

**AGREEMENT BETWEEN
LAKE COUNTY, FLORIDA
AND
RATP DEV USA, INC.
FOR TRANSPORTATION OPERATIONS AND MAINTENANCE**

REP #22-542

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County," by and through its Board of County Commissioners, and RATP Dev USA, Inc. (f/k/a McDonald Transit Associates, Inc.,) a foreign profit corporation authorized to do business in the State of Florida, its successors and assigns, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, the County has publicly submitted a Request for Proposal (RFP), #22-542, for procurement of a firm to provide Transportation Operator services and fleet maintenance for the County's Transportation Disadvantaged Program, and the County's fixed route service for LakeXpress, and ADA Complementary Services (hereinafter the "Services"); and

WHEREAS, the County serves in the capacity as the Community Transportation Coordinator (CTC), as authorized under Chapter 427, Florida Statutes; and

WHEREAS, the Contractor desires to perform such services subject to the terms of this Agreement; and

WHEREAS, the provision of such services will benefit the parties and the residents of Lake County, Florida.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

1. LEGAL FINDINGS OF FACT. The foregoing recitals are hereby adopted as legislative findings of the Board of County Commissioners and are ratified and confirmed as being true and correct and are hereby made a specific part of this agreement upon adoption hereof.

2. PURPOSE. The purpose of this Agreement is to establish a contract for various services in support of Lake County's Lake County Connection, ADA/Transportation Disadvantaged (TD) paratransit service and the County's fixed route service (LakeXpress). Such services shall be in compliance with all relevant requirements directed by the Federal Transit Administration (FTA), the Florida Department of Transportation (FDOT) and Lake County itself, and any associated funding partners. The services to be provided by the Contractor are generally described as the provision of operations of the transit program including drivers, and completion of all scheduling and reporting required to successfully perform the public transportation function and full maintenance of all associated transit vehicles. The County will provide all vehicles to be used in direct support of the LakeXpress and Lake County Connection. The County will also provide all associated fuel cards and all associated vehicle maintenance services other than those specifically assigned to the Contractor within the Scope of Work. Notwithstanding anything to the contrary, the Contractor

shall not be liable for any failure to meet its obligations under this Agreement including, but not limited to, the provision of Services, to the extent that such failure is attributable to the County's failure to comply with its obligations under the Agreement.

3. TERM; RENEWAL. The term of this Agreement shall be for an initial five (5) year term with the option for two (2) subsequent one (1) year renewals. Renewals are contingent upon mutual written agreement. The Agreement will commence upon the first day of the next calendar month after Board approval or related Notice to Proceed. Continuation of this Agreement beyond the initial period, and any option subsequently exercised, is a County prerogative, and not a right of the Contractor. This prerogative will be exercised only when such continuation is clearly in the best interest of the County.

4. SCOPE OF SERVICES. On the terms and conditions set forth in this Agreement, the County hereby engages the Contractor to provide the services identified in **Exhibit A**, the Scope of Services, attached hereto and incorporated herein by reference. In addition to the Scope of Services, the parties shall be bound by the following provisions:

(a) The parties agree and acknowledge that this Agreement is being entered into by the County based upon the representations made by the Contractor in the materials submitted under RFP 22-542. The Submittal Form is attached hereto and incorporated herein by reference as **Exhibit B**, and constitutes a material part of this Agreement. Any conflicts between the Contractor's Proposal and the County's Forms/this Agreement shall be resolved in favor of the provision most favorable to the County, as determined by the County.

(b) The parties agree that any conflicts between this Agreement, its exhibits, or any regulations governing the provision of transportation and maintenance services shall be resolved in favor of the provision which ensures continued State or Federal funding and/or which is the most favorable to the County, in the County's sole discretion.

5. PAYMENT. The Contractor shall submit monthly invoices by the tenth (10th) calendar day of each month. **Invoices shall be submitted in duplicate to the Office of Transit Services, Attn: Director, at P.O. Box 7800, Tavares, Florida 32778. Each invoice shall contain the RFP number, a detailed description of services and fees, dates and locations of services, and confirmation of acceptance of the goods or services by the appropriate County representative.** The invoices shall reflect both the monthly fixed flat fee and the charges for service performed in the prior month as set forth in the Pricing Schedule, attached and incorporated herein as **Exhibit C**.

For any maintenance or repair service performed by the Contractor, the invoices shall contain the contract and/or purchase order number, date and location of delivery or service, vehicle number, and confirmation of acceptance of the goods or services by the appropriate County representative (i.e. delivery ticket signed by an authorized representative of the County at the time the items were delivered and accepted) in addition to the general invoice requirements set forth herein. Advance payments are not authorized. Payment will be made only for actual services and/or repairs that have been received.

The Contractor shall submit invoices free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the County will return the invoice to the Contractor. The Contractor shall promptly resubmit the revised invoice to the County. Failure to identify an error does not waive any of the County's rights.

(a) **Time of Payment by County.** The County shall make payment on all invoices in

accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Failure to submit invoices in the prescribed manner will delay payment, and the Contractor may be considered in default of contract and the contract may be terminated.

(b) **Additional Information.** The County may request additional documentation from the Contractor prior to payment of any invoice or bill from the Contractor in compliance with all applicable state and federal procurement requirements. The County may disallow and deduct any cost for which proper documentation is not provided.

(c) **Receipt of Payment by Contractor as Waiver Against County.** The acceptance by the Contractor, its successors, or assigns, of any progress or final payment due pursuant to this Agreement, shall constitute a full and complete release of the County from any and all claims, demands, or causes of action whatsoever that the Contractor, its successors, or assigns may have against the County or in connection with the Services performed hereunder, through the date that the Services are rendered and for which such payment is made.

(d) **Subcontractors.** In the event the Contractor is utilizing any subcontractors for the furnishing of Services (which would only be as permitted in the Proposal), then, upon request by the County, the Contractor shall provide to the County copies of billings, invoices and other documentation which may be received from any such subcontractors in support of the Agreement, and, in addition, the Contractor will obtain releases from time to time in favor of the County from any subcontractor(s) for work so performed by that subcontractor. The County shall have the right as necessary to directly contact and discuss with the subcontractor any work performed by that subcontractor under the Proposal, but the County will not have any liability or obligation to said Subcontract to said subcontractor(s).

(e) **Contractor as Prime.** The Contractor shall act as the prime consultant for all required items and services and will assume full responsibility for the procurement and maintenance of such items and services. Contractor will be considered the sole point of contact with regards to all stipulations, including payment of all charges and meeting all requirements of this contract. All subcontractors will be subject to advance review by the County in terms of competency, security, and compliance with applicable laws. The combined expenses of subcontractors without a County contract are limited to thirty percent of the task not to exceed \$35,000. Professional services subcontractors currently under contract with the County obtained through competitive solicitation may be utilized by Contractor without limits. Contractor may be required to use subcontractors currently under contract with the County. The professional services subcontractors' limits may be waived with prior approval from the County Attorney and Procurement Services Director. No change in subcontractors will be made without consent of the County. Even if the subcontractor is self-insured, the County may require the Contractor to provide any insurance certificates required by the work to be performed.

(f) **Annual Budget Amount.** The Contractor is aware that the County adopts an annual budget which will provide for the payment of the Contractor under this Agreement, and that this Agreement is subject to the adoption by the County of the annual budget.

(g) **Hourly Rates.** Any hourly rates quoted shall be deemed to provide full compensation to the Contractor for labor, equipment use, travel time, and any other element of cost or price. This rate is assumed to be at straight-time for all labor, except as otherwise noted. The Contractor shall comply with minimum wage standards, and/or any other wage standards specifically set forth in this Agreement, and any other applicable laws of the State of Florida.

6. PRICE REDETERMINATIONS.

Contractor may, but is not obligated to, petition for one or more price redeterminations where such price redeterminations are necessitated by documented increases in the cost of wages or fuel. Petitions for price redeterminations will be made within 30-calendar days of the anniversary date of the Agreement and only after the Agreement has been in effect for at least one year. Unless otherwise expressly set forth in the Agreement, no other price redeterminations will be allowed. All price redeterminations, once issued, will be prospective from the date of approval unless otherwise approved by a duly executed amendment to the Agreement. The following apply:

(a) **Basis for Price Redeterminations.** The Contractor may petition for price redetermination based on the increased costs of wages, fuel, or materials. Price redeterminations will be based solely upon changes in pricing or costs documented by the Employment Cost Index (ECI) as published by the Bureau of Labor Statistics. The base index number for the ECI will be for the quarter in which the ITB opens. Any subsequent price redeterminations will use the last price redetermination approved for that price redetermination category as the "base index number." The County will have the right to audit the Contractor's records, including, but not limited to, payroll, materials, and fuel cost records, to verify or otherwise investigate the validity of any price redetermination request.

(b) **Wage Price Redetermination.** When requesting a price redetermination based upon an increase in wage costs, the Contractor will refer to and utilize the Employment Cost Index, Total Compensation, Private Industry, Index Number and Occupational Group as prepared by the Bureau of Labor Statistics in the U.S. Department of Labor located on the Statistics Site. The base figure will be tied to Trade, transportation, and utilities under the heading Service Providing Industries. Wage price redetermination increases will be granted only by reason of wage increases associated with the Contractor's employees or subcontractors performing work or services pursuant to the Agreement.

(c) **Fuel Price Redetermination.** If the price of fuel increases by a minimum of 10% percent, the Contractor may petition for a fuel price redetermination. As a condition of petitioning for a fuel price increase, the Contractor will be required to petition for a fuel price redetermination decrease if/when the price of fuel decreases by a minimum of 10% percent. Failure to make such petition may be grounds for Agreement termination and will entitle the County to a refund of the cumulative increase in pay to the Contractor due to any prior fuel price redetermination increases. Fuel price redetermination must be based solely upon changes as documented by the Producer Price Index (PPI) for the commodities "Unleaded Gasoline - WPU057104" or "#2 diesel fuel - WPU057303," as such may be applicable to the Contractor's operations in connection with the Contractor's performance of the Agreement.

(d) All Price Redeterminations will be calculated as demonstrated in this example:
Contractor indicated on the Submittal Form that 30% of the cost to provide the product/service is directly attributed to the redetermination category (wage or fuel).

Current applicable PPI \$200.50
Base index PPI - \$179.20
PPI increase dollars \$21.30
PPI increase percentage ($\$21.30 / \$179.20 = .1189$) 11.9%
Unit cost of the service is: \$100.00
30% of \$100.00 is directly attributed to the redetermination category \$30.00
 $\$30.00 \times 11.9\% = \3.57
New unit price is
($\$100 + \3.57) \$103.57

(e) **Expiration Upon Failure to Agree to Price Redetermination.** If the County and the Contractor cannot agree to a price redetermination, then the Agreement will automatically expire without penalty or expense to either party after a period of six months following the Contractor's initial request for such price redetermination. Requests for price redeterminations not made in accordance with the provisions of this Section will be deemed null and void and will not be a valid reason or pretext for expiration or termination of the Agreement. If the Agreement expires pursuant to the terms and conditions of this Section, the County reserves the right, at no expense, penalty, or consequence to the County, to award any remaining tasks thereunder to the next available most responsive and responsible Contractor.

7. CONTRACTOR'S OBLIGATIONS.

(a) **Furnishing of Materials and Labor.** Other than the labor, materials, equipment, tools, supplies, and incidentals to be provided by the County pursuant to this Agreement, the Contractor shall, for the consideration set forth herein, and at its sole cost and expense, as an independent contractor, provide all labor, materials, equipment, tools, supplies and incidentals necessary to perform this Agreement in the manner and to the full extent as set forth in the Proposal or Scope of Work.

(b) **Standard of Care.** The Contractor shall furnish, provide or fulfill its obligations under this Agreement in a professional manner to the reasonable satisfaction of the duly authorized representatives of the County, who shall have, at all times, full opportunity to monitor the services performed under this Agreement.

(c) **Compliance with Applicable Requirements.** The Contractor shall conform to all applicable governmental requirements and regulations, whether or not such requirements and regulations are specifically set forth in the Proposal, including but not limited to those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA). The Contractor in this regard understands that the County is a public agency which receives both federal and state funding and, if applicable, the Proposal and the performance by the Contractor shall be subject to any applicable rules and regulations promulgated by the Federal Transit Administration (FTA) and/or the Florida Department of Transportation (FDOT) and any of the other funding partners. The Contractor shall be bound by the Certifications contained in **Exhibit D**, attached hereto and incorporated herein by reference. The Contractor shall abide and be bound by the provisions contained in the Federally Funded Required Contract Clauses, attached hereto and incorporated herein by reference as **Exhibit E**.

(d) **Payment of Taxes and Fees.** The Contractor shall pay license fees and all sales, consumer, use and other similar taxes relating to this Agreement, and the matters to be performed thereunder. The County is exempt from payment of Florida sales and use taxes. The County will sign an exemption certificate submitted by the Contractor, if requested. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is the Contractor authorized to use the County's tax exemption number in securing such materials. The County reserves the right to "direct buy" any materials to be furnished by the Contractor under the Proposal and, if the County so submits, then the parties will enter into an appropriate agreement reflecting said direct purchase, the effect of which will be for the County to directly purchase those materials, for the contract amount to be reduced by the amount of the purchase price paid by the County for said materials, and for those materials to be physically acquired and/or delivered to the Contractor, who will install them or deliver them as provided in the Proposal, with full warranties regarding those materials as if those materials were purchased from the Contractor. Any bonds furnished by the Contractor will apply to those materials.

(e) **FICA.** The Contractor shall be responsible for payment of its employee(s)' Federal Insurance Contributions Act benefits with respect to this Agreement.

(f) **Permits and Approvals.** Unless otherwise expressly set forth in the Proposal, the Contractor shall be responsible to secure, at the Contractor's expense, all necessary permits, licenses and approvals. The Contractor shall promptly furnish copies of all such permits and approvals to the County as and when obtained.

(g) **Tests and Inspections.** The Contractor shall be responsible to coordinate all tests and inspections necessary for the proper execution and timely completion of this Agreement.

(h) **Indemnification.** The Contractor understands that in performing the Services hereunder it will be responsible for the consequences of its own actions. Therefore, the Contractor agrees that it will indemnify, defend and hold harmless the County as well as the County's commissioners, officers, directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of each of the foregoing from, against and in respect of all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and judgments (at equity or at law) and damages whenever arising or accruing (including, without limitation, amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or related to the Contractor's performance of the Services hereunder, including, without limitation, any acts or omissions with respect thereto. Contractor will indemnify and hold harmless County, its officers, employees, and agents from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor, its personnel, employees, and other person utilized by Contractor in the performance of this agreement, including without limitation, defects in design, or errors or omissions that result in material cost increases to County. Such indemnification will include the payment of all valid claims, losses, and judgments of any nature whatsoever in connection therewith and the payment of all related fees and costs. This indemnification obligation shall not be construed to negate, abridge, or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph or be deemed to affect the rights, privileges, and immunities of County as set forth in Section 768.28, Florida Statutes.

(i) **Insurance.** Contractor will purchase and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of insurance as indicated below, with a company or companies authorized to do business in the State of Florida, and which are acceptable to the County, insuring the Contractor against any and all claims, demands, or causes of action, for injuries received or damage to property relating to the performance of duties, services, or obligations of the Contractor under the terms and provisions of the Agreement. An original certificate of insurance, indicating that Contractor has coverage in accordance with the requirements of this section must be received and accepted by the County prior to contract execution or before any work begins. It will be furnished by Contractor to the County's Project Manager and Procurement Services Director within five working days of such request. The parties agree that the policies of insurance and confirming certificates of insurance will insure the Contractor in accordance with the following minimum limits:

i. General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$5,000,000/5,000,000
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Products-Completed Operations	\$5,000,000
Personal & Adv. Injury	\$5,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

ii. Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$5,000,000
Uninsured Motorist/Under-Insured Motorist Liability:	
Per Person Limit	State of Florida Required Minimum
Per Accident Limit	State of Florida Required Minimum

iii. Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the Contractor must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

iv. Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employer	\$1,000,000
Disease-Policy Limit	\$1,000,000

v. Garage Keepers Liability at coverage value: \$1,000,000

This policy must cover, but not be limited to 1) Coverage for third party claims and losses with respect to network risks and invasion of privacy, 2) Crisis management and identify theft response costs; 3) Cyber extortion; 4) Computer fraud coverage, and 5) Funds transfer loss.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

Notwithstanding the preceding, with respect to Computer fraud coverage and Funds transfer loss, the coverage shall be: (i) each claim: \$100,000; and (ii) annual aggregate: \$250,000.

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, will be named as additional insured as their interest may appear all applicable policies. Certificates of insurance must identify the RFP number in the Description of Operations section on the Certificate.

Contractor must provide a minimum of 30 days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance.

Certificates of insurance must evidence a waiver of subrogation in favor of the County, that coverage must be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the County.

Contractor must provide a copy of all policy endorsements, reflecting the required coverage, with Lake County listed as an additional insured along with all required provisions to include waiver of

subrogation. Contracts cannot be completed without this required insurance documentation. A certificate of insurance (COI) will not be accepted in lieu of the policy endorsements.

Certificate holder must be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND
THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

All self-insured retentions will appear on the certificates and will be subject to approval by the County.

County will be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention will be the sole responsibility of the Contractor or subcontractor providing such insurance.

Contractor will be responsible for subcontractors and their insurance. Subcontractors are to provide Certificates of Insurance to the County evidencing coverage and terms in accordance with the requirements.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the County of any insurance supplied by Contractor, nor a failure to disapprove that insurance, will relieve Contractor of full responsibility of liability, damages, and accidents as set forth herein. Notwithstanding anything herein to the contrary, the Contractor shall have the right to satisfy the required insurance limits through any combination of deductible, self-insured retention, primary insurance, excess insurance, or umbrella coverage.

(j) **Public Funding/Additional Terms or Conditions.** In the event that the County obtains funding, in whole or in part, from a public entity (e.g., Federal Transit Administration, Florida Department of Transportation, Department of Homeland Security, etc.) for the Services, there may be additional conditions imposed by said funding agency, including for example, a requirement that the Contractor comply with any rules and regulations promulgated by that funding agency. The County has attempted to identify in the RFP and this Agreement the source of funding available to the County as well as any requirements of any such funding agency, but, in any event, the Contractor will be required to comply with any requirements imposed by the funding agency. The Contractor specifically agrees to so comply with said requirements, without any adjustments or increase in the amount to be paid to the Contractor, **provided, however,** if said requirement is not contained in the RFP or this Agreement and if both parties agree that said requirement is both material and would impose on the Contractor a material burden, then the Contractor would be entitled to request a change order for any additional cost of compliance by the Contractor.

(k) **Additional Information.** The Contractor, at the request of the County, shall further provide to the County such other information as the County may reasonably request from time to time. Further, the Contractor shall at the County's request meet and have its employees and representatives meet with the County, municipalities, and other transportation stakeholders from time to time, regarding the public transit program described under this Agreement.

(l) **E-verify.** The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Agreement; and

Shall expressly require any contractor and subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

(m) **Health Insurance Portability and Accountability Act (HIPAA).** To the extent applicable, both the Contractor and the County agree to comply with, and assures the compliance of its employees and subcontractors with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Contractor shall include these provisions in any subcontract associated with the completion of the Scope of Services hereunder.

(n) **Key Contractor Personnel.** The Contractor represents in executing this Agreement that each person listed or referenced in the qualifications package, specifically the general manager, operations manager, safety manager, maintenance manager, and all road supervisors, shall be available to perform the services described herein for the County, barring illness, accident, voluntary resignation, or other unforeseeable events of a similar nature in which case the Contractor shall promptly provide a qualified replacement. The applicability to road supervisors extends until such time as the Contractor is operating from a single location. In the event the Contractor desires to substitute personnel, the Contractor shall propose a person with equal or higher qualifications and each replacement person is subject to prior written approval of the County. In the event the requested substitute is not satisfactory to the County and the matter cannot be resolved to the satisfaction of the County, the County reserves the right to terminate this Agreement for cause.

(o) **Local Office.** To ensure responsive support to the overall function, the Contractor shall maintain an office within the geographic boundaries of Lake County, preferably in the area that LakeXpress operates. The office shall be staffed by a competent company representative who can be contacted during normal working hours and who is authorized to discuss matters pertaining this Agreement. There shall be ample vehicle storage space at the local office to the County's satisfaction. The County reserves the right to perform an inspection of the local office during the term of this Agreement, and to terminate this Agreement for cause if the size, location and overall safety and functionality of the local office does not serve the best interests of the County.

(p) **Other Entity Transportation.** In no event shall the Contractor be permitted to utilize any County-owned vehicles or County resources for provision of services to any other entity.

(q) **Advertising.** The Contractor shall provide access to advertising vendors under contract to the County for the purpose of installing and maintaining advertising signs on the exterior and interior of County owned vehicles upon written approval and notification of the County. Revenues from advertising shall be paid from vendors to the County. The Contractor shall not have authority to advertise on or in County owned vehicles. The vendor contracted by the County to install such advertising shall be insured in compliance with County requirements, and shall be responsible for any damages to vehicles used by the Contractor in performance of its obligations under this Agreement caused in relation to installation and/or removal of said advertising.

(r) **Labor, Materials, and Equipment Shall be Supplied by the Contractor.** Unless otherwise stated in this solicitation the Contractor shall furnish all labor, material and equipment necessary for satisfactory performance under this Agreement. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the County's Project

Manager.

(s) **Materials May be Maintenance Certified.** The County hereby agrees that materials supplied by the Contractor in conjunction with this Agreement may be original vehicle manufacturer (OEM) maintenance certified (re-manufactured, rebuilt, or re-conditioned) as long as they are warranted for merchantability, and carry a warranty equal to new products. Any remanufactured, aftermarket, or fabricated parts shall meet or exceed OEM warranty standards. In the event any of the materials supplied to the County by the Contractor are found to be defective or do not conform to specifications, the County reserves the right to either (1) cancel the order and return such materials to the Contractor at the Contractor's expense; or (2) require the Contractor to replace the materials at the Contractor's expense. The Contractor's supplier of maintenance certified equipment should be easily identifiable to the County.

(t) **Material Safety Data Sheet (MSDS).** It is a Contractor responsibility to ensure that the County has received the latest version of any MSDS required by 29 CFR 1910.1200 with the first shipment of any hazardous material. Also, at any time the content of an MSDS is revised, the Contractor shall promptly provide a new MSDS to the County with the new information relevant to the specific material.

(u) **Minimum Wages.** Under this Agreement, the wage rate paid to all laborers, mechanics and apprentices employed by the Contractor for the work under this Agreement, shall not be less than the wage rates for similar classifications of work as established by the Federal Government, including those enforced by the U.S. Department of Labor, Wages and Hours Division, and Florida's Minimum Wage requirements in Article X, Section 24 (f) of the Florida Constitution and enforced by the Florida Legislature by statute or the State Agency for Workforce Innovation by rule, whichever is higher.

(v) **Omission from the Specifications.** The apparent silence of this specification and any addendum regarding any details, or the omission from the specification of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials and workmanship of first quality are to be used. All interpretations of this specification shall be made upon the basis of this Agreement.

(w) **Wage Increases Mandated by Governmental Agencies.** When any change in the basic wage rate to be paid to Contractor employees being utilized under this Agreement is mandated by a governmental activity (e.g.; a change in the Federal Minimum Wage or other governmentally mandated wage structure), the Contractor may submit a request for equitable adjustment. This adjustment request must be based strictly on the impact of the mandated change.

8. NO DISCRIMINATION/REQUIREMENTS.

(a) **Non-Discrimination.** Neither the Contractor nor any of its subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, 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 Agreement, which may result in the termination of this Agreement or such other remedy as the County deems appropriate.

(b) **DBE Requirements.** The Contractor is specifically advised that the County has established a Disadvantaged Business Enterprise ("**DBE**") policy and procedure that together set an overall race-neutral goal of 6.13% participation for such businesses under State or Federal grant funded projects. The Contractor shall make a good faith effort to meet the DBE participation rate described herein.

DBE is permitted for services and goods such as vehicle cleaning, uniforms, customer service, and janitorial service. The Contractor shall have the right, with approval of the County, to utilize other DBEs if the Contractor is unable to contract with the DBE named in the Proposal at rates acceptable to Contractor.

9. PUBLIC RECORDS.

(a) All electronic files, audio and video recordings, and all papers pertaining to any activity performed by the contractor for or on behalf of the County will be the property of the County and will be turned over to the County upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the County are public records available for inspection by any person even if the file or paper resides in the Contractor's office or facility. The Contractor will maintain the files and papers for not less than three complete calendar years after the Service has been completed or terminated, or in accordance with any grant requirements, whichever is longer. Prior to the close out of this Agreement, the Contractor will appoint a records custodian to handle any records request and provide the custodian's name and telephone numbers to the County's Project Manager.

(b) Pursuant to Section 119.0701, Florida Statutes, Contractor will comply with the Florida Public Records' laws, and will:

- i. Keep and maintain public records required by the County to perform the services identified herein.
- ii. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the County.
- iv. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If Contractor transfers all public records to the County upon completion of the contract, Contractor will destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, Contractor will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

(c) IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT LAKE COUNTY OFFICE OF PROCUREMENT SERVICES, 315 WEST MAIN STREET, P.O. BOX 7800, TAVARES, FL 32778 OR AT 352-343-9424

OR VIA EMAIL AT PURCHASING@LAKECOUNTYFL.GOV.

(d) Failure to comply with this subsection will be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

(e) Unless otherwise provided, Contractor shall maintain substantiating records as required by the State of Florida, General Records Schedule GS1-SL ("Schedule") for State and Local Government Agencies. If Contractor receives notification of a dispute or the commencement of litigation regarding the Project within the time specified in the Schedule, the Contractor shall continue to maintain all service records until final resolution of the dispute or litigation.

10. COUNTY PROPRIETARY INFORMATION. The Contractor may, by virtue of this Agreement, come into possession of certain non-publicly available information relating to the County, which information may or may not be proprietary to the County (the "**Information**"). In any event, the Contractor agrees that any such Information is solely for the purpose of enabling the Contractor to fulfill its duties and obligations under this Agreement, and the Contractor may not use any such Information for any other purpose whatsoever without the express, written permission of the County. By way of illustration and not limitation, any such Information may not be used by the Contractor in submitting a Request for Proposal for any other purpose, whether to the County or to any other third party. Upon the expiration or termination of this Agreement, the Contractor will return to the County any proprietary Information and will not, without the County's prior written approval, keep or maintain any copies or transcripts thereof.

11. TERMINATION.

(a) **Default by Contractor.** The County may, in its sole and absolute discretion, by written notice of default to the Contractor, terminate all or any part of this Agreement if (i) the Contractor fails to perform the Services described herein, within the time specified herein or any extension hereof; or (ii) if the Contractor fails to satisfy any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms; and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the County may in its sole discretion authorize in a writing signed by the County Procurement Manager) after receipt of notice from the County specifying such failure. In the event that the County elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Agreement, such waiver by the County shall not limit the County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement. In the event of termination for default, the County may procure another vendor to provide the services and the Contractor shall bear all costs of such re-procurement.

(b) **Default by County.** The Contractor may, in its sole and absolute discretion, by written notice of default to the County, terminate this Agreement if the County fails to satisfy its material obligations under this Agreement and does not cure such failure within a period of ten (10) days (or such longer period as the Contractor may in its sole discretion authorize in a writing) after receipt of notice from the Contractor specifying such failure. In the event that the Contractor elects to waive its remedies for any breach by the County of any covenant, term or condition of this Agreement, such waiver by the County shall not limit the Contractor's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement. County's material obligations shall be defined as: rendering payment as set forth herein.

(c) **Termination by County for Convenience.** This Agreement may be terminated by the County in its absolute discretion, in whole or in part, whenever the County shall determine that such termination is in its best interest. Any such termination shall be effected by delivery of a notice of

termination by the County to the Contractor, signed by the County's Procurement Manager or other official, specifying the extent to which performance of work under this Agreement is terminated, and the date upon which such termination becomes effective; provided, however, that the Contractor shall be given a minimum of thirty (30) days' notice written notice. The Contractor shall be paid its costs, including contract closeout costs, and profit on Services performed by the Contractor up to the effective date of termination. The Contractor shall promptly submit its claim for final payment to the County.

(d) **Termination Due to Unavailability of Funds in Succeeding Fiscal Years.** When funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year, this Agreement shall be terminated immediately upon written notice by the County to the Contractor, and the Contractor will be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the services provided under this Agreement.

(e) **Remedies for Default by Contractor.** If this Agreement is terminated by the County for default by the Contractor, the County shall, except as otherwise expressly set forth in the Proposal, retain any and all remedies available for it against the Contractor, all of which remedies shall be cumulative. By way of illustration and not limitation, the County may proceed to obtain the remaining Services from another third party and thereby recover from the Contractor any "excess costs" incurred by the County in so doing.

12. DISPUTE RESOLUTION. If there is any controversy or claim arising out of or relating to this Agreement, or the breach thereof (collectively, a "**Legal Dispute**"), the parties agree that the County shall have the sole and exclusive discretion to elect which of the means set forth below that the County and the Contractor shall use to settle the Legal Dispute. At the sole discretion and option of the County, the parties shall attempt to resolve any Legal Dispute by one or more of the following and abide by the provisions thereto.

(a) **Informal Meeting Between the Parties.** If the County decides that the parties should initially attempt to resolve the Legal Dispute informally, then the parties agree to a meeting between the County and the Contractor's CEO (or other such officer with equivalent binding authority) whereby both parties try in good faith to settle the dispute and reach an agreement. Any meeting required hereunder shall take place within the geographic boundaries of Lake County. If the parties are unable to resolve their dispute through an informal meeting pursuant to this Section 12(a) (Informal Meeting Between the Parties), then either party shall have the right to avail itself to resolution pursuant to Section 12(b) (Mediation) or Section 12(c) (Court of Law).

(b) **Mediation.** If the County decides that the parties should attempt to resolve the Legal Dispute by mediation, then the parties agree to try in good faith to settle the dispute by mediation which shall follow the practices and procedures as set forth by the Circuit Court of Lake County Florida, subject to the Florida Rules of Appellate Procedure 9.700-9.740 and conducted by a Florida Supreme Court Certified Mediator before resorting to judicial action. Any such mediation shall be held in Lake County, Florida. Arbitration shall not be permitted.

(c) **Court of Law.** If the County decides that a Legal Dispute should be resolved in a court of law, then any action, suit or proceeding arising in conjunction with the Legal Dispute shall be brought exclusively in the Fifth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division, as appropriate.

Nothing in this Section shall in any way limit the right of the County to terminate this Agreement under Section 12 hereof.

13. NOTICES. All notices shall be made to the addresses listed provided below:

(a) The Contractor's primary point of contact for daily operations of the Services pursuant to this Agreement is: **Steve Sherrer, Region Vice President, 3800 Sandshell Drive, Suite 180, Fort Worth, Texas 76137.**

(b) The Contractor's primary point of contact for legal notice and authority to modify or act under this Agreement is: **County Manager, P.O. Box 7800, Tavares, Florida 32778 with a copy to County Attorney, P.O. Box 7800, Tavares, Florida 32778**

(c) The Contractor may appoint other individuals upon written notice to, and approval by, the County. The Contractor shall provide written notice to the County promptly with respect to any changes to the aforesaid contact information.

(d) As of the date hereof, the County designates, Transit Manager, Department of Community Services, whose address is P.O. Box 7800, Tavares, Florida 32778 (the "**Project Manager**") with respect to the Contractor's performance of this Agreement, and who will also serve as the primary point of contact for operational issues. The County may change such designation upon written notice to the Contractor. Copies of any notices required hereunder shall be additionally sent to the County Manager at P.O. Box 7800, Tavares, Florida 32778.

(e) The Project Manager, and all other officers, employees, executives, agents and representatives of the County have only such authority to act on behalf of and bind the County to the extent granted to such individuals by the Lake County Board of County Commissioners, and no apparent authority of any such individuals shall be binding upon the County. No individual shall have the authority to act pursuant to this Agreement or to modify or amend this Agreement except in accordance with the County's Procurement Policies and Procedures, and such other policies and procedures that may be adopted by the County pursuant thereto. No such action, modification or amendment shall be valid or binding upon the County, if the authorizing representative of the County has exceeded the authority actually granted to such individual by the County's Governing Board.

14. MISCELLANEOUS.

(a) **Governing Law.** The parties mutually acknowledge and agree that this Agreement shall be construed in accordance with the laws of the State of Florida, without regard to the internal law of Florida regarding conflicts of law.

(b) **Attorney Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, claim, or misrepresentation arising out of or in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover its or their reasonable attorneys' fees (including paralegals' fees), court costs, expenses, and costs of experts and investigation, whether at trial, upon appeal, or during investigation by such prevailing party or parties in prosecuting or defending such legal action or other proceeding.

(c) **Waiver of Jury Trial.** Each party hereby agrees not to elect a trial by a jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.

(d) **Assignment by Contractor.** The County has selected the Contractor to render the Services based in substantial part on the personal qualifications of the Contractor; as such, the Contractor may not assign or transfer any right or obligation of this Agreement in whole or in part, without the prior written consent of the County, which consent may be granted or withheld in the sole discretion of the County. Any direct or indirect change in the ownership (legal or equitable) of a controlling and/or a majority interest of the Contractor, whether such change in ownership occurs at one time or as a result of sequential incremental changes, and whether said change is by sale, assignment, hypothecation, bequest, inheritance, operation of law, merger, consolidation, reorganization or otherwise, shall be deemed an assignment of this Agreement subject to the consent of the County. The Contractor may utilize subcontractors as otherwise permitted and provided in the Proposal. Any assignment or transfer of any obligation under this Agreement without the prior written consent of the County shall be void, ab initio, and shall not release the Contractor from any liability or obligation under this Agreement, or cause any such liability or obligation to be reduced to a secondary liability or obligation.

(e) **Captions and Headings.** The captions and headings provided herein are for convenience of reference only and are not intended to be used in construing the terms and provisions hereof.

(f) **Number And Gender.** Whenever herein the singular or plural is used the same shall include the other where appropriate. Words of any gender shall include other genders when the context so permits.

(g) **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts each of which is an original and all of which constitute collectively one agreement. In making proof of this Agreement in any legal action, it shall not be necessary to produce or account for more than one such counterpart.

(h) **Survival.** Should any provision of this Agreement be determined to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired.

(i) **No Third-Party Beneficiary.** It is specifically agreed that this Agreement is not intended by any of the provisions of any part of this Agreement to establish in favor of any other party, the public or any member thereof, the rights of a third-party beneficiary hereunder, or to create or authorize any private right of action by any person or entity not a signatory to this Agreement to enforce this Agreement or any rights or liabilities arising out of the terms of this Agreement.

(j) **Right to Audit.** The County reserves the right to require the Contractor to submit to an audit by any auditor of the County's choosing. The Contractor shall provide access to all of its records, which relate directly or indirectly to this Agreement, at its place of business during regular business hours. The Contractor shall retain all records pertaining to this Agreement and upon request make them available to the County for five (5) years following expiration of this Agreement. The Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the County to ensure compliance with applicable accounting and financial standards. This provision is hereby considered to be included within, and applicable to, any subcontractor agreement entered into by the Contractor in performance of any work hereunder.

The County acknowledge that the Services do not include the provision of technology services. If, via a change order, the Contractor is to provide technology services, the Contractor must provide Statement of Standards for Attestations Engagements (SSAE) 16 or 18 and System and Service Organization Control

(SOC) reports upon request by the County. The SOC reports must be full Type II reports that include the Contractor's description of control processes, and the independent auditor's evaluation of the design and operating effectiveness of controls. The cost of the reports will be paid by the CONTRACTOR.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the Contractor to the County in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the County's audit shall be reimbursed to the County by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the County's audit findings to the Contractor.

This provision is hereby considered to be included within, and applicable to, any subcontractor contract entered into by the CONTRACTOR in performance of any work under this Agreement.

Pursuant to Section 287.055, Florida Statutes, the contract pricing and any additions will be adjusted to exclude any significant sums by which the County determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments will be made within one year following the end of the contract.

Pursuant to Section 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity nor shall such person or affiliate be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, Section 287.017 for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

(k) **Independent Contractor.** The Contractor agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of the County. The Contractor shall have no authority to contract for or bind the County in any manner and shall not represent itself as an agent of the County or as otherwise authorized to act for or on behalf of the County. Additionally, the Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

15. AMENDMENT OF CONTRACT. This Agreement may not be modified or amended without the prior written consent of the party to be charged by said amendment or modification. This provision may not itself be changed orally. The Contractor specifically is aware and understands that any material or substantial change to this Agreement may require written approval of County for any such change to be valid.

16. SOVEREIGN IMMUNITY. The Contractor understands and is aware that County is a political subdivision of the State of Florida and is, therefore, entitled to the benefits of "sovereign immunity" in accordance with Florida Law, including Section 768.28, *Florida Statutes*. In that regard, nothing contained in this Agreement or in any of the dealings between the Contractor and the County shall at any time be deemed to be or in any event be a waiver by the County of the provisions of sovereign immunity which waiver, to be effective at all, must be expressly and specifically approved by the County.

Accordingly, no document executed by any County representative will be effective in any way to waive or modify the provisions of sovereign immunity in connection with the County.

17. ENTIRE AGREEMENT. This Agreement together with any attachments hereto constitutes the entire agreement between the parties, and incorporates all discussions between the parties. This Agreement may not be amended or modified except by a writing signed by the party to be charged.

18. EXHIBITS. The following exhibits are attached hereto and incorporated by reference as material parts of this Agreement:

Exhibit A:	Scope of Work (including Addenda)
Exhibit B:	Submittal Form
Exhibit C:	Pricing
Exhibit D:	Certifications
Exhibit E:	Federally Funded Required Contract Clauses

19. FORCE MAJEURE. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations on account of riots, insurrections, fires, floods, storms, explosions, acts of God, acts of terrorism, war, governmental action, earthquakes, or any other cause that is beyond the reasonable control of such party.

IN WITNESS WHEREOF, the parties through their duly authorized representatives have signed this Agreement on the dates under each signature.


RATP DEV USA, INC.

By: 
Debra Martinez, CFO


This 7th day of October, 2022.

LAKE COUNTY, FLORIDA by and through its
BOARD OF COUNTY COMMISSIONERS

ATTEST:


Gary J. Cooney, Clerk
Board of County Commissioners
of Lake County, Florida




Sean M. Parks, Chairman

This 25th day of October, 2022.

Approved as to form and legality:



Melanie Marsh
County Attorney

Exhibit A: Scope of Work

EXHIBIT A – SCOPE OF SERVICES

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TRANSIT OPERATIONS

BACKGROUND

- A. Lake County (County) is in central Florida, spanning 1157 square miles, just Northwest of the Orlando metropolitan area. The County is part of the Orlando-Kissimmee-Sanford, Florida Metropolitan Statistical Area (MSA) and is in the Lake-Sumter Metropolitan Planning Organization (MPO) service area for metropolitan transportation planning. The County is growing with a transit system that connects the approximate 390,000 residents in the County's fourteen municipalities. The County's public transit service includes urban, suburban, exurban, and rural areas throughout the County. Bus stops are placed strategically along each of the fixed routes within the County.
- B. The County operates a full-brokerage, public transportation system with fixed-route and paratransit services. The Transportation Contractor (Contractor) provides the daily operations of fixed route and paratransit services, fleet maintenance, and dispatch services. The fixed-route bus system (LakeXpress) currently travels the County corridors via seven fixed routes using a fleet of sixteen buses, ten of which operate in peak operations. The paratransit service Lake County Connection (LCC) provides eligible residents transportation to a variety of destinations within the County and select medical facilities outside of the County. LakeXpress and LCC currently operate Monday thru Friday with LCC providing Saturday service for Dialysis patients. Additionally, a deviated fixed route system operates on Friday. It services residents living in the Paisley area by providing transit services to the Deland Walmart in the morning and returns to the Paisley area early in the afternoon. Transfer stations, located in Leesburg, Clermont, and Eustis facilitate passenger transfers. Both LakeXpress and Lake County Connection were enjoying a 6-7% annual growth in ridership leading up to the pandemic but is currently operating near 50% ridership of pre-pandemic numbers, however, ridership trendlines reflect a steady growth each quarter.
- C. Service Expansion: Currently the County is pursuing the following service expansion plans:
 - a. Express Service between Four Corners to Clermont Park and Ride during peak commute times. (M-F, 6:00 AM-8:00 AM and 5:00 PM-7:00 PM (hourly service)
 - b. Express Service between Clermont Park and Ride and Leesburg Transfer Center during peak commute times. (M-F, 6:00 AM-8:00 AM and 5:00 PM-7:00 PM (hourly service)
 - c. Assume Rt 55 operations Monday thru Friday (5:30 AM-8:00 AM) & (4:30 PM-9:45 PM). Lynx will continue to provide Rt 55 weekend operations.
- D. The existing routes and schedules are included as **Exhibit C**.
- E. The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 applies to this contract. There is a minimum 6.13% DBE participation goal on this contract. Contractors are required to use Good Faith Efforts to meet this DBE participation goal. The selected Contractor will report its race-neutral and race-conscious measures quarterly along with its DBE. The DBE Compliance Officer, provided through Lake County, will perform regular site visits to ensure that all DBE obligations are fulfilled, and that the work performed by each DBE meets specifications. The DBE Compliance Officer will review the contractor's daily field reports to verify that the work is being performed by the contracted DBE and not by the prime contractor's

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EXHIBIT A – SCOPE OF SERVICES

TRANSIT OPERATIONS

own workforce. If the Contractor does not meet the minimum DBE goal or if the paid amount differs from the amount submitted, the prime contractor will provide a written explanation.

- F. Any Contract resulting from this RFP process is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the Contract. The parties agree that no persons supplied by Contractor in the performance of Contractor's obligations under the Contract are considered to be County employees and that no right of County civil service, retirement, or personnel rules accrue to such persons. Contractor shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold the County harmless with respect thereto.

1. SCOPE OF SERVICES

The selected Contractor shall provide for all requirements for the operation of fixed route and paratransit services, including, but not limited to: management, personnel, dispatching, training, operations, vehicle maintenance, plans (preventive maintenance, safety, security, and emergency management), fueling, insurance, record keeping and reporting, computer hardware and administrative software, telecommunications equipment and system, all shop equipment and vehicles for driver relief and road supervision. The Contractor shall, at all times during the term of the Agreement, perform all services diligently, carefully, and in a professional and timely manner in accordance with the standards and practices generally accepted as standards in the industry; shall have and maintain all required authority, licenses, professional ability, skills, personnel, and capacity to perform the Contractor's obligations; shall furnish all labor, supervision, equipment, material, and supplies necessary; and shall comply with all terms and conditions of the Agreement and the other Contract Documents.

2. FTA GRANT REQUIREMENTS AND COMPLIANCE

This Service is possible with funding assistance from the Federal Government under the Urban Mass Transportation Act of 1964 and in accordance with FTA C 4220.1F. The successful proposer and all contractors will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and Lake County Board of County Commissioners. The management contract will comply with FTA C 4220.1F Rev. 4 of March 18, 2013 which is available at: [Third Party Contracting Guidance | FTA \(dot.gov\)](#)

Lake County, in accordance with the provisions of the funding of the Title VI of the Civil Rights Act of 1964, (23 U.S.C. 140 and 112), (49 CFR, Part 21), (42 U.S.C. Sub. Sec. 2000D), other applicable federal regulations (23 CFR, Part 633), (23 CFR, Part 635) and orders, Executive Order 11625, (DOT Order 4000.7A), (DOT Order 4600.9A), hereby notifies all participation by minorities in any contract for consultant services entered pursuant to this advertisement. Minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of

EXHIBIT A – SCOPE OF SERVICES

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TRANSIT OPERATIONS

race, color, sex, or national origin in consideration for selection. The transit service shall be operated in compliance with the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

The rules and regulations in the following documents are incorporated by reference: United States of America Department of Transportation Federal Transit Administration Master Agreement, FTA Master Agreement FY 2021 can be obtained at the web site: [FTA Master Agreement \(version 27, October 1, 2020\) | FTA \(dot.gov\)](#)

Federal Transit Administration Best Practices Procurement Manual can be obtained at web site: [Best Practices Procurement & Lessons Learned Manual \(Report 0105\) | FTA \(dot.gov\)](#)

3. CONTRACTOR'S RESPONSIBILITIES

The Contractor responsibilities shall include but are not limited to the day-to-day operations and management of all Lake County Transit services. The Contractor responsibilities shall include, but are not limited to:

- 3.1 Provision and maintenance of the facility that will house the operations and maintenance departments for the Contractor.
- 3.2 Provision of all maintenance equipment and tools.
- 3.3 Provision of computer hardware and administration software.
- 3.4 Provision of telecommunications system and equipment.
- 3.5 Provision of all office furniture.
- 3.6 Develop, implement, and maintain a comprehensive maintenance program for the fleet, facility, and equipment in accordance with state and federal regulations and guidelines.
- 3.7 Provisioning of all fleet fuel.
- 3.8 Employment and training of all public transit personnel in accordance with state and federal regulations and guidelines.
- 3.9 Offer policy recommendations to the County, as requested.
- 3.10 Provide assistance with transit related procurement activities.
- 3.11 Assisting with marketing and promotional activities, as requested.
- 3.12 Provide recommendations for LakeXpress/LCC schedules and stop locations.
- 3.13 Participate in Triennial and other Reviews conducted by the Federal Transit administration, Florida Department of Transportation, and Florida Commission for the Transportation Disadvantaged as required by these agencies.
- 3.14 Sustain or surpass on time performance goals in accordance with the contract.

EXHIBIT A – SCOPE OF SERVICES

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TRANSIT OPERATIONS

- 3.15 Manage customer relations in accordance with the contract.
- 3.16 Preparation of monthly service reports and the annual operations report. This includes collection of data for the National Transit Database (NTD), Florida Commission of the Transportation Disadvantaged, and gathering data for the annual Florida Department of Transportation's Quality of Services Report.
- 3.17 If selected, the Contractor may subcontract paratransit and maintenance services. The County must approve of the subcontractor and be named as a third-party beneficiary in all subcontracts. In the event of a subcontracting relationship, the Contractor assumes all responsibility for the performance of the services that are supplied by the subcontractor.
- 3.18 Retain all records and books (including but not limited to the technical records) of the Contractor during the term of this Agreement and for a period of three years after termination or expiration of the agreement for any reason. The County shall have the right to audit, either itself or through a third party, the books and records of the Contractor to ensure the Contractor's compliance with all the terms and conditions of the agreement.

4. COUNTY RESPONSIBILITIES.

The responsibilities of the County include, but are not limited to, the following:

- 4.1. Overall policy development and direction for the administration, operations, and maintenance of the transit system.
- 4.2. Acquisition of all capital equipment necessary for system operations. County will provide the following capital items to the contractor:
 - Two portable lifts with jack stands
 - Brake machine for cutting rotors
 - Remix planning software
 - Route Match paratransit scheduling software
 - Fareboxes
 - Security cameras
- 4.3. Approval of routes, stops
- 4.5. Establishment of fare policies and structure
- 4.6. Expansion or reduction of service
- 4.7. Preparation of state and federal grant applications and administration of those grants
- 4.8. Assimilation of data and submitting of the NTD report to Federal Transit Administration and the Quality of Services report to the Florida Department of Transportation
- 4.9. Designated recipient of all grant funds
- 4.10. Contractor Personnel

EXHIBIT A – SCOPE OF SERVICES

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TRANSIT OPERATIONS

4.10.1. County has the right to require the removal and replacement of any personnel of the Contractor or subcontractor who are assigned to deliver Services to the County.

4.10.2. Any temporary or permanent replacement personnel recommended by the Contractor must be approved in writing by the County prior to placement.

4.12. Right to approve Equipment

4.12.1 The Contractor agrees to allow the County to inspect and approve all equipment to be used to perform the Services. The County reserves the right to inspect all vehicles to make sure that they meet or exceed the County's expectations regarding appearance, operation, and any other physical aspect of the vehicle that the County may deem appropriate.

4.12.2 The County may require vehicles to be pulled from active Service until such time as the Contractor resolves such problems with vehicle as determined by the County. If such vehicle remains in service against the recommendation of the County, the Contractor will be subject to fines in the amount of \$100.00 per hour per day of use, upon official notification from the County. The County reserves the right to inspect all vehicles before Services begin and randomly throughout the length of the contract without notice. Failure to comply will result in the County's requiring that the vehicle be removed from Service. The County may assess fines as referenced above or consider the Service Contractor's actions a breach of the contract.

Exhibit B: Submittal Form

ATTACHMENT 1 – SUBMITTAL FORM

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The undersigned hereby declares that: RATP Dev USA, Inc. has examined and accepts the specifications, terms, and conditions presented in this Solicitation, satisfies all legal requirements to do business with the County, and to furnish **TRANSIT SERVICES OPERATOR** for which Submittals were advertised to be received no later than 3:00 P.M. Eastern time on the date stated in the solicitation or as noted in an addenda. Furthermore, the undersigned is duly authorized to execute this document and any contracts or other transactions required by award of this Solicitation.

1.0 TERM OF CONTRACT

The Contract will be awarded for an initial five (5) year term with the option for two (2) subsequent one (1) year renewals. Renewals are contingent upon mutual written agreement.

The Contract will commence upon the first day of the next calendar month after Board approval or related Notice to Proceed. The Contract remains in effect until completion of the expressed and implied warranty periods. The County reserves the right to negotiate for additional services/items similar in nature not known at time of solicitation.

2.0 PAYMENT

The Contractor shall email the County's using department an accurate invoice within 30 calendar days after delivery. Invoices shall reference the: purchase/task order, delivery date, delivery location, and corresponding packing slip or delivery ticket signed by a County representative at the time of acceptance. Failure to submit invoices in the prescribed manner will delay payment.

Payments will be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes. The County will remit full payment on all undisputed invoices within 45 days from receipt by the appropriate County using department. The County will pay interest not to exceed 1% per month on all undisputed invoices not paid within 30 days after the due date.

All pricing will be FOB Destination unless otherwise specified in this solicitation document. Pricing submitted will remain valid for a ninety (90) day period.

Vendor accepts MasterCard for payment: NO

3.0 CERTIFICATION REGARDING LAKE COUNTY TERMS AND CONDITIONS:

I certify that I have reviewed the [General Terms and Conditions for Lake County Florida](#) and accept the Lake County General Terms and Conditions dated 5/6/21 as written including the Proprietary/Confidential Information section. YES

Failure to acknowledge may result in Submittal being deemed non-responsive.

4.0 CERTIFICATION REGARDING FELONY CONVICTION:

Has any officer, director, or an executive performing equivalent duties, of the bidding entity been convicted of a felony during the past ten (10) years? NO

5.0 CONFLICT OF INTEREST DISCLOSURE CERTIFICATION:

Except as listed below, no employee, officer, or agent of the firm has any conflicts of interest, real or apparent, due to ownership, other clients, contracts, or interests associated with this project; and, this Submittal is made without prior understanding, agreement, or connection with any

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ATTACHMENT 1 – SUBMITTAL FORM

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corporation, firm, or person submitting a proposal for the same services, and is in all respects fair and without collusion or fraud. N / A

6.0 CERTIFICATION REGARDING BACKGROUND CHECKS:

Under any County Contract that involves Contractor or subcontractor personnel working in proximity to minors, the Vendor hereby confirms that any personnel so employed will have successfully completed an initial, and subsequent annual, Certified Background Check, completed by the Contractor at no additional cost to the County. The County retains the right to request and review any associated records with or without cause, and to require replacement of any Contractor employee found in violation of this requirement. Contractor shall indemnify the County in full for any adverse act of any such personnel in this regard. Additional requirements may apply in this regard as included within any specific contract award. YES

7.0 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The County does not establish specific goals for minority set-asides however, participation by minority and non-minority qualified firms is strongly encouraged. If the firm is a minority firm or has obtained certification by the State of Florida, Office of Supplier Diversity, (OSD) (CMBE), please indicate the appropriate classification(s) not applicable not applicable and enter OSD Certification Number N / A and enter effective date N / A to date N / A

8.0 FEDERAL FUNDING REQUIREMENT:

8.1. REQUIRED for this project – DUNS Number: 073162695

8.2. A contract award expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Registration or search can be conducted here: [SAM Directory and Registration website](#)

9.0 RECIPROCAL VENDOR PREFERENCE:

N/A

10.0 GENERAL VENDOR INFORMATION:

Firm Name: RATP Dev USA, Inc.

Street Address: 3800 Sandshell Drive | Suite 180

City: Fort Worth State and ZIP Code: Texas, 76137

Page 2 of 3

ATTACHMENT 1 – SUBMITTAL FORM

22-542

Mailing Address (if different): Click or tap here to enter text.

Telephone: 844-RATPDEV Fax: (817) 232-9560

Federal Identification Number / TIN: 751626932

DUNS Number: 073162695

11.0 SUBMITTAL SIGNATURE:

I hereby certify the information indicated for this Submittal is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an authorized representative of this Vendor and/or empowered to execute this Submittal on behalf of the Vendor. I, individually and on behalf of the Vendor, acknowledge and agree to abide by all terms and conditions contained in this solicitation as well as any attachments, exhibits, or addenda.

Name of Legal Representative Submitting this Proposal: *Mark Millan*

Date: 6/14/2022

Print Name: Mark Millan

Title: Vice President, Commercial Development

Primary E-mail Address: Mark.Millan@ratpdev.com

Secondary E-mail Address: Click or tap here to enter text.

The individual signing this Submittal affirms that the facts stated herein are true and that the response to this Solicitation has been submitted on behalf of the aforementioned Vendor.

[The remainder of this page is intentionally blank]

Exhibit C: Pricing

EXHIBIT C - PRICING

22-542

START UP COSTS

Year 1

Total for start up costs:	zero
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Base Contract Year One (1)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1A	Mobilization priced separately - See Start Up Tab				
2A	Fixed costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$120,229.70	\$1,442,756.37
3A	Variable costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	37,090	\$43.38	\$1,608,967.44
4A	Total Fixed Route Price Base Contract Year One (Line Items 2 & 3)				\$3,051,723.81
	Estimated Fuel Costs				\$ 316,789.82

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1B	Mobilization priced separately				
2B	Fixed costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$156,403.08	\$1,876,836.91
3B	Variable costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$32.36	\$1,663,553.03
4B	Total Price Base Contract Year One (Line Items 2 & 3)				\$3,540,389.94
	Estimated Fuel Costs				\$ 412,102.03

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1C	Mobilization priced separately				
2C	Fixed costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,610.00	\$19,319.98
3C	Variable costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$18.06	\$11,738.93
4C	Total Price Base Contract Year One (Line Items 2 & 3)				\$31,058.90
	Estimated Fuel Costs				\$ 4,242.14

YEAR 1	Total Price Base Contract Year One for Fixed Route, Paratransit and Deviated Service	\$6,623,172.65
YEAR 1	Total Estimated Fuel Cost for Contract Year One	\$733,133.99

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

EXHIBIT C - PRICING

22-542

Base Contract Year Two (2)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1A	Fixed costs, base estimated quantity -				
	FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$125,337.86	\$1,504,054.31
2A	Variable costs, base estimated quantity -				
	FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	40,952	\$43.16	\$1,767,306.48
3A	Total Fixed Route Price Base Contract Year Two (Line Items 2 & 3)				\$3,271,360.79
	Estimated Fuel Costs				\$ 324,709.57

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1B	Fixed costs, base estimated quantity -				
	PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$163,048.12	\$1,956,577.50
2B	Variable costs, base estimated quantity -				
	PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$33.37	\$1,715,951.34
3B	Total Price Base Contract Year Two (Line Items 2 & 3)				\$3,672,528.83
	Estimated Fuel Costs				\$ 422,404.58

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1C	Fixed costs, base estimated quantity -				
	DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,678.40	\$20,140.82
2C	Variable costs, base estimated quantity -				
	DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$19.56	\$12,715.85
3C	Total Price Base Contract Year Two (Line Items 2 & 3)				\$32,856.67
	Estimated Fuel Costs				\$ 4,348.19

YEAR 2	Total Price Base Contract Year Two for Fixed Route, Paratransit and Deviated Service				\$6,976,746.29
YEAR 2	Total Estimated Fuel Cost for Contract Year Two				\$751,462.34

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

EXHIBIT C - PRICING

22-542

Base Contract Year Three (3)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1A	Fixed costs, base estimated quantity -				
	FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$129,561.05	\$1,554,732.64
2A	Variable costs, base estimated quantity -				
	FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	40,952	\$44.55	\$1,824,309.54
3A	Total Fixed Route Price Base Contract Year Three (Line Items 2 & 3)				\$3,379,042.18
	Estimated Fuel Costs				\$ 332,827.31

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1B	Fixed costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$168,541.95	\$2,022,503.36
2B	Variable costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$34.43	\$1,770,075.97
3B	Total Price Base Contract Year Three (Line Items 2 & 3)				\$3,792,579.33
	Estimated Fuel Costs				\$ 432,964.70

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1C	Fixed costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,734.95	\$20,819.45
2C	Variable costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$20.17	\$13,107.93
3C	Total Price Base Contract Year Three (Line Items 2 & 3)				\$33,927.38
	Estimated Fuel Costs				\$ 4,456.90

YEAR 3	Total Price Base Contract Year Three for Fixed Route, Paratransit and Deviated Service	\$7,205,548.89
YEAR 3	Total Estimated Fuel Cost for Contract Year Three	\$770,248.91

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

EXHIBIT C - PRICING

22-542

Base Contract Year Four (4)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1A	Fixed costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$133,944.94	\$1,607,339.26
	Variable costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	40,952	\$45.99	\$1,883,239.69
3A	Total Fixed Route Price Base Contract Year Four (Line Items 2 & 3)				\$3,490,578.95
	Estimated Fuel Costs				\$ 341,147.99

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1B	Fixed costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$174,244.81	\$2,090,937.67
2B	Variable costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$35.51	\$1,825,987.14
3B	Total Price Base Contract Year Four (Line Items 2 & 3)				\$3,916,924.81
	Estimated Fuel Costs				\$ 443,788.81

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1C	Fixed costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,793.66	\$21,523.91
2C	Variable costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$20.79	\$13,512.71
3C	Total Price Base Contract Year Four (Line Items 2 & 3)				\$35,036.62
	Estimated Fuel Costs				\$ 4,568.32

YEAR 4	Total Price Base Contract Year Four for Fixed Route, Paratransit and Deviated Service	\$7,442,540.38
YEAR 4	Total Estimated Fuel Cost for Contract Year Four	\$789,505.12

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

EXHIBIT C - PRICING

22-542

Base Contract Year Five (5)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1A	Fixed costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$138,496.09	\$1,661,953.12
	Variable costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	40,952	\$47.47	\$1,944,165.97
3A	Total Fixed Route Price Base Contract Year Five (Line Items 2 & 3)				\$3,606,119.09
	Estimated Fuel Costs				\$ 349,676.69

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1B	Fixed costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$180,165.26	\$2,161,983.14
2B	Variable costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$36.64	\$1,883,747.28
3B	Total Price Base Contract Year Five (Line Items 2 & 3)				\$4,045,730.42
	Estimated Fuel Costs				\$ 454,883.53

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1C	Fixed costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,854.60	\$22,255.24
2C	Variable costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$21.43	\$13,930.65
3C	Total Price Base Contract Year Five (Line Items 2 & 3)				\$36,185.89
	Estimated Fuel Costs				\$ 4,682.53

YEAR 5	Total Price Base Contract Year Five for Fixed Route, Paratransit and Deviated Service	\$7,688,035.40
YEAR 5	Total Estimated Fuel Cost for Contract Year Five	\$809,242.75

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

EXHIBIT C - PRICING

22-542

Option Year One (1)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1A	Fixed costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$143,221.38	\$1,718,656.59
	Variable costs, base estimated quantity - FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	40,952	\$49.01	\$2,007,160.09
3A	Total Fixed Route Price Option Year One (Line Items 2 & 3)				\$3,725,816.68
	Estimated Fuel Costs				\$ 358,418.61

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1B	Fixed costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$186,312.24	\$2,235,746.93
2B	Variable costs, base estimated quantity - PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$37.80	\$1,943,421.17
3B	Total Price Option Year One (Line Items 2 & 3)				\$4,179,168.10
	Estimated Fuel Costs				\$ 466,255.62

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1C	Fixed costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,917.88	\$23,014.56
2C	Variable costs, base estimated quantity - DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$22.10	\$14,362.18
3C	Total Price Option Year One (Line Items 2 & 3)				\$37,376.74
	Estimated Fuel Costs				\$ 4,799.59

Option Year 1	Total Price Option Year One for Fixed Route, Paratransit and Deviated Service				\$7,942,361.52
Option YEAR 1	Total Estimated Fuel Cost for Contract Option Year One				\$829,473.82

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

EXHIBIT C - PRICING

22-542

Option Year Two (2)

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
	Fixed costs, base estimated quantity -				
1A	FIXED ROUTE SERVICE Contracted Service	Month(s)	12	\$148,127.97	\$1,777,535.68
	Variable costs, base estimated quantity -				
2A	FIXED ROUTE SERVICE Contracted Service	Revenue Hour(s)*	40,952	\$50.60	\$2,072,296.47
3A	Total Fixed Route Price Option Year Two (Line Items 2 & 3)				\$3,849,832.15
	Estimated Fuel Costs				\$ 367,379.07

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
	Fixed costs, base estimated quantity -				
1B	PARATRANSIT SERVICE Contracted Service	Month(s)	12	\$192,695.08	\$2,312,340.91
	Variable costs, base estimated quantity -				
2B	PARATRANSIT SERVICE Contracted Service	Passenger Trips*	51,415	\$39.00	\$2,005,076.02
3B	Total Price Option Year Two (Line Items 2 & 3)				\$4,317,416.92
	Estimated Fuel Costs				\$ 477,912.01

Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
	Fixed costs, base estimated quantity -				
1C	DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Month(s)	12	\$1,983.58	\$23,803.01
	Variable costs, base estimated quantity -				
2C	DEVIATED SERVICE / EMERGENCY SERVICE Contracted Service	Revenue Hour(s)*	650	\$22.78	\$14,807.78
3C	Total Price Option Year Two (Line Items 2 & 3)				\$38,610.79
	Estimated Fuel Costs				\$ 4,919.58

Option Year 2	Total Price Option Year Two for Fixed Route, Paratransit and Deviated Service				\$8,205,859.87
Option Year 2	Total Estimated Fuel Cost for Contract Option Year Two				\$850,210.66

*The revenue hours, trips, and fuel costs are estimates and will change due to fuel pricing and service expansion or reduction. Revenue hours, trips, and fuel costs listed are not a contractual guarantee, only an estimate. The COVID-19 pandemic has impacted the recovery of both revenue hours and trips. CONTRACTOR will be paid based on actual fuel costs, revenue hours, and trips performed. Revenue hours and trips may vary by 15%.

Exhibit D: Certifications

ATTACHMENT FOUR

FORM 1 AND 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeree has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeree is committed to a minimum of _____ % DBE utilization on this contract.

 X The bidder/offeree (if unable to meet the DBE goal of 6.13 %) is committed to a minimum of 0.9 % DBE utilization on this contract submits documentation demonstrating good faith efforts.

Name of bidder/offeree's firm: RATP Dev USA, Inc.

State Registration No. RATP Dev is not a Certified DBE.

By  VP, Commercial Development
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeree's firm: RATP Dev USA, Inc.

Address: 3800 Sandshell Dr, Suite 180

City: Fort Worth State: TX Zip: 76137

Name of DBE firm: Coach Crafters

Address: 27530 County Road 561

City: Tavares State: FL Zip: 32778

Telephone: 352-742-8111

Description of work to be performed by DBE firm:


Performs maintenance and accident repairs on LakeXpress buses that can't be performed

by our maintenance personnel.

The bidder/offeree is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ 300,000 for the
5 year base term

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By 
(Signature)

VP, Transit Sales & Contracts
(Title)

If the bidder/offeree does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: RATP Dev USA, Inc.

Address: 3800 Sandshell Dr, Suite 180

City: Fort Worth State: TX Zip: 76137

Name of DBE firm: ~~Mobile Fingerprinting~~ USA mobile fingerprinting Inc

Address: 1014 Country Hill Rd.

City: Clermont State: FL Zip: 34711

Telephone: 877-USA-0594

Description of work to be performed by DBE firm:

Conducts live scan fingerprinting services for level 2 background checks

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ 15,000 for the 5 year base term.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By Gloria L. McCaul, CEO
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

Exhibit E: Federally Funded Required Contract Clauses

Note: any conflict between this clause set and any terms and conditions set forth in the specific solicitation and any resulting contract shall be resolved in favor of this clause set.

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

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This procurement is being funded, in whole or in part, with federal funds through Federal Transit Administration (FTA). As a consequence of that funding, the following FTA mandated provisions are included in this proposal.

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

1.0 ACCESS TO RECORDS AND REPORTS

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

Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Access to Records and Reports

- a. 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.
- b. 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.
- c. 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.
- d. 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.

E-2

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

2.0 BONDING REQUIREMENTS

2 C.F.R. § 200.325

31 C.F.R. part 223

Applicability to Contracts

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has **not** been made, the following minimum requirements apply:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

Model Clauses/Language

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

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 5% 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

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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 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.

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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.

SAMPLE BOND CERTIFICATIONS

Sample bond certifications are below:

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PERFORMANCE GUARANTEE CERTIFICATION

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

_____ Performance Bond

_____ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

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PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that _____

(Insert full name and address and legal title of Contractor) as Principal, hereinafter called Contractor, and _____ (Insert full name and address or legal title of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto RECIPIENT as Obligee, hereinafter called Authority, in the amount of _____ Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated __ 20__, entered into a contract with the RECIPIENT for Contract No. _____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RECIPIENT.

Whenever Contractor shall be, and is declared by the RECIPIENT to be in default under the Contract, the RECIPIENT having performed RECIPIENT'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RECIPIENT elects, upon determination by the RECIPIENT and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RECIPIENT to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RECIPIENT to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the RECIPIENT or the heirs, executors, administrators or successors of the RECIPIENT.

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Signed and sealed this _____ day of _____, 20____.

PRINCIPAL:

(Company Name)

By: _____
(Authorized Signature)

Witness as to Principal

(Printed Name)

Witness as to Principal

(Title)

(Business Address)

Attach hereto proof of authority of officers or agents to sign bond.

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IRREVOCABLE STAND-BY LETTER OF CREDIT CERTIFICATE

The undersigned states that he/she is _____ of the

(Title)

_____ (The "Beneficiary") and hereby

(Name of Beneficiary)

Certifies on behalf of the Beneficiary to _____ (the "Bank"), with

(Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No. _____ Issued by the

Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract No. _____.
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this _____ day of _____, 20_____.

(NAME OF BENEFICIARY)

By: _____

Its: _____

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BANK DRAFT

FOR VALUE RECEIVED

Pay on presentment to _____ the sum of _____
(Name of Beneficiary) Dollars (\$)

Charge the Account of _____ Irrevocably Standby Letter of
(Name of Issuing Bank)

Credit No. _____ Dated: 20 _____

To _____
(Name of Issuing Bank)

NAME OF BENEFICIARY

By _____

Its _____

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3.0 BUS TESTING

49 U.S.C. § 5318(e)

49 C.F.R. part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

Flow Down

There is no flow down requirement for Bus Testing.

Model Clause/Language

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11. Although no specific certification and bus testing language is required, recipients can draw on the following language for inclusion in their federally funded procurements.

Bus Testing

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

4.0 BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 C.F.R. part 661

Applicability to Contracts

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: [The Federal Transit Administration's Buy America website](#).

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Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

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 all 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.


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In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: August 23, 2022

Signature: 

Company: RATP Dev USA, Inc.

Type text here

Name: Mark Millan

Title: Vice President, Commercial Development

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

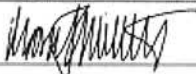
EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: August 23, 2022

Signature: 

Company: RATP Dev USA, Inc.

Name: Mark Millan

Title: Vice President, Commercial Development

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

5.0 CARGO PREFERENCE REQUIREMENTS

46 U.S.C. § 55305

46 C.F.R. part 381

Applicability to Contracts

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

Cargo Preference - Use of United States-Flag Vessels

The contractor agrees:

- a. 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. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading 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, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

6.0 CHARTER SERVICE

49 U.S.C. 5323(d) and (r)

49 C.F.R. part 604

Applicability to Contracts

The Charter Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

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The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language.

Recipients can draw on the following language for inclusion in their federally funded procurements.

Charter Service

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 subrecipients 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;
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.

7.0 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

Recipients can draw on the following language for inclusion in their federally funded procurements.

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).

8.0 CIVIL RIGHTS LAWS AND REGULATIONS

Applicability to Contracts

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:
 - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

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.

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

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 in 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.

9.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

Background and Applicability

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The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

[Federal Transit Administration website Disadvantaged Business Enterprise page click here](#)

[Department of Transportation website Disadvantaged Business Enterprise Program click here](#)

Flow Down

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

Clause Language

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient 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

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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).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an 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 to participate as DBE's;
- 5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
- 6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- 7. Assist in the development of firms that can compete successfully in the marketplace outside

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the DBE program.

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

Contract Assurance

The Contractor, subrecipient 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 AGENCY deems 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 7.57%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 7.57%** of the total Contract 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

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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/Offeree has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeree 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**.
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/Offeree is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeree'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/Offeree'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/Offeree's of DBE subcontracting opportunities;
3. The Bidder/Offeree'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/Offeree 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

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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.

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).

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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 Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeree 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/Offeree 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 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

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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/Offeree has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offeree is committed to a minimum of _____% DBE utilization on this contract.

☒ The Bidder/Offeree (if unable to meet the DBE goal of 7.57 %) is committed to a minimum of 0.9% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE

The Bidder/Offeree 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/Offeree 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
Coach Crafters 27530 County Rd 561 Tavares, FL 32778	VP, Transit Sales & Contracts 352-742-8111	0.87%	Maintenance and Accident Repair that cannot be performed by RATP Dev personnel	Female, white
USA Mobile Fingerprinting Inc. 11014 Country Hill Road Clermont, FL 34711	Gloria McCarl, CEO 877-USA-0594	0.04%	Conducts live scan fingerprinting services for level 2 background checks	Female, african american

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10.0 EMPLOYEE PROTECTIONS

49 U.S.C. § 5333(a)
 40 U.S.C. §§ 3141 – 3148
 29 C.F.R. part 5
 18 U.S.C. § 874
 29 C.F.R. part 3
 40 U.S.C. §§3701-3708
 29 C.F.R. part 1926

Applicability to Contracts

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

1. Prevailing Wage Requirements
 - a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
 - b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
 - c. U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
2. "Anti-Kickback" Prohibitions
 - a. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
 - b. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and
 - c. U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.
3. Contract Work Hours and Safety Standards
 - a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
 - b. U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti- Kickback" Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

Model Clause/Language

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The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or

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a territory, to such District or to such territory), 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 this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

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11.0 ENERGY CONSERVATION

42 U.S.C. 6321 *et seq.*

49 C.F.R. part 622, subpart C

Applicability to Contracts

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

12.0 FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirements applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes

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 agreement (Form FTA MA (26) dated October, 2019) 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.

13.0 FLY AMERICA

49 U.S.C. § 40118

41 C.F.R. part 301-10

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48 C.F.R. part 47.4

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.

FTA proposes the following language, modified from the Federal clause.

Fly America Requirements

a) *Definitions.* As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds,

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appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(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.

(End of Clause)

14.0 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

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
Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to

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contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Model Clause/Language

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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 Governmentwide 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;
- 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 any 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.

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The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

15.0 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (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 DPT, as set forth in [FTA Circular 4220.1F](#) 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 and act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

16.0 LOBBYING RESTRICTIONS

31 U.S.C. § 1352

2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20

Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Model Clause/Language

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

Lobbying Restrictions

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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 subrecipients 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.

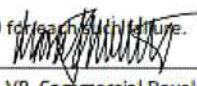
 Signature of Contractor's Authorized Official
Mark Millan, VP, Commercial Development Name and Title of Contractor's Authorized Official
August 23, 2022 Date

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

17.0 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

The No Obligation clause applies to all third party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

No Federal Government Obligation to Third Parties.

The Recipient and 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 by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18.0 PATENT RIGHTS AND RIGHTS IN DATA

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

37 C.F.R. part 401

Applicability to Contracts

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;
and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Flow Down

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EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

The Patent Rights and Rights in Data requirements flow down to all third party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

Model Clause/Language

Recipients can draw on language provided in 37 C.F.R. § 401.3 for appropriate Patent Rights and Data Rights Clauses for use in their federally funded research, development, demonstration, or special studies projects. Recipients should consult legal counsel for guidance in developing an appropriate Intellectual Property Agreement. At a minimum, recipients can include the following language in their standard boilerplates.

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. 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 below. 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.

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- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract 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 the 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 this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees 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 the 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. 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.
4. 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.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. 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.

19.0 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

49 U.S.C. 5323(m)
49 C.F.R. part 663

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Applicability to Contracts

Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre- award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, please go to [FTA's Buy America](#) page on its website.

Flow Down

There is no flow down requirement for Pre-Award and Post-Delivery Audits of Rolling Stock.

Model Clause/Language

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Recipients are advised to use the model certificates and language contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

20.0 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

Applicability to Contracts

The Program Fraud clause applies to all third party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it

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may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this 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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in 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.

21.0 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) ("13(c)")

29 C.F.R. part 215

Applicability to Contracts

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

Flow Down

The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier.

Model Clause/Language

There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Public Transportation Employee Protective Arrangements

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311,

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U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

22.0 RECYCLED PRODUCTS

42 U.S.C. § 6962
40 C.F.R. part 247
2 C.F.R. part § 200.322

Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Model Clause/Language

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

23.0 SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402
Executive Order No. 13043

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Executive Order No. 13513
U.S. DOT Order No. 3902.10

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

Model Clause/Language

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

24.0 SCHOOL BUS OPERATIONS

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

Applicability to Contracts

The School Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

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Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language.

Recipients can draw on the following language for inclusion in their federally funded procurements.

School Bus Operations

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.

25.0 SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*
 49 C.F.R. part 41
 Executive Order (E.O.) 12699

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third party contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

Seismic Safety

The 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 (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the

EXHIBIT E – FEDERALLY FUNDED REQUIRED CONTRACT CLAUSES 22-542

extent required by the regulation. The contractor also agrees to ensure that all work performed under this 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.

26.0 SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331
49 C.F.R. part 655
49 C.F.R. part 40

Applicability to Contracts

Third party contractors who perform *safety-sensitive functions* must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

Flow Down Requirements

The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

Model Clause/Language

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in

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compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Option 1

The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Option 2

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Option 3

The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

SUBSTANCE ABUSE TESTING

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Option 1

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

SUBSTANCE ABUSE TESTING

Option 2

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. 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*.

SUBSTANCE ABUSE TESTING

Option 3

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. 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*. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In

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addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

27.0 TERMINATION

2 C.F.R. § 200.339

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

Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Termination for Convenience (General Provision)

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. 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 AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

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The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this 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 the AGENCY.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of AGENCY goods, the

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Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 the AGENCY.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the AGENCY may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the AGENCY resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the AGENCY in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of AGENCY.

Termination for Convenience or Default (Architect and Engineering)

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY shall terminate by

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delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the AGENCY, the AGENCY's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the AGENCY may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the AGENCY.

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 AGENCY.

Termination for Convenience or Default (Cost-Type Contracts)

The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

28.0 VIOLATION AND BREACH OF CONTRACT
2 C.F.R. § 200.326

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

Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

Rights and Remedies of the AGENCY

The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include [AGENCY to define].

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of

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a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.
- **Example 2:** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court *de novo* and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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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 its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AGENCY 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 the State in which the AGENCY is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder 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 the AGENCY 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 thereunder, except as may be specifically agreed in writing.

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