous major version release)

2. MAINTENANCE AND SUPPORT SERVICES

2.1 Maintenance Services: RideCo shall provide the following maintenance services to Customer:

(a) Supply or deploy corrections to the Software as required to correct errors, defects, malfunctions, and deficiencies, if any, in the Software; and

(b) Supply or deploy improvements, extensions, upgrades, enhancements and other changes to the Software developed from time to time by RideCo.

2.2 Support Services: In response to a support request from Customer, RideCo shall provide the following support services to Customer as per the priority levels, response times and procedures specified in Schedule "B" to be provided remotely:

(a) Clarification of software functionality

(b) Adjustments to software configuration; and

(c) Advice on the use and results of the Service Offerings;

2.3 Services Outside Scope of Maintenance and Support: The Maintenance and Support Services to be provided under this Agreement do not include:

(a) Correction of errors or defects caused by operation of the Software in a manner other than specified in the Software documentation;

(b) Rectification of errors caused by incorrect use of the Software;

(c) Correction of errors caused in whole or in part by the use of computer programs other than the Software unless the use of such programs has been approved by RideCo in writing; or

(d) Diagnosis or rectification of faults not associated with the Software.

2.4 Access: The Customer shall:

(a) Provide RideCo's support personnel reasonable or necessary access to the Customer accounts relating to the Distributed Software, as may be applicable, at mutually agreed upon times, and for the purposes of providing the Maintenance and Support Services;

(b) Provide RideCo with a duly qualified and trained representative of the Customer, and with all relevant information and assistance required by RideCo to enable RideCo to provide the Maintenance and Support Services.

2.5 Professional Services: Customer may request at any time and from time to time that RideCo provide to Customer any other professional services or Software modifications which are within the scope of its business and which are not provided for herein and which are not covered by the Subscription and Services Fee. RideCo shall evaluate such requests and may provide the Customer an estimate of the cost of such professional services. In no event shall RideCo be obligated to provide professional services not agreed in writing with Customer.

2.6 Availability:

(a) RideCo shall make the Service Offerings Available, as measured over the course of each calendar month during the term and any additional periods during which RideCo does or is required to provide Service Offerings (each such calendar month, a "**Service Period**"), at least 99.9% of the time (the "**Availability Requirement**"). "**Available**" means the Service Offerings are available and operable for access and use by the majority of end users of the Customer over the Internet in conformity with the specifications and documentation therefor. "**Availability**" has a correlative meaning. The Service Offerings are not considered Available in the event of any of the following:

(i) an issue affecting entire system or single critical production function for at least the majority of end users of the Customer;

(ii) System down or operating in materially degraded state for at least 50.1% of end users of the Customer.

3. PRIORITY LEVELS, RESPONSE TIMES, EXCEPTIONS AND PROCEDURES

3.1. Resources and Forms of Support

Support Portal	Utilized for medium or low priority items
Emergency hotline	Used for critical / high priority items Customer specific emergency telephone number

3.2. Support Response Time

Priority	Response Time	Update Frequency	Resolution Time
High Business critical problems that affect the availability or access of or to the Service Offering for most users	**1 hour** Support ticket updated/created	**Every 2 hours** or as mutually determined	**Within 24 hours** Resolution times may be longer depending on the nature and complexity of the problem.
Medium Not critical but important problems that materially interrupt or restrict the normal production running of the Software (affecting a minority of users)	**12 hours** Support ticket updated/created	Every working day or as mutually determined	**Within five (5) business days**
Low Not business critical or important. Issues that do not materially impact the normal production running of the Software	**24 hours** Support ticket updated/created	Every week or as mutually determined	**Ten (10) business days** RideCo shall notify Customer of the analysis of the problem, the intended fix and the release in which it will be delivered. Where feasible, RideCo shall provide a temporary workaround to Customer.

3.3. Exceptions: No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following ("Exceptions"):

(a) Customer's or any of its Authorized Users' misuse of the Hosted Services;

(b) failures of Customer's or its Authorized Users' internet connectivity;

(c) internet or other network traffic problems or connectivity of cellular networks other than problems arising in or from networks actually or required to be provided or controlled by Supplier;

(d) Customer's or any of its Authorized Users' failure to meet any minimum hardware or software requirements set forth in the Specifications; or

(e) Scheduled Downtime; or

(f) Downtime is caused by third party hardware or third party software, except to the extent Supplier exerts control over such third party hardware or third party software.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

SCHEDULE "C"
DATA PROTECTION UNDERTAKING

1. **Definitions**. Capitalized terms used herein shall have the meanings set forth in this Section 1. Terms that are capitalized but not otherwise defined in this Schedule shall have the meaning set forth in the RideCo Subscription and Services Agreement ("**Agreement**")

"**Personal Data**" means data, whether true or not, about an individual who can be identified —

(a) from that data; or

(b) from that data and other information to which the organization has or is likely to have access;

"**Security Incident**" means —

(a) any act or omission that compromises the security, confidentiality, or integrity of Operational Data as it relates to Customer or the physical, technical, administrative, or organizational safeguards put in place by RideCo, or by Customer should RideCo have access to Customer's systems, that relate to the protection of the security, confidentiality, or integrity of Operational Data, or

(b) receipt of a complaint in relation to the privacy and data security practices of RideCo, or a breach or alleged breach of this Schedule relating to such privacy and data security practices. Without limiting the foregoing, the loss of or unauthorized access, disclosure, or acquisition of Operational Data, or an incident that prevents or limits users or Customer from accessing a system or any Operational Data (through the use of malware, ransomware, or otherwise) is a Security Incident.

RideCo agrees that the following terms shall apply where RideCo accesses, handles or uses any Operational Data under the Agreement, including in the course of and/or in connection with exercising its rights or carrying out its obligations under the Agreement:

a. Standard of Care. Except as provided in the Agreement, RideCo shall not sell, rent, transfer, distribute, or otherwise disclose Operational Data for RideCo's own purposes or for the benefit of anyone other than Customer, in each case, without prior written consent. RideCo shall comply with any reasonable written instructions the Customer gives RideCo in advance relating to compliance with any laws, regulations, court orders, or self-regulatory programs applicable to the collection, use, disclosure, treatment, protection, storage and return of Operational Data.

b. Information Security. RideCo shall maintain reasonable and appropriate policies and procedures to protect the security, privacy, integrity, and confidentiality of Operational Data, including a written information security program that is reviewed at least annually.

   i. RideCo shall implement administrative, physical, and technical safeguards to protect Operational Data from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices including the National Institute of Standards and Technology (NIST) Cybersecurity Framework, and the Payment Card Industry Data Security Standard), and shall ensure that all such safeguards, including the manner in which Operational Data is Processed, comply with

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applicable data protection and privacy laws, as well as the terms and conditions of this Schedule.

ii. At a minimum, RideCo's safeguards for the protection of Operational Data shall include: (i) limiting access of Operational Data to authorized users; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Operational Data stored on any media; (vii) encrypting Operational Data transmitted over public or wireless networks; (viii) logically segregating Operational Data from information of RideCo or its other customers so that Operational Data is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and implementing, at RideCo's sole cost and expense, a corrective action plan to correct any material issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices; and (xi) providing appropriate privacy and information security training to RideCo's employees.

c. PCI-DSS.

i. If, in the course of its engagement by Customer, RideCo has access to or will collect, handle, access, use, store, process, transmit, dispose of or disclose credit, debit or other payment cardholder information (as such term is defined by the PCI-DSS, "**Cardholder Data**"), RideCo: (i) acknowledges that RideCo is responsible for the security of Cardholder Data that RideCo collects, handles, accesses, uses, stores, processes, transmits, disposes of, discloses, or otherwise possesses, for or on behalf of Customer or to the extent that RideCo could impact the security of Customer's Cardholder Data environment; and (ii) shall comply and remain in compliance with all rules, regulations, standards, and security requirements of the payment brands, including, without limitation, the PCI-DSS, in each case, as such may be amended, modified, supplemented, or replaced from time to time ("**PCI Security Requirements**") including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI-DSS at RideCo's sole cost and expense.

ii. RideCo shall, not less than once per year, at RideCo's sole cost and expense undergo a PCI-DSS assessment in the form and manner as required by the PCI-DSS and the payment brands (a "Security Assessment"), on all of RideCo's systems and System Components (as defined in the PCI DSS) used by RideCo to perform the services

d. Security Incident. If RideCo discovers a Security Incident, or if there has been any unauthorized or accidental disclosure, corruption, or damage of Operational Data, RideCo must inform the Customer without undue delay and no later than 72 hours after RideCo becomes aware of such Security Incident RideCo. Following a Security Incident, the parties will coordinate with each other to investigate the matter. RideCo will reasonable cooperate with Customer in Customer's handling of the matter, including: (i) assisting with any investigation; (ii) providing Customer with physical access to any facilities and operations affects; (iii) facilitating interviews with RideCo's employees, former employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with all privacy and data

protection requirements or as otherwise reasonably required by the Customer. RideCo shall not inform any third party of any Security Incident involving Customer without first obtaining Customer's prior written consent, except when law or regulation requires it.

i. RideCo agrees that Customer has the sole right to determine: (i) whether to provide notice of a Security Incident to any affected individuals, regulators, law enforcement, agencies, or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and (ii) whether to offer any type of remedy to individuals affected by the Security Incident, including the nature and extent of such remedy..

ii. RideCo shall notify the Customer promptly in the event of any claim or complaint from any individual to whom the Operational Data relates and/or where there has been an event of non-compliance with any data privacy laws by RideCo, whether discovered by RideCo or forming the subject of an investigation and/or action by the relevant authorities.

iii. RideCo shall notify the Customer promptly in the event that RideCo is required by law, court order, warrant, subpoena, or other legal or judicial process to disclose any Operational Data to any person, unless prohibited by law.

e. Oversight of Security Compliance. At least once per year, RideCo shall conduct audits of the information technology and information security controls for all facilities used in complying with its obligations under this Schedule, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on recognized industry best practices.

i. Upon Customer's written request, to confirm compliance with this Schedule, as well as any applicable laws and industry standards, RideCo shall promptly and accurately complete a written information security questionnaire provided by Customer, or a third party on Customer's behalf, regarding RideCo's business practices and information technology environment in relation to all Operational Data being handled and/or services being provided by RideCo to Customer pursuant to this Schedule. RideCo shall fully cooperate with such inquiries.

ii. At no charge to Customer, RideCo shall, at least once each calendar year at no greater than a twelve month interval from the previous audit (such interval, the "Audit Period"), carry out an audit, report, attestation, and opinion that evaluates the security controls over RideCo's sites, facilities, systems (including infrastructure, software, people, procedures, and data), and system components through or from which the Services are provided, including those of all of RideCo's authorized users, subcontractors and subservice organizations, (collectively, "RideCo Systems") throughout the entirety of the Audit Period. Without limiting the foregoing, RideCo shall document any changes made to RideCo Systems relating to the Audit, including RideCo changes in the Subcontractors or subservice organizations used by RideCo, as well as assessments and attestations from RideCo, its subcontractors and any subservice organizations with respect to the effectiveness of the controls prior to and after the implementation of any such change.

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iii. Audit Findings. If: RideCo at any time discovers a material or significant weakness or deficiency in RideCo's controls that could reasonably be expected to cause data loss or unauthorized access or disclosure of Operational Data (any of the foregoing, a "**Deficiency**"), then in each case RideCo's officer in charge of information technology security (or, if mutually-agreed, his delegated representative), shall notify Customer and meet with Customer upon Customer's request to discuss with Customer the nature and extent of the Deficiency, and RideCo shall (a) promptly develop a remediation plan with respect to each Deficiency (which shall include deadlines for the completion of the tasks/activities under such remediation plan and such deadlines shall be negotiated with Customer), (b) diligently implement the remediation plan and shall use commercially reasonable efforts to remediate any Deficiencies, and (c) promptly report to Customer on the status of remediation efforts as requested by Customer.

f. <u>Consents</u>. If under the Agreement, RideCo has to collect any Operational Data from the Customer's employees or any other individuals directly, RideCo must notify the individuals about the purpose of RideCo's collection and must obtain their consent before RideCo does so, and RideCo must follow any reasonable instructions which the Customer may give RideCo in this regard, and must comply with all applicable laws for such collection of Operational Data.

g. <u>Third Party Disclosure</u>. RideCo must not disclose any Operational Data to any other unrelated persons/entities or transfer any Operational Data outside of the USA or Canada without the Customer's permission in writing.

h. <u>Return or Destruction of Operational Data</u>. RideCo shall promptly return to the Customer or destroy any Operational Data received in error. RideCo must destroy Operational Data as soon as practicable if required by the Customer. At the end of the Agreement, RideCo must notify the Customer if RideCo or other recipients (if disclosure of Operational Data to such other recipients has been permitted by the Customer in writing) have any Operational Data collected/received as part of the Agreement and follow the Customer's instructions on returning or destroying the Operational Data, whether in written, electronic, or other form or media. Following such destruction, the Customer may require RideCo to certify that RideCo (and such recipients) no longer have Operational Data. If RideCo wants to retain any Operational Data beyond the end of the Agreement, RideCo will be required to inform the Customer of RideCo's reasons and seek the Customer's written consent on the same. RideCo shall comply with all reasonable directions provided by Customer with respect to the return or disposal of Operational Data.

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RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

SCHEDULE "D"
INSURANCE

A. Insurance Coverages. RideCo shall provide and maintain insurance, acceptable to the Customer, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by RideCo, its agents, representatives or employees. RideCo shall procure and maintain the following scope and limits of insurance:

Commercial General Liability (CGL): Insurance written on an occurrence basis to protect RideCo and Customer against liability or claims of liability which may arise out of this Agreement in the amount of two million dollars ($2,000,000) per occurrence and subject to an annual aggregate of four million dollars ($4,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). All defense costs shall be outside the limits of the policy.

Vehicle Liability Insurance: Vehicle liability insurance in an amount not less than $1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars ($1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars ($1,000,000). A combined single limit policy with aggregate limits in an amount of not less than $2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the Customer.

Workers' Compensation Insurance: Workers' Compensation insurance with a minimum of one million dollars ($2,000,000) of employers' liability coverage. RideCo shall provide an endorsement that the insurer waives the right of subrogation against the Customer and its respective elected officials, officers, employees, agents and representatives. In the event a claim is filed against CustomerCustomer by a bona fide employee of RideCo participating under this Agreement, RideCo is to defend and indemnify the Customer from such claim.

Professional Liability Insurance: Professional liability insurance appropriate to the RideCo's profession in an amount not less than one million dollars $1,000,000 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The insurance must be maintained for at least three (3) consecutive years following the completion of RideCo's services or the termination of this Agreement. During this additional three (3) year period, RideCo shall annually and upon request of the Customer submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to Customer.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. Customer, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities RideCo performs; products and completed operations of RideCo; premises owned, occupied or used by RideCo; or automobiles owned, leased, hired or borrowed by RideCo. The coverage shall contain no special limitations on the scope of protection afforded to Customer, and their respective elected and appointed officers, officials, or employees.

b. RideCo's insurance coverage shall be primary insurance with respect to Customer, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Customer, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, RideCo's insurance.

c. RideCo's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to Customer, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against the Customer, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the Customer Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against Customer, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by RideCo.

C. Other Requirements. RideCo agrees to deposit with Customer, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy Customer that the insurance provisions of this contract have been complied with. The Customer may require that RideCo furnish Customer with copies of original endorsements effecting coverage required by this Exhibit "B". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Customer reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. RideCo shall furnish certificates and endorsements from each subcontractor identical to those RideCo provides.

2. Any deductibles or self-insured retentions must be declared to and approved by Customer. At the option of Customer, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Customer or its respective elected or appointed officers, officials, employees and volunteers, or the RideCo shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit RideCo's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

SCHEDULE "E"
FEDERAL PROVISIONS

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LEE COUNTY TRANSIT POLICIES
AND
PROCEDURES

GRANT-FUNDED PROCUREMENTS (500-11)
GENERAL PROVISIONS

3401 Metro Parkway
Fort Myers, FL 33901

Revision Date: December 30, 2019

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LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

I. PROVISIONS APPLICABLE TO ALL CONTRACTS

A. Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities. All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

B. Application of Federal Laws Clause

Contractor understands that Federal, state and local laws, regulations, policies, and related administrative practices ("Laws") applicable to the Contract on the date the Contract was executed (the "Execution Date") may be modified from time to time, or new Laws may be established after the Execution Date. Contractor agrees that the most recent of such Laws will govern the administration of the Contract at any particular time, unless there is sufficient evidence in the Contract of a contrary intent. Such contrary intent might be evidenced by express language in the Contract, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of the Contract.

C. Access to Records and Reports

(49 U.S.C. § 5325(g), 2 C.F.R. § 200.333, 49 C.F.R. part 633)

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

Federal Changes (49 C.F.R. Part 18)

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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D. Civil Rights Requirements

Civil Rights and Equal Opportunity

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.,* and Federal transit laws at 49 U.S. C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, " Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination I Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.,* U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S. C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.,* the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.,* and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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E. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any Contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

F. Disadvantaged Business Enterprise (DBE)

(49 C.F.R. part 26)

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

The text of 49 CFR Part 26 can be found at the following link: https://ecfr.io/Title-49/pt49.1.26

FDOT's website DBE Directory is located at:
https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/CustomSearch.aspx

Overview

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types offederally assisted contracts and procurement a

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7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirement as set forth herein. These requirements are in addition to all other equal opportunity employment Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder the requirements stated herein. In assessing compliance, the AGENCY may consider Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-comp on previous contracts with the AGENCY.

Contract Assurance
The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, c the performance of this Contract. The Contractor shall carry out applicable requirements of and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other r appropriate.

DBE Participation
For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the *[certifying agency or the Unified Certification Program (UCP)];* or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY.

DBE Participation Goal
The DBE participation goal for this Contract is set at 4%. This goal represents those element performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less** price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

Proposed Submission
Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.

2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.

3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule.**

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4. An original **DBE Affidavit** (See below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [Contact Name]. The [Contact Name] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

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As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor

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relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations
If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM
The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

___________The Bidder/Offer is committed to a minimum of ________% DBE utilization on this contract.
____________The Bidder/Offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of ____________% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE
The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM				
Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description of Work to be Performed	Race and Gender of Firm

G. Energy Conservation

(42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C)

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 USC § 6321 *et seq.,* and perform an energy assessment for any building

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constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessment," 49 CFR part 622, subpart C.

H. False or Fraudulent Statements or Claims – Civil and Criminal Fraud

(49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; and 49 C.F.R. part 31)

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801-3812 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in which whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

I. Federal Assistance and Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or subsequent revisions, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

J. Federal Changes

(49 C.F.R. part 18)

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

K. Fly America Requirements

(49 U.S.C. § 40118; 41 C.F.R. part 301-10; and 48 C.F.R. part 47.4)

LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

L. No Government Obligation to the Third Parties

1. Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in, or approval of the solicitation or award of the underlying Contract, absent the express written consent of the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party pertaining to any matter resulting from the underlying Contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

M. Termination

(2 C.F.R § 200.339; 2 C.F.R. part 200, Appendix II (B))

1. **Termination for Convenience.** LCBOCC may terminate the Contract, in whole or in part, at any time and for any reason by written notice to the Contractor when it is in the best interest of LCBOCC, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA. The Contractor shall be paid its costs, including Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to LCBOCC to be paid to the Contractor. If the Contractor has any property in its possession belonging to LCBOCC, the Contractor will account for the same, and dispose of it in the manner LCBOCC directs.

2. **Termination for Default.** If the Contractor fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of ten (10) days after receiving such notice from LCBOCC , thereafter, LCBOCC may terminate the Contract for default and have the Work completed and the Contractor shall be liable for any resulting cost to LCBOCC . In the event of termination for default, the Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LCBOCC.

3. **Termination Due to Insufficient Funds**. If at any time during the term of the Contract the LCBOCC Governing Board makes a determination that LCBOCC has insufficient funds with which to carry

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out its performance and obligations under the Contract, then LCBOCC may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LCBOCC.

4. **Termination Due to Failure to Receive a Grant or other Funding Device**. If at any time during the term of the Contract LCBOCC ceases to receive a grant or other funding device from a third party with which it intended to pay for the goods or services Contracted for, then, unless otherwise directed by the LCBOCC Governing Board, LCBOCC may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LCBOCC.

5. **Damages upon Termination.** Any damages to be assessed to the Contractor as a result of a default termination or any claim by Contractor for costs resulting from a termination for convenience by LCBOCC, a termination due to insufficient funds by LCBOCC, or a termination due to a failure to receive a grant or other funding device by LCBOCC will be computed and allowable in accordance with federal regulations in effect at the time of termination.

N. Conformance with Intelligent Transportation System (ITS) National Architecture

For all respect to all Contracts involving the provision of Intelligent Transportation Systems ITS property and services the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the National ITS Architecture and Standards to the extend required by 23 USC Section 517 (d) and 23 CFR Part 655 and 940.

O. Cargo Preference (Required for Transport of materials by Ocean Vessels)

(46 U.S.C. § 55305; 46 C.F.R. part 381)

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Use of United States – Flag Vessels:

a. The Contractor agrees to use privately owned United States- Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States- Flag commercial vessels

b. Furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration,

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Washington, DC 20590 and to LCBOCC (through the Contractor in the case of a subcontractor's bill-of-lading.)

c. Include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

P. Recycled Products

(42 U.S.C. § 6962; 40 C.F.R. part 247; and 2 C.F.R. part § 200.322)

With respect to contracts for items designated by the Environmental Protection Agency, when LCBOCC procures at least Ten Thousand Dollars ($10,000) of such materials per year, the Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

Q. Program Funding

LCBOCC's performance and obligations to pay under the Contract are contingent upon the availability of various Federal, State and local funding.

R. Immigration Law Affidavit Certification (E-Verify Requirement)

Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the united States; it is not a substitute for any other employment eligibility verification requirements. Vendors/bidders are required to enroll in the E-Verify program and provide acceptable evidence of their enrollment, at the time of the submission of the vendor's/bidder's proposal. Exceptions to the program: Commodity based procurement where no services are provided.

II. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS ($25,000)

A. Suspension and Debarment

(2 C.F.R. part 180; 2 C.F.R. part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; and Executive Order 12689)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;

b) Suspended from participation in any federally assisted Award;

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c) Proposed for debarment from participation in any federally assisted Award;

d) Declared ineligible to participate in any federally assisted Award;

e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

III. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS BY STATUTE ($100,000)

A. Byrd Anti-Lobbying Amendment

Lobbying Restrictions

(31 U.S.C. § 1352; 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (J); and 49 C.F.R. part 20)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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____ Signature of Contractor's authorized Official

____ Name and Title of Contractor's Authorized Official

____ Date

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

B. Contract Work Hours and Safety Standards

(40 U.S.C §§ 3701-3708; and 29 C.F.R. part 5)

The following provisions shall apply with respect to all U.S. federal government financed contracts and subcontracts in excess of $100,000, involving employment of laborers or mechanics, including watchmen and guards, provided, however, that these provisions shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market.

1. **Overtime requirements -** No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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4. **Subcontracts -** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (3) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

C. Bonding Requirements (all construction or facility improvement contracts)

(2 C.F.R. § 200.325; 31 C.F.R. part 223)

Bid Guarantee

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to $$$$ or X% of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RECIPIENT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the RECIPIENT, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent RECIPIENT'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense RECIPIENT for the damages occasioned by default, then the undersigned bidder agrees to indemnify RECIPIENT and pay over to RECIPIENT the difference between the bid guarantee and RECIPIENT'S total damages so as to make RECIPIENT whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee

A Performance Guarantee in the amount of 100% of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The RECIPIENT may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement

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from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

   The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds
A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

IV. PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD – ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000)

A. Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA - funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $150,000). Separate requirements for rolling stock are set out at U.S.C. 5323(j) (C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit to LCBOCC a Buy America

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certification with respect to all FTA funded contracts, except those subject to a general waiver. This requirement does not apply to lower tier subcontractors.

B. Bonding Requirements (Non-Construction)

Contractor may be required to obtain performance and payment bonds when necessary to protect LCBOCC's interest.

1. The following situation may warrant a performance bond:
   a. LCBOCC property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
   b. Contractor sells assets to or merges with another concern, and LCBOCC, after recognizing the later concern as the successor in interest, desires assurance that it is financially capable.
   c. Substantial progress payments are made before delivery of end items starts.
   d. Contracts are for dismantling, demolition, or removal of improvements.
2. When determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
   a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless LCBOCC determines that a lesser amount would be adequate for the protection of LCBOCC.
   b. LCBOCC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increased contract price. LCBOCC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when performance bond is required, and if the use of payment bond is in the interest of LCBOCC.
4. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bond as follows:
   a. The penal amount of the payment bonds shall equal:
      i. Fifty percent of the contract price if the contract price is not more than $1 million.
      ii. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
      iii. Two and half million if the contract price is more than $5 million.

C. Resolution of Disputes, Breaches, or Other Litigation

(2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A))

Disputes – Disputes arising in the Performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the Procurement Director of LCBOCC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnished a written appeal to the Procurement Director.

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In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence of its position. The decision of the Procurement Director of LCBOCC shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by LCBOCC, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between LCBOCC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Lee County, Florida.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by LCBOCC or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

D. Clean Air and Federal Water Pollution Control

(42 U.S.C. §§ 7401 – 7671q; 33 U.S.C. §§ 1251-1387; and 2 C.F.R. part 200, Appendix II (G))

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387)

V. PROVISIONS APPLICABLE TO ROLLING STOCK PURCHASE CONTRACTS

A. Bus Testing

Contractor agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to LCBOCC at a point in the procurement process specified by LCBOCC, which will be before LCBOCC's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.

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3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report. This must be provided to LCBOCC before LCBOCC, and A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
5. Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by LCBOCC.

B. Pre-award and Post Delivery Audit Requirements

Contractor agrees to comply with 49 U.S.C. 5323(m) and FTA's implementation regulation at 49 C.F.R. Part 663 and to submit the following certifications: **

1. **Buy America Requirements -** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America requirements. If the Contractor certifies compliance with the Buy America requirements, it shall submit documentation which lists (i) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs; and (ii) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. **Solicitation Specification Requirements -** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. **Federal Motor Vehicle Safety Standards ("FMVSS") -** The Contractor shall submit (i) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (ii) manufacturer's certified statement that the Contracted buses will not be subject to FMVSS regulations.

** Buy America requirements are applicable to rolling stock procurements exceeding $150,000.

VI. PROVISIONS APPLICABLE TO CONSTRUCTION PROJECTS

A. Davis-Bacon Act and Copeland Anti-Kickback Acts

With respect to all construction contracts and subcontracts over two thousand dollars ($2,000) at least partly financed by a loan or grant from the Federal Government, and including contracts for actual construction, alteration and/or repair, including painting and decorating, the following provisions shall apply.

1. **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents

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thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advice the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

2. **Withholding** - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under the Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LCBOCC may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. **Payrolls and basic records** - Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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(ii) (A) The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LCBOCC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c) (i) (B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

4. Apprentices and trainees – (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or

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her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(II) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no

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longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

5. **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.

6. **Subcontracts**. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.

7. **Contract termination: debarment.** A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

8. **Compliance with Davis - Bacon and Related Act requirements**. All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. **Certification of eligibility –** (i) By entering into the Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

    (ii) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

    (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

B. Bonding Requirements for Construction Contracts Exceeding One Hundred FIFTY Thousand ($150,000)

Bid Bond Requirements (Construction)

1. Bid security - A Bid Bond must be issued by a fully qualified surety company acceptable to LCBOCC and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

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2. Rights Reserved – In submitting the Bid, it is understood and agreed by bidder that the right is reserved by LCBOCC to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of LCBOCC. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of LCBOCC , shall refuse or be unable to enter into the contract, as LCBOCC provided above, or refuse or unable to furnish adequate and acceptable Performance Bond and labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, bidder shall forfeit the bid security to the extent of LCBOCC's damages occasioned by such withdrawal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check shall prove inadequate to fully recompense LCBOCC for the damages occasioned by default, then such bidder agrees to indemnify LCBOCC and pay over to LCBOCC the difference between the bid security and LCBOCC's total damages, so as to make LCBOCC whole.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

1. Performance bonds
    a. The penal amount of performance bonds shall be 100 percent of the original Contract price, unless LCBOCC determines that a lesser amount would be adequate for the protection of LCBOCC.
    b. LCBOCC may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. LCBOCC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
2. Payment bonds
    a. The penal amount of the payment bonds shall equal:
        i. Fifty percent of the contract price if the contract price is not more than $1 million.
        ii. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
        iii. Two and half million if the contract price is more than $5 million.
    b. If the original contract price is $5 million or less, LCBOCC may require additional protection as required by subparagraph 1 of the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. LCBOCC shall determine the amount of the advance payment bond necessary to protect LCBOCC.

Warranty of the Work

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1. The Contractor warrants to LCBOCC, the Architect and/or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by LCBOCC, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by LCBOCC and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to LCBOCC.

C. Seismic Safety Requirements for the Construction of New Buildings or Addition to Existing Buildings

(42 U.S.C. 7701 et seq.; 49 C.F.R. part 41; and Executive Order 12699)

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

VII. PROVISIONS APPLICABLE TO OPERATIONS/MANAGEMENT CONTRACTS

A. Charter Service Operations

(49 U.S.C. 5323(d) and (r); and 49 C.F.R. part 604)

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;

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2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

B. School Bus Requirements

(49 U.S.C. 5323(f); and 49 C.F.R. part 605)

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

C. Transit Employee Protective Agreements Provisions

(49 U.S.C. § 5333(b) ("13(c)"); and 29 C.F.R. part 215)

With respect to Contracts for "transit operations" as classified by the FTA, and performed by employees of a Contractor recognized by FTA to be a transit operator, the Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. **General Transit Employee Protective Requirements -** To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations Work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department of Labor to FTA applicable to LCBOCC's project from which Federal assistance is provided to support Work on the underlying Contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. Department of Labor letter. The requirements of this subsection

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(a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this Section.

2. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities -** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for LCBOCC , the Contractor agrees to carry out the Work in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. Department of Labor's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with LCBOCC. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. Department of Labor letter.

3. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. Department of Labor or any revision thereto.

4. **Requirements Apply to Subcontracts.** The Contractor agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with assistance provided by FTA.

D. Drug and Alcohol Testing

(49 U.S.C. § 5331; 49 C.F.R. part 655; and 49 C.F.R. part 40)

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 40 and 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or LCBOCC , to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 15th of each year and to submit the Management Information System (MIS) reports before December 31st of each year to LEE COUNTY, LEE COUNTY TRANSIT DIRECTOR, 3401 Metro Parkway, Fort Myers, FL 33901. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

VIII. PROVISIONS APPLICABLE TO RESEARCH AND DEVELOPMENT CONTRACTS

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LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

A. Patent and Rights in Data

(2 C.F.R. part 200, Appendix II (F); 37 C.F.R. part 401)

The following requirements apply to each Contract involving experimental, developmental or research work:

1. Patent Rights

a. General – If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this section applies and that inventions, improvement, or discovery is patentable under the laws of the United States of America or any foreign county, LCBOCC and Contractor agree to take action necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

b. Unless the Federal Government later make a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individually), LCBOCC and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

c. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

2. Rights in Data

a. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

b. The following restrictions apply to all subject data first produced in the performance of the Contract to which this Section applies:

i. Except for its own internal use, LCBOCC or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may LCBOCC or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction

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on publication, however, does not apply to any contract with an academic institution.

ii. In accordance with 49 CFR § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (b)(ii)(A) and (b)(ii)(B) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- Any subject data developed under that contract, whether or not a copyright has been obtained; and
- Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

iii. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the Work to participants in that work. Therefore, unless FTA determines otherwise, LCBOCC and the Contractor performing experimental, developmental, or research Work required by the underlying Contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for LCBOCC or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

iv. Unless prohibited by state law, upon request by the Federal Government, LCBOCC, and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by LCBOCC or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. Neither LCBOCC nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

v. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

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vi. Data developed by LCBOCC or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract to which this Section applies is exempt from the requirements of subsections (ii), (iii), and (iv) of this clause, provided that LCBOCC or Contractor identifies that data in writing at the time of delivery of the Contract work.

vii. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

c. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), LCBOCC and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

d. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

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LEE COUNTY TRANSIT GRANT-FUNDED PROCUREMENT GENERAL PROVISIONS

Applicability of Third Party Contract Provisions

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding $2,000)

	TYPE OF PROCUREMENT				
PROVISION	PROFESSIONAL SERVICES/A&E	OPERATIONS/MANAGEMENT	ROLLING STOCK PURCHASE	CONSTRUCTION	MATERIALS & SUPPLIES
No Federal Government Obligations to Third Parties (by use of a disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>$10,000 if 49 CFR part 18 applies	>$10,000 if 49 CFR part 18 applies	>$10,000 if 49 CFR part 18 applies	>$10,000 if 49 CFR part 18 applies	>$10,000 if 49 CFR part 18 applies
Civil Rights (Title VI, ADA, EEO except Special DOL. EEO clause for construction projects)	All	All	All >$10,000	All	All
Special DOL EEO clause for construction projects				>$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard	>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard	>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard
Resolution of Disputes, Breaches, or Other Litigation	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Lobbying	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Air	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Water	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transport/travel	Foreign air transport/travel	Foreign air transport/travel	Foreign air transport/travel	Foreign air transport/travel
Davis-Bacon Act				>$2,000 (also ferries)	
Contract Work Hours and Safety Standards Act		>$100,000 (transportation services excepted)	>$100,000	>$100,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All >$2,000 (also ferries)	
Bonding				$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit Operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations.			
Alcohol Misuse and Testing		Transit Operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items $10,000 or more annually.		EPA-selected items $10,000 or more annually.	EPA-selected items $10,000 or more annually.
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States