

NEW ORLEANS REGIONAL TRANSIT AUTHORITY

Addendum II to

Request for Proposals # 2019-030



Ferry Transit Services

Operations and Maintenance

October 11, 2019

REGIONAL TRANSIT AUTHORITY

PUBLIC NOTICE

RFP 2019-030 Ferry Transit Services

Addendum II

Acknowledge receipt of this addendum in the proposal submission. This addendum is a part of the Contract Documents and shall be included in the Contract Documents. Changes made by the addenda take precedence over information published at an earlier date.

1. The relevant sentence in Section “2.1.1. Ferry Service Operations and Maintenance Agreement” is amended to read as follows:

“The selected proposer shall enter into an Agreement for Ferry Service Operations and Maintenance with the RTA which will substantially conform to Attachment 9 Draft Ferry Service Operations and Maintenance Agreement (hereinafter referred to as the “Agreement”) and which will allow the RTA to perform as obligated under the CEA, or as obligated under a new or amended cooperative endeavor agreement.”

2. The list of Attachments underneath the Table of Contents is amended to include “Attachment 9: Draft Ferry Service Operations and Maintenance Agreement” which is found on the following pages in this Addendum II.

3. The relevant sentence in Section “3.3 Pre-proposal Conference, Facility Tour, Procurement Website, Questions, Clarifications,” having been amended in Addendum I, is now amended to read as follows:

“All questions or requests for clarifications must be submitted via the ProcureWare system at <https://norta.procureware.com> no later than October 16, 2019 at 4:00 P.M. CDT.”

4. The procurement schedule in Section “3.2. Schedule,” having been amended in Addendum I, is now amended to read as follows:

Period	Date
Notice of Upcoming Procurement Issue Date	September 6, 2019
RFP Release	September 13, 2019
Pre-proposal Conference & Facilities Tour	September 23, 2019
Question Submittal Deadline	October 16, 2019
Q&A Responses Issue Date	October 30, 2019
Proposals Due/RFP Due Date	November 7, 2019
Evaluation and Scoring Period	November 8 - 19, 2019
Notice to Proposers within Competitive Range (if established)	November 20, 2019
Interviews with Proposers within Competitive Range (if conducted)	December 4, 2019
Request for Best and Final Offer (BAFO) (if needed)	December 4, 2019
BAFOs Due (if requested)	December 5, 2019
Evaluation of BAFOs	December 6 - 9, 2019
Final Approval and Notice of Award at RTA Board Meeting	December 17, 2019
Finalization of Terms and Execution Date	December 18 - 31, 2019
Transition Start	January 1, 2020
Transition End	January 31, 2020
Commencement of Service	February 1, 2020

The RTA reserves the right to amend this schedule at its sole discretion.

Attachment 9: Draft Ferry Service Operations and Maintenance Agreement

Draft Ferry Service Operations and Maintenance Agreement is included on the following pages.

DRAFT

Contract No. _____

**AGREEMENT FOR FERRY SERVICE
OPERATIONS AND MAINTENANCE**

Between

NEW ORLEANS REGIONAL TRANSIT AUTHORITY

and

<Contractor>

<month> <day>, <year>

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LIST OF EXHIBITS

- Exhibit A Cooperative Endeavor Agreement for Ferry Services between State of Louisiana, Department of Transportation and Development and the New Orleans Regional Transit Authority
- Exhibit B Blanket Bareboat Charter Agreement and Charter Orders
- Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders
- Exhibit D Minimum Wage Requirements
- Exhibit E Federal Requirements
- Exhibit F Regional Transit Authority System Safety Program Plan / Agency Safety Plan
- Exhibit G City Assisted Evacuation Plan
- Exhibit H Approved Staffing Plan
- Exhibit I Riverwalk Marketplace, LLC Lease

**AGREEMENT FOR FERRY SERVICE
OPERATIONS AND MAINTENANCE**

This Agreement for Ferry Service Operations and Maintenance (“Agreement”) is made and entered into on <month> <day>, <year>, by and between the New Orleans Regional Transit Authority (“Regional Transit Authority”), a political subdivision of the State of Louisiana, whose address is 2817 Canal Street, New Orleans, Louisiana, and <Contractor> (“Contractor”), a <state of incorporation> corporation authorized to do business in the State of Louisiana.

RECITALS

WHEREAS, the Regional Transit Authority and the State of Louisiana, Department of Transportation and Development have entered into a Cooperative Endeavor Agreement (CEA) for the operation of certain ferry services; and

WHEREAS, the Regional Transit Authority conducted a competitive procurement process to select a Contractor to operate and maintain Ferry Service operating out of Facilities provided by the Regional Transit Authority.

WHEREAS, the Contractor was selected as the highest ranked proposer under the evaluation process and criteria established in Request for Proposals No. 2019-030.

WHEREAS, as representative of the Parties’ intent underlying this Agreement, Parties have jointly identified, acknowledged, and accepted the following goals and objectives to govern its implementation:

1) The Regional Transit Authority hereby engages Contractor as an independent contractor to operate and maintain the Ferry Service, and Contractor hereby agrees to supply such services in accordance with the terms and conditions provided herein.

2) Contractor shall provide services for the Regional Transit Authority in the most efficient and economical manner possible while maintaining the quality and quantity of services as determined by the Regional Transit Authority.

3) Contractor agrees to substantially meet established performance measures as determined by the Regional Transit Authority while complying with all requirements of federal, state, and local law, including but not limited to requirements established by the United States Coast Guard and Federal Transit Administration.

4) Contractor shall have authority to enter into, on its own behalf, all contracts necessary to perform the services specified herein, subject to approvals which may be required as provided herein. Contractor shall not have the authority to contractually bind the Regional Transit Authority.

5) Contractor shall retain control and remain responsible for the safety of its employees, agents, servants, and subcontractors, as well as all invitees and patrons of the Regional Transit Authority. Contractor shall, at all times during the term of this Agreement, exercise safety precautions for the protection of all Contractor and Regional Transit Authority employees and patrons. Contractor shall make every effort to detect potential hazards and take prompt action to retain loss of control as it related to the operation and maintenance of the Ferry Service.

6) Contractor acknowledges that this Agreement and any related financial records, audits, reports, plans, correspondences, and other documents may be subject to disclosure to members of the public pursuant to Louisiana Revised Statutes 44:1 *et seq.* In the event the Contractor fails to abide by the provisions of Louisiana Revised Statutes 44:1 *et seq.*, the Regional Transit Authority may, without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, during which period the Contractor still fails to provide or allow access to such documents, terminate the Agreement.

7) Contractor acknowledges that the Regional Transit Authority will perform oversight over the Contractor's services, as required by the Federal Transit Administration or as otherwise in the best interest of the Regional Transit Authority.

WHEREAS, the Regional Transit Authority and the Contractor have finalized mutually acceptable terms and conditions setting forth the rights and obligations of the Parties under this Agreement.

WHEREAS, the Regional Transit Authority's Board of Commissioners has approved contract award to the Contractor.

NOW THEREFORE, in consideration of the above and the mutual promises hereinafter given the Regional Transit Authority and the Contractor have agreed as follows:

SEC. 1 DEFINITIONS

(1) Agreement. -- The term "Agreement" means this Agreement between the Regional Transit Authority and the Contractor for the operation and maintenance of the Ferry

Service described in this Agreement, and the Exhibits hereto, which Agreement incorporates the Cooperative Endeavor Agreement between RTA and DOTD (Exhibit A) and all exhibits and attachments thereto (collectively the “CEA Documents”), and any amendments that are required to complete the performance of the Agreement in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

(2) Approval. – The term “Approval” means a written determination by the Regional Transit Authority that a particular plan, program, invoice, action, or submittal of the Contractor appears to meet the requirements of this Agreement or the other Contract Documents. “Approval” shall not operate to shift any risk to the Regional Transit Authority or relieve the Contractor of any obligations under this Agreement.

(3) BAFO. -- The term “BAFO” means Best and Final Offer.

(4) Chief Administrative Officer. – The term Chief Administrative Officer means the Regional Transit Authority Chief Administrative Officer or his or her designee.

(5) Chief Executive Officer. – The term Chief Executive Officer means the Regional Transit Authority Chief Executive Officer or his or her designee.

(6) Chief Financial Officer. – The term Chief Financial Officer means the Regional Transit Authority Chief Financial Officer or his or her designee.

(7) Chief Operations Officer. – The term Chief Operations Officer means the Regional Transit Authority Chief Operations Officer or his or her designee.

(8) Commencement Date. – The term “Commencement Date” means the date the Contractor assumes responsibility for the operation and maintenance of Ferry Service under this Agreement, which date shall coincide with the termination of the Supplemental Agreement for Ferry Operations between the Regional Transit Authority and Veolia Transportation Services, Inc., as extended by the August 29, 2019 Operations and Maintenance Agreement between New Orleans Regional Transit Authority and Transdev Services, Inc.

(9) Contract Documents. -- The term “Contract Documents” means the following documents, set forth in their order of precedence: (A) this Agreement (as defined in this Section); (B) the BAFO request; (C) the Contractor’s BAFO; (D) the RFP; and (E) the Contractor’s proposal in response to the RFP (including supplemental documents).

(10) Contract Month – The term “Contract Month” means a calendar month during a Contract Year.

(11) Contract Term. -- The term “Contract Term” means the three (3)-year base contract term beginning as of the Commencement Date and the duration of either or both of the two one (1) year options terms (if exercised by the Regional Transit Authority).

(12) Contractor. -- The term “Contractor” means <Contractor>, the corporation entering into this Agreement with the Regional Transit Authority to provide the Scope of Work described herein.

(13) Contractor General Manager. -- The term “Contractor General Manager” means the Key Personnel member designated by the Contractor to oversee the proper operation and overall performance under this Agreement in its entirety.

(14) Days. -- The term “Days” means business days recognized by the Regional Transit Authority, except that if the end of a period of time specified in this Agreement falls on any of the following days, the end of such period shall be deemed to fall on the next business day: (A) New Year’s Day, Martin Luther King, Jr. Day, Mardi Gras, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve and Christmas Day; and (B) any holiday recognized by the Regional Transit Authority on a weekday when that holiday falls on a weekend.

(15) Deadhead. – The term “Deadhead” means movement of a Vessel without fare-paying passengers between: (A) a Facility and the beginning point of a scheduled Trip; (B) the end point of an scheduled Trip and a Facility; (C) the ending point of a scheduled Trip and a layover location; (D) interlined route movements; and (E) movement from a layover location and the start of a Trip.

(16) Deductions. – The term “Deductions” means amounts assessed to the Contractor in the nature of liquidated damages for the Contractor’s failure to achieve Key Performance Measures set forth in Section 21 of this Agreement.

(17) DOTD. – The term “DOTD” means the Department of Transportation and Development of the State of Louisiana.

(18) Equipment. -- The term “Equipment” means the maintenance equipment, fareboxes and other fare collection equipment, computers, cameras, communications equipment, furniture at the Facilities, and other equipment and systems, to the extent used by the Contractor to provide services under this Agreement.

(19) Event of Default. – The term “Event of Default” means an action or omission of the Contractor that may give rise to a Termination for Default under Section 40 hereof.

(20) Facilities. – The term “Facilities” means: (A) the Algiers/Canal Ferry Terminals including the Algiers Port Ferry Landing Barge and the Canal Street Ferry Landing Barge; (B) the Chalmette/Algiers Ferry Terminals located at 7320 Patterson Drive including the Chalmette Ferry Landing Barge, the Lower Algiers Ferry Landing Barge, and the Maintenance Facility Landing Barge; and (C) the Gretna Ferry Landing Barge. The Facilities are provided to the RTA

by DOTD and shall be used by the Contractor to provide services and operate and maintain the Vessels and Non-Revenue Vehicles under this Agreement.

(21) Federal Transit Administration (FTA). – The term “Federal Transit Administration” or “FTA” means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

(22) Ferry Platform Service Hour. -- The term “Ferry Platform Service Hour” means the time a Vessel departs the operating facility to the time the Vessel returns to the operating facility (including Revenue Service, Deadhead, and Recovery Time), and which excludes time for special (or charter) service, operator training, and Vessel maintenance testing.

(23) Ferry Platform Service Hour Rate. – The term “Ferry Platform Hour Rate” means the amount per hour to determine the Contractor’s invoice amount, based on actual hours of Ferry Platform Service Hours provided in the month, to be paid by the Regional Transit Authority to the Contractor in compensation for the Ferry Service (excluding the Lump Sum for Indirect Costs and Insurance and Fixed Fee). The Ferry Platform Service Hourly Rate is set forth in Section 5.

(24) Ferry Service. – “Ferry Service” means the following ferry service lines: (1) the Chalmette-to-Lower Algiers ferry line, (2) the Canal Street-to-Algiers Point ferry line, (3) the Gretna-to-Canal Street ferry line, and (4) any additional ferry line that is allowable under this Agreement.

(25) Fit-For-Use. – The term “Fit-For-Use” when applied to a Vessel means fully operable and available to be used in Revenue Service without the need for maintenance, repair or cleaning.

(26) Incentives. – The term “Incentives” means amounts awarded to the Contractor for exceeding Key Performance Measures set forth in Section 21 of this Agreement, provided that the dollar amount of Incentives awarded in any Contract Month shall not exceed the dollar amount of the Deductions assessed for that Contract Month.

(27) Key Performance Measure. – The term “Key Performance Measure” means a performance standard set forth in Section 21 of this Agreement that may subject the Contractor to Deductions if the Contractor fails to achieve the standard and may result in the award of Incentives if the Contractor exceeds the standard.

(28) Key Personnel. – The term “Key Personnel” means the Contractor’s General Manager, Safety Manager, and Maintenance Manager.

(29) Monthly Service Payment. – The term “Monthly Service Payment” means the amount to be paid by the Regional Transit Authority to the Contractor each month defined and calculated as compensation for the Contractor’s monthly services.

(30) MMS. – The term “MMS” means the Vehicle and Maintenance Management Systems provided by Regional Transit Authority and used by the Contractor to record and monitor maintenance performed on Vessels and Non-Revenue Vehicles, Vessel and Non-Revenue Vehicle warranty repair information, parts inventory and utilization, fueling, and other activities and information as specified in this Agreement. The MMS software system will be provided by Regional Transit Authority at the beginning of the Contract Term and RTA reserves the right to provide and require the use of additional or alternative software during the Contract Term.

(31) Non-Revenue Vehicle. – The term “Non-Revenue Vehicle” means a vehicle that is used to support transit services under this Agreement (such as a supervisory, relief, or utility vehicle), but is not used in Revenue Service. The term includes both the Non-Revenue Vehicles provided by the Regional Transit Authority and the Non-Revenue Vehicles provided by the Contractor.

(32) Operating Cost. – The term “Operating Cost” means the expenses incurred in the operation, maintenance, and support of Ferry Service.

(33) Operating Subsidy. – The term “Operating Subsidy” means State of Louisiana public funding provided to assist in deferring the cost of Ferry Service.

(34) Party or Parties. -- The term “Party” or “Parties” means the Regional Transit Authority and the Contractor, individually (each a Party) and collectively (the Parties).

(35) Property Condition Assessment. – The term “Property Condition Assessment” means a visual evaluation of the overall condition of the Facilities, designed to evaluate the Facilities for observed conditions beyond normal “wear and tear,” and includes an inventory of Equipment (including furniture) at the Facilities.

(36) Preventable Accident. – The term “Preventable Accident” means an accident in which Contractor’s staff failed to take appropriate reasonable actions, including the failure to react to the errors of others, anticipating hazards, or applying defensive maneuvers, to avoid or prevent the accident.

(37) Pull-In. – The term “Pull-in” means movement without fare paying passengers from the terminus of a Trip to return to the applicable Facility.

(38) Pull-Out. – The term “Pull-out” means movement without fare paying passengers from the applicable Facility to the origin of a Trip.

(39) RFP. – The term “RFP” means Request for Proposals No. 2019-030.

(40) Recovery Time. – The term “Recovery Time” means the time between the end of one Trip and the scheduled start time of the next Trip intended to mitigate schedule adherence issues that could result in service delays.

(41) Regional Transit Authority. -- The term “Regional Transit Authority” or “RTA” means the New Orleans Regional Transit Authority, a political subdivision of the State of Louisiana and a local transportation provider established by the Louisiana State Legislature in 1983, to provide public transit services, including services dating back to 1835, with its principal place of business in New Orleans, Louisiana. The Regional Transit Authority is governed by an eight-member Board of Commissioners representing Orleans Parish, and Jefferson Parish, and the City of Kenner.

(42) Revenue Service. -- The term “Revenue Service” means the operation of a Vessel in service available to carry fare paying passengers.

(43) Revenue Service Hour. – The term “Revenue Service Hour” means the time in hours that a Vessel is in Revenue Service. The term includes any variation in Revenue Service Hours, verified and Approved by the Regional Transit Authority, that a Vessel is not in Revenue Service for reasons beyond the control of the Contractor (i.e., detours, significant accidents), but does not include Deadhead time, Pull-In Time, or Pull-Out Time.

(44) Revenue Service Miles. – The term “Revenue Service Miles means the distance measured in miles that a Vessel operates in Revenue Service, excluding miles in Deadhead movement, Pull In time, and Pull-Out time.

(45) Service Change. -- The term “Service Change” means a change to the scope of services provided by the Contractor under this Agreement, as implemented under Section 20 hereof.

(46) Surge Service. – The term “Surge Service” means Ferry Service provided by the Contractor in addition to regular Ferry Service, such as Ferry Service for special events or activities and that is compensated at the Ferry Platform Service Hourly Rate set forth in Section 5 of the Agreement.

(47) Trip. -- The term “Trip” means a one-way movement of a Revenue Vehicle in service from one terminus to another terminus of a single route.

(48) Vehicle. – The term “Vehicle” includes the Revenue Vehicles and Non-Revenue Vehicles used by the Contractor in providing services under this Agreement.

(49) Vessels. – The term “Vessels” includes the six (6) ferries owned by DOTD and covered from time to time under the Blanket Bareboat Charter Agreements, as amended,

between DOTD and RTA (as Owner and Charterer, respectively) and between RTA and <Contractor> (as Charterer and Sub-Charterer, respectively), and separately chartered under individual charter orders, all attached hereto as Exhibit B and Exhibit C, as follows:

1. Thomas Jefferson
2. Sen. Alvin T. Stumpf
3. Capt. Neville Levy
4. Col. Frank X. Armiger
5. RTA 1 (Upon execution of Charter Order & Sub-Charter Order)
6. RTA 2 (Upon execution of Charter Order & Sub-Charter Order)

"Vessels" also includes those barges owned by DOTD and chartered and sub-chartered pursuant to individual Charter Orders under the respective Blanket Bareboat Charter Agreements. Additionally, all defined terms in the Blanket Bareboat Charter Agreement, Blanket Bareboat Sub-Charter Agreement, and the CEA shall have the same meanings in this Agreement, unless otherwise expressly defined herein.

(50) Work. -- The term "Work" means all the services and responsibilities to be performed by the Contractor under this Agreement, as specified, stated, or implied in this Agreement. The term "Scope of Services" may be used interchangeably with "Work".

SEC. 2 SCOPE OF WORK, REPRESENTATIONS AND WARRANTIES, AND ALLOCATION OF RESPONSIBILITIES

(a) Summary of Scope. – The Contractor shall perform all day-to-day operational, maintenance, and other support functions as delineated in the Cooperative Endeavor Agreement for Ferry Services between LADOTD and RTA (hereinafter referred to as the "CEA"), except for (i) responsibility for planning, (ii) the responsibility for developing specifications under Article III (Section 3.5 of the CEA), and (iii) the responsibility for marketing and branding for Ferry Services under Article IX of the CEA, as described in this Agreement. Furthermore, the Contractor shall perform such Work in accordance with Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders. In the event that any term or condition of Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders contradicts this Agreement, the contradictory term or and condition in Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders shall prevail over this Agreement. This Agreement is intended to supplement and clarify the requirements of Exhibit C Blanket

Bareboat Sub-Charter Agreement and Sub-Charter Orders, and this Agreement should not be interpreted to amend the requirements of Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders. Furthermore, Contractor shall assist the RTA and the RTA's consultants (or other designee) in obtaining Certificates of Inspection, Charter Orders, and any other agreements or approvals necessary for Ferry Service using the Vessels selected by the RTA.

(b) Contractor Performance Requirements. – The Contractor shall be required, at all times during the term of this Agreement, to perform all services diligently, carefully, and in a professional manner; to have and maintain all required authority, licenses, professional ability, skills, training, personnel, and capacity to perform the Contractor's obligations under this Agreement; to furnish all insurance, labor, supervision, machinery, material, and supplies necessary therefore (other than Equipment supplied by the Regional Transit Authority), as required under this Agreement; and to comply with all terms and conditions of this Agreement and the other Contract Documents. The Contractor shall conduct all Work in the Contractor's own name and as an independent contractor and not in the name of, or as an agent for, or in the service of, the Regional Transit Authority. Contractor shall be solely responsible for all staff compensation and employee benefits. Contractor must comply with the Minimum Wage Requirements from Section 70-806 of the City of New Orleans Code of Ordinances, attached as Exhibit D hereto.

(c) Contractor Representations and Warranties. -- The Contractor represents and warrants as follows:

(1) The Contractor has, and shall maintain throughout the Contract Term, all licenses and permits necessary to perform the Work in accordance with this Agreement.

(2) The Contractor will provide personnel for the performance of the Work who are properly trained and possess all professional skills and capability and licenses necessary for the performance of the Work and their assigned duties.

(3) The Contractor will perform the services under this Agreement in accordance with all requirements set forth herein.

(4) The Contractor has reviewed the Scope of Services and warrants that such services can be performed for the compensation provided to the Contractor

under this Agreement, without any increase in such compensation during the Contract Term, and agrees not to seek any such increase except as may be expressly authorized by this Agreement.

(5) The Contractor has familiarized itself with the requirements of all applicable Federal, State, and local laws and regulations and the conditions of any required governmental approvals, and will comply with all such requirements and conditions throughout the Contract Term without any increase in compensation.

(6) As of <month> <day>, <year>, there are no changes in ownership or control of the Contractor and none are pending or in process. In the event that a change in ownership or control arises subsequent to <month> <day>, <year>, the Contractor shall provide the Regional Transit Authority advance notice of no less than 90 days prior to the effective date of such a change.

(7) As of <month> <day>, <year>, there are no existing or threatened legal proceedings against the Contractor that would have an adverse effect on its ability to perform its obligations under this Agreement. In the event a threatened legal proceeding against the Contractor that may have an adverse effect on its ability to perform its obligations under this Agreement arises subsequent to <month> <day>, <year>, the Contractor shall provide the Regional Transit Authority notice of no more than the (10) Days after the Contractor knows, or should have known, of the threatened legal proceeding.

(8) The Contractor agrees to take all action necessary to ensure the uninterrupted operation of the ferry service in the U.S. coastwise trade. Upon the request of the Regional Transit Authority, such action may include obtaining approvals to conduct ferry operations from the U.S. Maritime Administration, U.S. Customs and Border Protection and any other regulatory authority. If the services of a subcontractor are required to ensure the uninterrupted operation of the ferry service, the Contractor agrees to procure the services of a qualified subcontractor, subject to the prior written Approval of the Regional Transit Authority under Section 32 of this Agreement.

(d) Contractor Duties.

(1) The Contractor shall coordinate, manage, and control all activities necessary to perform the Work and carry out its responsibilities under this Agreement, which include, but are not limited to, the following: maintaining all Vessels and Non-Revenue Vehicles; maintaining the Facilities; maintaining the Equipment; providing operators, mechanics, and all other project personnel; training personnel as necessary; developing administrative procedures and financial records; providing all reports required by this Agreement; providing security for the Vessels and Non-Revenue Vehicles and the Facilities; arranging for fuel deliveries, fueling, and accounting for fuel used; and developing methods to improve effectiveness and maximize service efficiency.

(2) The Contractor shall be responsible for all costs of performing the Work and providing operations and maintenance services in accordance with this Agreement.

(3) The Contractor shall retain employees of the Regional Transit Authority's incumbent contractor in accordance with Section 9(n) of this Agreement.

(4) In operating services under this Agreement, the Contractor shall emphasize maintaining courtesy to passengers, adequate training (including training consistent with the Regional Transit Authority's Customer Service Guidelines), policies designed to minimize employee turnover and maximize on-time performance, providing well-maintained and mechanically safe Vessels, and providing backup Vessels or coordinating with RTA to provide alternative services in an expeditious manner in the event of breakdowns and other service-related items that affect the reliability of service and otherwise carrying out all contractual obligations in a safe and reliable manner.

(5) In providing services under this Agreement, the Contractor shall comply with the Regional Transit Authority Vehicle Condition Policy; the Regional Transit Authority Maintenance Staffing Requirements; the Regional Transit Authority Uniform Policy; the Minimum Wage Requirements set forth in Exhibit D; the Regional Transit Authority System Safety Program Plan/Agency Safety Plan set forth in Exhibit F, and with all of the Contractor's plans and programs as approved by the Regional Transit Authority.

(6) Contractor acknowledges and agrees to provide information or reports as directed by the RTA, including but not limited to information relating to ferry service operations and maintenance that is required to be submitted into the National Transit Database.

(7) Contractor acknowledges and agrees to perform the Disadvantaged Business Enterprise Participation Plan presented in Contractor's proposal and abide by Regional Transit Authority Disadvantaged Business Enterprise programs or policies.

(8) Contractor Assurance. The Contractor, and any of its subcontractors, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, veteran status, political affiliation, or disabilities in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 Code of Federal Regulations Part 26 in the administration of FTA-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 Regional Transit Authority deems appropriate. Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended; the Equal Opportunity Act of 1972, as amended; Federal Executive Order 11246, as amended; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Americans with Disabilities Act of 1990, as amended. Notwithstanding anything to the contrary contained herein, in the event of any conflict between any federal requirements and the other requirements of this Agreement, the federal requirements will prevail, take precedence, and be in force over and against any such conflicting provisions. The Federal Transit Administration's required contract clauses are attached and incorporated into this Agreement as Exhibit E.

(9) Prompt Payment. The Contractor agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract obligations no later than five (5) days from the receipt of each payment the Contractor receives from the Regional Transit Authority. The Contractor further agrees to return retainage payment to each subcontractor within five (5) days after the subcontractor's work is satisfactorily completed and accepted by the Regional Transit Authority, and all lien delays under applicable laws have expired. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Regional Transit Authority. This clause applies to both DBE and non-DBE subcontractors.

(e) Regional Transit Authority Duties. – The Regional Transit Authority shall be responsible for carrying out its obligations under this Agreement, which include: providing Vessels; providing Non-Revenue Vehicles in accordance with this Agreement; providing Equipment and inventory as specified in this Agreement; providing fare media including, but not

limited to, transfer forms and bus passes; providing marketing and advertising services; paying fuel costs and utility costs for Vessels and Non-Revenue Vehicles and Facilities used in providing services under this Agreement; responsibility for all significant Vessel, Facility, and infrastructure repairs, modifications and improvements, including the cost of services, materials, and supplies (as described in Section 11(m) and Section 13(c)(4)); planning and scheduling of transit services; and providing and managing customer call center operations. Consistent with the responsibility to schedule transit services, the Regional Transit Authority may require that the Contractor implement a significantly revised transit deployment plan no more than three (3) times per Contract year of Contract services, provided that the Regional Transit Authority provide the Contractor ninety (90) calendar days' notice prior to the implementation of any service change.

SEC. 3 CONTRACT AWARD AND NOTICE TO PROCEED

(a) Request following Award. – Within five (5) Days after receiving a specific written request from the Regional Transit Authority, the Contractor shall submit the following to the Regional Transit Authority: (1) the insurance certificates for the policies required under Section 26 of this Agreement; (2) the Performance Bond required under Section 27 of this Agreement; (3) the list of the Contractor's Key Personnel (as identified in the Contractor's response to the RFP and/or its BAFO (if applicable)); (4) the Contractor's complete organizational chart; and (5) an executed copy of this Agreement.

(b) Notice to Proceed. – Within three (3) Days after receipt from the Contractor of the documentation required under subsection (a), the Regional Transit Authority, if it determines that the submissions are satisfactory, shall execute the Agreement and issue a Notice to Proceed (NTP) to the Contractor. The Contractor is not authorized to perform work under this Agreement prior to receiving the NTP. Upon receipt of the NTP, the Contractor shall commence Work in accordance with this Agreement and the other Contract Documents.

(c) Required Submittals. – Within seven (7) calendar days after issuance of the NTP, the Contractor shall submit a Transition and Start-up Plan to the Regional Transit Authority, for its review and Approval. Within fourteen (14) calendar days after issuance of the NTP, the Contractor shall submit to the Regional Transit Authority, for its review and Approval pursuant to Section 6 of this Agreement, the following plans and programs (or updates thereto): (1) the Training Program; (2) the Staffing Plan; (3) the Vessel and Non-Revenue Vehicle Maintenance Program, including the Preventative Maintenance Program; (4) the Facility Maintenance Plan; (5) the Safety, Security, and Emergency Preparedness Plan (including the

Guidelines for Transit Threat Management, the Continuity of Operations Plan, and the Emergency Response and Operations Plan in compliance with the Hurricane Preparedness Plan); and (6) the fare collection system security policies, procedures, and practices. All such plans and programs shall be consistent with the plans and programs on that topic submitted with the Contractor's proposal in response to the RFP (or BAFO, as appropriate), and shall contain at least the same level of effort (e.g., the hours of specific training, the elements of the Preventative Maintenance Program, etc.) as set forth in the Contractor's proposal (or BAFO, as appropriate). The Regional Transit Authority shall, within fourteen (14) calendar days after receipt, review each such plan and program and either grant Approval of such plan and program as submitted or provide the Contractor with such modifications as the Regional Transit Authority determines necessary. Upon Approval, such plans and programs shall become attachments to the Agreement.

SEC. 4 CONTRACT TERM

(a) Term. – The Agreement will become effective upon execution by the Regional Transit Authority. The term of this Agreement (the Contract Term) shall be for a base term of three (3) years, with two (2) one year options (if the Regional Transit Authority elects to exercise those options). The Contract Term shall start on the Commencement Date, which date shall coincide with the termination of the Supplemental Agreement for Ferry Operations between the Regional Transit Authority and Veolia Transportation Services, Inc., as extended by the August 29, 2019 Operations and Maintenance Agreement between New Orleans Regional Transit Authority and Transdev Services, Inc.

(b) Options.

(1) At least ninety (90) calendar days prior to the end of the last year of the three (3) year base term, the Regional Transit Authority shall notify the Contractor in writing whether it intends to exercise the first option. At least ninety (90) calendar days prior to the end of the first option (if exercised), the Regional Transit Authority shall notify the Contractor in writing whether it intends to exercise the remaining option. The decision as to whether to exercise each option shall be at the Regional Transit Authority's sole discretion. The Regional Transit Authority also reserves the unilateral right to extend the Agreement on a month-to-month basis at the end of the base term or following any exercised option provided such right shall not permit the Regional Transit Authority to extend the Agreement unilaterally on a month-to-month basis for more than six (6) months. In the event that the Regional Transit Authority elects to extend the term of the Agreement unilaterally on a month-to-month basis under this provision,

compensation for each month of the extension shall be determined on the same basis as compensation was determined pursuant to Section 5 of this Agreement in the preceding final full year of the Contract Term.

(2) The decision to exercise an option under this Agreement is the unilateral right of the Regional Transit Authority to obtain transit services from the Contractor for the option years involved. The Contractor acknowledges and agrees that it is contractually obligated, upon exercise of an option by the Regional Transit Authority, to provide the services described hereunder, in satisfaction of all requirements of this Agreement, at the rates established for the applicable option year.

(c) Extensions. -- Upon agreement of the Parties, this Agreement may be extended on a month-to-month basis at the expiration of the Contract Term, for a total period not to exceed one year (inclusive of the time period by which the Regional Transit Authority may unilaterally extend the Agreement pursuant to subsection (b)(1) of this Section.).

SEC. 5 COMPENSATION FOR SERVICES

(a) Basis for Compensation.

(1) In consideration of the Contractor's full performance of the Work, and in accordance with the terms of the Agreement, the Regional Transit Authority shall pay the Contractor for actual Ferry Platform Service Hours performed, on a monthly basis, in an amount equal to:

(i) the Ferry Platform Service Hourly Rate multiplied by the actual Ferry Platform Service Hours performed in the contract Month; minus

(ii) adjustments for Deductions (net of Incentives) assessed by the Regional Transit Authority in accordance with Section 21 of the Agreement; plus

(iii) 1/12 of the Lump Sum for Indirect Costs and Insurance; plus

(iv) 1/12 of the Fixed Fee.

(2) The Ferry Platform Service Hourly Rate as of the Commencement Date will be \$<TBD>.

(3) The Lump Sum for Indirect Costs and Insurance as of the Commencement Date will be a not-to-exceed amount of \$<TBD> annually.

(4) The Fixed Fee as of the Commencement Date will be a not-to-exceed amount of \$<TBD> annually, or \$<TBD> monthly, except as provided in Section 20(d), and will be verified by the true-up described in Section 8(f).

(5) The Ferry Platform Service Hourly Rate and Lump Sum for Indirect Costs and Insurance, described in (2) and (3) above, are subject to the true-up described in Section 8(f), but will remain in effect until the Ferry Platform Service Hourly Rate and Lump Sum for Indirect Costs and Insurance are negotiated in accordance with Section 5(a)(8) and 5(a)(9).

(6) The Regional Transit Authority shall compensate the Contractor for transition activities during start up prior to the Commencement Date in accordance with Section 6 of this Agreement.

(7) Within the limitation of Section 20(d) of this Agreement, the Regional Transit Authority may increase or decrease the number of Ferry Platform Service Hours by up to ten (10) percent compared to the Ferry Platform Service Hours in the Base Year during the Contract Term without impacting the Ferry Platform Service Hourly Rate or Lump Sum for Indirect Costs and Insurance or Fixed Fee.

(8) The Regional Transit Authority and the Contractor shall negotiate an escalation or other modification of the Ferry Platform Service Hourly, Lump Sum for Indirect Costs and Insurance, and Fixed Fee that is fair and reasonable for the second and third year of the Contract.

(9) Notice by the Regional Transit Authority of the intent to exercise a one-year option pursuant to Section 4(b)(1) of this Agreement shall initiate negotiation of the Ferry Platform Service Hourly Rate, Lump Sum for Indirect Costs and Insurance, and Fixed Fee for that optional term.

(10) Compensation in excess of the Ferry Platform Service Hourly Rate, Lump Sum for Indirect Costs and Insurance, and Fixed Fee described in this Section must be approved in advance by written change order on Regional Transit Authority letterhead that is signed and dated by the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, and Chief Administrative Officer.

(b) Scope of Compensation. – The compensation provided to the Contractor as described in this Section shall cover the costs of performing the Scope of Services to be provided under this Agreement and complying with the requirements set forth herein, including:

(A) all costs of maintaining and repairing the Vessels and replacing Vessel components and parts as necessary (except as provided for in Section 11(m)); (B) all costs of maintaining and repairing the Non-Revenue Vehicles (whether supplied by Regional Transit Authority or the Contractor) and replacing Non-Revenue Vehicle components and parts as necessary (except as provided in Section 11(m)); (C) the costs of all equipment and supplies necessary for the performance of services (other than Equipment provided by the Regional Transit Authority); (D) all costs of maintaining and repairing all Equipment (except as provided for in Section 13(c)(4)) or supplies and replacing supplies, if necessary; (E) all costs of maintaining and repairing the Facilities and maintaining and repairing the Equipment therein (except as provided in Section 13(c)(4)); (F) all costs of Contractor personnel providing management, operations, maintenance, and related services under this Agreement, including all costs of employee wages, salaries, health benefits, retirement, and other employee benefits and all costs of training; and (G) all costs associated with the implementation of the plans and programs submitted by the Contractor in its response to the RFP (or BAFO or post-award in accordance with Section 3 of this Agreement, as appropriate). The Contractor will have no other right or claim to compensation, payment, or reimbursement from the Regional Transit Authority, except as otherwise expressly provided in this Agreement.

SEC. 6 TRANSITION AND START-UP

(a) Purpose and Objectives. – During the transition and start-up, Contractor shall execute or obtain all agreements and authorizations that are required for Contractor's performance of Ferry Service operations and maintenance from DOTD, the U.S. Coast Guard, and any other authorities. Furthermore, the following objectives shall be achieved during transition and start-up:

(1) RTA approval of Contractor's Training Program, Staffing Plan, Vessel and Non-Revenue Vehicle Maintenance Program, including the Preventative Maintenance Program, Facility Maintenance Plan, the Safety, Security, and Emergency Preparedness Plan (including the Guidelines for Transit Threat Management, the Continuity of Operations Plan, and the Emergency Response and Operations Plan in compliance with the Hurricane Preparedness Plan), and the fare collection system security policies, procedures, and practices; and

(2) RTA approval of list of assets (movable and immovable) that will be used to provide Ferry Service under this Agreement; and

(3) Initial Vessel and Non-Revenue Vehicle, Equipment, and Facility Inspections (including Condition and Valuation Survey of each Vessel to be used in Ferry Service); and

(4) Agreed-upon Ferry Platform Service Hourly Rate, Lump Sum for Indirect Costs and Insurance, and Fixed Fee for the first year of the Agreement for Ferry Service using RTA 1 and RTA 2 (coinciding with the return of the Vessels Armiger and Stumpf to DOTD), in the event the Vessels RTA 1 and RTA 2 are authorized for Ferry Service prior to the Commencement Date; and

(5) Identify amendments to this Agreement (if any) to assure viability following a review of operational and financial data.

(b) Timing. – The Contractor shall commence its transition and start-up activities immediately upon receipt of the NTP and shall complete all those activities by the Commencement Date, at which time the Contractor shall assume full responsibility for Ferry Service under this Agreement. The Chief Executive Officer may extend the deadline for achieving the objectives stated in Section 6(a), except that in any event Contractor must execute or obtain all agreements and authorizations required for Contractor's performance of Ferry Service operations and maintenance prior to the Commencement Date.

(c) Contractor Duty. -- The Contractor shall be responsible for carrying out an effective and smooth transition and start-up process, in accordance with its Transition and Start-up Plan, as Approved by the Regional Transit Authority, which will assure that it is capable of assuming responsibility for all required operations by the Commencement Date. The Transition and Start-up Plan, as Approved by the Regional Transit Authority, shall be binding on the Contractor.

(d) Initial Vessel, Non-Revenue Vehicle, and Equipment Inspection.

(1) During the transition and start-up period, the Contractor shall participate with the Regional Transit Authority in an acceptance inspection, in accordance with this subsection, of all Vessels, the Regional Transit Authority-provided Non-Revenue Vehicles, and Equipment (including farebox and related fare collection Equipment) for purposes of establishing the overall condition of the Vessels, Non-Revenue Vehicles, and Equipment as of the time the Contractor commences work under this Agreement. This inspection of Vessels is

intended to result in Condition and Valuation Surveys as described in the Cooperative Endeavor Agreement between RTA and DOTD.

(2) The inspection under this subsection shall be performed by an independent third party (or third-parties), selected by the Regional Transit Authority, who is experienced in Vessel, Non-Revenue Vehicle, and Equipment inspections. The Regional Transit Authority shall be responsible (either directly or through reimbursement from the prior contractor) for the expenses of such inspection.

(3) The Contractor shall designate an individual, with decision-making authority, to be the Contractor's representative in the Vessel, Non-Revenue Vehicle, and Equipment inspection under this subsection and the Facility inspection under subsection (e) hereof.

(4) The purpose of the inspection under this subsection is to establish the condition of the Vessels, Non-Revenue Vehicles, and the Equipment, as of the inspection date, and to determine the specific repairs and maintenance that need to be performed in order to assure that all Vessels, Non-Revenue Vehicles, and Equipment are in a safe and sound mechanical condition, properly serviced, and in good repair, normal wear and tear excluded.

(5) The cost of all repairs and additional maintenance to the Vessels, Non-Revenue Vehicles, and Equipment determined to be necessary to meet the standards referenced in paragraph (4) shall be the responsibility of the Regional Transit Authority (either directly or through reimbursement from the prior contractor). If repairs have not been completed by the Commencement Date, the Regional Transit Authority may direct the Contractor to complete the repairs, or may elect to have such repairs performed by a third party. If the Regional Transit Authority directs the Contractor to complete the repairs, the Regional Transit Authority will compensate the Contractor for the cost of any new or replacement parts or components needed to make the repair (at cost, with no mark-up) and for the reasonable labor costs of work required to complete the repair. Such costs will be separately invoiced by the Contractor (with supporting documentation) and paid by the Regional Transit Authority. All such work performed by the Contractor shall be completed by a deadline to be determined by the Chief Executive Officer, which shall be commercially reasonable, unless the Contractor demonstrates to the Regional Transit Authority's satisfaction that completion by that date is not feasible due to circumstances beyond the Contractor's control.

(6) If a substantial amount of repair work must be performed by the Contractor after the Commencement Date, the Regional Transit Authority will take that fact into account in the assessment of Deductions pursuant to Section 21 during the Contractor's initial period of Revenue Service under this Agreement.

(7) Prior to the termination of this Agreement, the Vessels, Non-Revenue Vehicles, and Equipment assigned to the Contractor at that time shall be subject to the turnover audit and inspection process set forth in Section 11(d).

(e) Facility Inspection.

(1) During the transition and start-up period, the Contractor shall participate with the Regional Transit Authority in an inspection, in accordance with this subsection, of the Facilities to be used by the Contractor in providing services under this Agreement, including the office furniture at the Facilities. At the Regional Transit Authority's discretion, a Property Condition Assessment may be included in the Facility inspection process under this subsection.

(2) The purpose of the inspection under this subsection is to establish the condition of the Facilities, as of the inspection date, and to determine the specific repairs that need to be performed in order to assure that the Facilities are in a safe and sound condition, and in good repair, normal wear and tear excluded. The inspection shall include a walk-through or visit to the Facilities by the Contractor and the Regional Transit Authority. On the basis of this review, the Parties will develop and agree upon a "punch list" of the items that need to be repaired.

(3) The cost of all Facility repairs determined to be necessary under paragraph (2) hereof shall be the responsibility of the Regional Transit Authority (either directly or through reimbursement from the prior contractor). If all such repairs have not been completed by the Commencement Date, the Regional Transit Authority may direct the Contractor to complete such repairs, or may elect to have such repairs performed by a third party. In the event the Contractor completes such repairs, the Regional Transit Authority will compensate the Contractor for the cost of any materials or supplies needed to make the repair (at cost, with no mark-up) and for the reasonable labor costs of work required to complete the repair. Such cost will be separately invoiced by the Contractor (with supporting documentation) and paid by the Regional Transit Authority.

(f) Assumption of Responsibility by Contractor. -- Beginning on the Commencement Date, the Contractor shall assume responsibility for maintenance and repair of all Vessels, Non-Revenue Vehicles, Equipment, and the Facilities in accordance with this Agreement.

(g) Review of Contractor Plans. – During the transition and start-up, the Regional Transit Authority shall review each of the Contractor’s plans and programs submitted under Section 3(c) hereof and shall either: (1) Approve such plan or program as submitted; or (2) require the Contractor to make reasonable revisions to such plan or program, in which event the Contractor shall promptly make such revisions (after any necessary discussions with the Regional Transit Authority) and resubmit the plan or program involved to the Regional Transit Authority for its Approval. After Approval under this subsection, a plan or program shall be binding on the Contractor and may not be modified without prior written Approval by the Regional Transit Authority.

(h) Compensation. –The Contractor shall be reimbursed for costs incurred during the transition and start-up to the extent such costs are pre-approved by the Chief Executive Officer. Payment shall be made by the Regional Transit Authority upon the Chief Executive Officer’s determination that such costs have been authorized, actually incurred, and adequately documented. The Regional Transit Authority shall reimburse the Contractor within thirty (30) days of the Commencement Date.

(i) Savings Provision. The Regional Transit Authority’s assumption of responsibility for costs under subsection (e) or (f) hereof shall not reduce or otherwise affect the contractual obligation and financial responsibility of the prior contractor, to repair and maintain Vessels, Non-Revenue Vehicles, Equipment, and the Facilities in accordance with: (i) the October 3, 2008 agreement entered into by and between the Regional Transit Authority and Veolia Transportation Services, Inc. and subsequent amendments thereto; (ii) the February 16, 2014 Supplemental Agreement for Ferry Operations between the Regional Transit Authority and Veolia Transportation Services, Inc. and any subsequent amendments thereto; and (iii) the August 29, 2019 Operations and Maintenance Agreement between New Orleans Regional Transit Authority and Transdev Services, Inc.

(j) If the Chief Executive Officer determines that the Contractor is not adequately progressing towards the transition objectives (whether such transition objective is stated in the Agreement or subsequently stated), he or she may, without prejudice to any other right or

remedy and after giving the Contractor seven (7) days written notice, during which period the Contractor still fails to adequately progress towards the transition objective, unilaterally terminate this Agreement and enforce the performance bond under Section 27(c).

SEC. 7 SURGE SERVICE

(a) Surge Services.

(1) The Regional Transit Authority may, in its discretion, request the Contractor to operate Surge Services (additional ferry services above and beyond the normal weekday and weekend hours of service to serve demand created by special events). Any such request shall be made in writing, and shall be made not less than ten (10) Days in advance of the date the Surge Services will be needed. The Contractor shall provide the Surge Services requested unless the Contractor demonstrates to the satisfaction of the Regional Transit Authority that providing such services would have an adverse impact on its ability to provide the operations and maintenance services required under this Agreement.

(2) If the third party for whom Surge Services are being requested is permitted, under its agreement with the Regional Transit Authority, to obtain such Surge Services upon a notice or request period of less than ten (10) Days, the Contractor agrees it will make a good faith effort to provide such services within the timeframe requested, but not to the detriment of the Regional Transit Authority Revenue Service under the Agreement.

(b) Contractor Responsibility. – The Contractor is responsible for providing adequate staff, supervision, and maintenance capability to support Surge Services provided under this Section.

(c) Rates and Other Terms. -- Compensation for Surge Services shall be in accordance with the Ferry Platform Service Hourly Rate pursuant to Section 5.

(d) Applicability of Terms. -- Except as otherwise expressly agreed in writing by the Regional Transit Authority and the Contractor, the terms and conditions of this Agreement and the other Contract Documents shall apply to any Surge Services operated under this Section.

SEC. 8 INVOICES

(a) Submittal. -- During the Contract Term, the Contractor shall submit an invoice for each Contract Month of operations to the Regional Transit Authority, no later than the 15th day of the following month, in the format prescribed by the Regional Transit Authority. Each

invoice shall include all documentation and supporting information needed to calculate the payment due, as described in subsection (b).

(b) Supporting Materials. -- Invoices shall be prepared in a form provided by the Regional Transit Authority and shall be supported by the reports submitted by the Contractor in accordance with Section 22 of this Agreement and other documentation or information requested by the Regional Transit Authority, including documentation of operating expenses incurred. In addition to the true-up procedure described in Section 8(f), any costs not allowed under Generally Accepted Accounting Principles, or as provided for in the Code of Federal Regulations, Federal Transit Agency regulations, and other applicable federal regulations, will not be approved or authorized, and unallowable costs shall be reimbursed to the Regional Transit Authority if included in an invoice paid by the Regional Transit Authority. In addition, with each monthly invoice, Contractor shall submit a report of operating expenses incurred, to support the invoiced amount, in a format to be prescribed by the Regional Transit Authority.

(c) Regional Transit Authority Review and Payment.

(1) The Regional Transit Authority shall be entitled to make Deductions (net of Incentives) to each invoice due to the Contractor's failure to achieve Key Performance Measures specified in Section 21 of this Agreement.

(2) Except as otherwise provided in paragraphs (3) and (4), payment, as revised in accordance with paragraph (1), will be made by the Regional Transit Authority within thirty (30) calendar days after an invoice is received and approved.

(3) If the Regional Transit Authority determines, based on its review of an invoice, that payment has been requested for services that were not provided in accordance with this Agreement, or if the Regional Transit Authority otherwise questions or objects to the contents of an invoice (including requests for supporting documentation or clarification), the Regional Transit Authority shall so notify the Contractor and give the Contractor the opportunity to correct the invoice. If the invoice is not corrected to the satisfaction of the Regional Transit Authority, the Regional Transit Authority may withhold payment of the disputed amount and make payment of any undisputed amount due.

(4) The Regional Transit Authority may reasonably withhold an appropriate amount from any invoice at or near the end of the Contract Term in order to cover: (A) the cost or estimated cost of Facility non-significant repairs and/or maintenance (including Equipment at

the Facilities) required as a result of the Facility turnover audit carried out under Sections 13(b)(1) and 13(b)(2) and (B) the cost or estimated cost of Vessel and Non-Revenue Vehicle repairs and/or maintenance required as a result of the Vessel and Non-Revenue Vehicle turnover audit carried out under Sections 11(c) and 11(d).

(d) Audits and Reviews. – The Regional Transit Authority may, at any time, conduct an audit (or an agreed upon procedure review, in lieu of an audit) of any records kept by the Contractor that are directly or indirectly related to the services provided under this Agreement. Any overpayment or underpayment uncovered in such an audit (or an agreed upon procedure review, in lieu of an audit) may be charged or credited (as the case may be) against the Contractor's future payments. In addition, appropriate financial adjustments to future payments shall be made by the Regional Transit Authority based upon any inconsistency, irregularity, discrepancy, under-billing, or unsubstantiated billing revealed as a result of the audit (or an agreed upon procedure review, in lieu of an audit). Prior to withholding payment or deducting amounts from future invoices, the Regional Transit Authority will give notice to the Contractor and provide the Contractor with an opportunity to state its position on the issue presented and provide corrected or updated information. In the event that the Contractor does not respond to requests for documents or information in a timely manner, as determined by the Chief Executive Officer, the following actions may be taken by the Regional Transit Authority: (i) deduction(s) under Section 21(b); (ii) withholding(s) of payment under Section 8(c)(3); and/or (iii) termination of the Agreement, without prejudice to any other right or remedy, after giving the Contractor seven (7) days written notice, during which period the Contractor still fails to provide or allow access to such documents or information.

(e) Annual Budget. – Sixty (60) days prior to the end of each contract year (or within fifteen (15) days from Commencement Date), Contractor shall submit an annual budget for the Contractor's services to the Regional Transit Authority for upcoming contract year, listing all projected operating expenses. If the Regional Transit Authority objects to the proposed Annual Budget, or any portion thereof, the Regional Transit Authority shall promptly notify the Contractor. If the Regional Transit Authority and Contractor are unable to reach an agreement as to the proposed Annual Budget by the end of the contract year, then the prior year's budget shall carry over. Contractor shall not expend funds greater than the authorized Annual Budget, unless pursuant to a written change order on Regional Transit Authority letterhead that is signed and dated by the Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer. Should Contractor fail to comply with the funding limitations set forth in the authorized

Annual Budget in any given contract year, the Regional Transit Authority may terminate this Agreement for cause, and Contractor shall not be entitled to reimbursement for any unauthorized expenditures.

(f) Monthly True-Up. – The RTA may, at a frequency no more than once a month, conduct an audit (or an agreed upon procedure review, in lieu of an audit), either to be conducted in accordance with Generally Accepted Accounting Principles, Code of Federal Regulations, and/or Federal Transit Administration regulations, of the Contractor's invoices and supporting documentation (and any other of the Contractor's relevant records). Following such an audit or review of the actual costs incurred by the selected proposer to perform the services required under the Agreement, the selected proposer shall reimburse the RTA for payments made as part of the Ferry Platform Service Hourly Rate including related personnel fringe benefits or the Lump Sum for Indirect Costs and Insurance which are in excess of the actual costs incurred by the Contractor. Furthermore, the RTA shall reimburse the Contractor for payments made as part of the Ferry Platform Service Hourly Rate or Lump Sum for Indirect Costs and Insurance that were less than actual costs incurred by the selected proposer. In addition, the selected proposer shall be responsible for reimbursement to the RTA for any direct or indirect costs, whether identified in the RTA's audit, agreed upon review procedure, or monthly payment processing, that are deemed dis-allowable, dis-allocable, and/or unreasonable according to Generally Accepted Accounting Principles or as provided for in the Code of Federal Regulations, Federal Transit Agency regulations, and other applicable federal regulations.

(g) Monthly Not-to-Exceed Amount. – Contractor shall not, in any event, incur costs during any month which, when added to the monthly portion of the Fixed Fee, exceeds the monthly fare revenue and monthly portion of the State Operating Subsidy. This monthly not-to-exceed amount may be amended by change order written on RTA letterhead and signed by the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, and Chief Administration Officer.

SEC. 9 STAFFING AND PERSONNEL REQUIREMENTS

(a) Contractor Responsibility; Indemnification.

(1) The Contractor shall be solely responsible for the satisfactory work performance of all its employees as described in this Agreement or in any performance standard established by the Regional Transit Authority.

(2) The Contractor shall be solely responsible for payment of all its employees' salaries, wages, and benefits in accordance with applicable collective bargaining agreements. In addition, the Contractor shall be solely responsible for payment of any of its subcontractors. The Regional Transit Authority shall have no role in the determination of salaries, wages, benefits, or other terms and conditions of employment.

(3) Without any additional expense to the Regional Transit Authority, the Contractor shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security, and the Americans with Disabilities Act. The Contractor shall hold Regional Transit Authority harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices, collective bargaining agreements, or statutory, regulatory, or contractual obligations to employees.

(b) General Manager. -- The Contractor shall designate a General Manager who shall oversee the proper operation of services under this Agreement and overall performance of the Work. The General Manager shall be 100 percent dedicated to providing services for the Regional Transit Authority under this Agreement, unless the Regional Transit Authority provides prior written Approval for a lesser time dedication. If the Regional Transit Authority Approves a variance to the time dedication level of the General Manager, this variance is subject to immediate reversal at the discretion of the Regional Transit Authority.

(c) Key Personnel.

(1) The Contractor shall maintain the Key Personnel identified in its Proposal and/or its BAFO (if applicable) throughout the Contract Term. The Key Personnel shall include, in addition to the General Manager, a Safety Manager and a Maintenance Manager. All of the Contractor's Key Personnel shall be 100 percent dedicated to providing services for the Regional Transit Authority under this Agreement unless the Regional Transit Authority provides prior written Approval for a lesser time dedication. None of these Key Personnel positions can be combined without the prior written Approval of the Regional Transit Authority. If the Regional Transit Authority Approves a variance to the time dedication level of any Key Personnel or a consolidation of any Key Personnel positions, the Regional Transit Authority reserves the right to make appropriate adjustments to the Contractor's Monthly Service Payment, and also reserves the right to reverse or modify any such Approval at any time.

(2) The Contractor shall provide all Key Personnel and other senior staff with a copy of this Agreement and shall require all such individuals to read and review the Agreement. The Contractor shall submit a certification to the Regional Transit Authority signed by all Key Personnel and senior staff indicating they have read and understand this Agreement.

(d) Changes in Key Personnel.

(1) The Contractor shall not, without prior written notice to and prior written Approval by the Regional Transit Authority, remove or reassign any Key Personnel identified in its proposal, or appoint any new individual to any Key Personnel position (whether in an acting or permanent capacity), at any time during the Contract Term; provided that the Contractor may, following written notice and explanation to the Regional Transit Authority, remove any such individual for misconduct or cause pursuant to the Contractor's established personnel policies.

(2) If the Contractor fails to provide the required Key Personnel, or removes Key Personnel without the Regional Transit Authority's prior written Approval, the Contractor shall be subject to Deductions under Section 21, and the Regional Transit Authority may make appropriate adjustments in the Contractor's Monthly Service Payment until the position is filled.

(e) Requirement for a Qualified Workforce: Compliance with Staffing Plan.

(1) The Contractor shall provide and maintain throughout the Contract Term a sufficient number of properly qualified personnel, having the necessary skills, training, and experience to operate and maintain the Vessels and Non-Revenue Vehicles and the Equipment, and systems used to perform the Work, to maintain the Facilities, and to provide all other services and tasks required in the performance of the Work.

(2) The number, qualifications, experience, and class, craft, or position of the personnel provided shall, at a minimum, be in accordance with the Staffing Plan submitted by the Contractor in its proposal and/or its BAFO (if applicable), as subsequently Approved by the Regional Transit Authority. The Contractor shall comply with its Approved Staffing Plan throughout the Contract Term. The Contractor agrees to make appropriate modifications in the Staffing Plan (e.g. by increasing the number of employees or changing the mix of employee positions or classes), as necessary to meet changing demands of the service over the Contract Term. Any such modifications in the Staffing Plan shall be submitted to the Regional Transit Authority for its review and Approval.

(3) All of the Contractor's employees, at all times while on duty in the performance of service required under this Agreement, shall be neatly and cleanly dressed and shall at all times maintain a courteous and cooperative attitude in their contact with the public. All such personnel who are likely to be in contact with the public shall be trained by the Contractor to give accurate information concerning routes and schedules of services as Approved by the Regional Transit Authority.

(4) The Regional Transit Authority Chief Executive Officer shall have the right to demand the removal from services under this Agreement, for reasonable cause, any personnel (including Key Personnel and supervisory staff) furnished by the Contractor. Any such demand shall be made in writing, and shall be complied with promptly by the Contractor.

(f) Uniforms and Appearance. -- The Contractor shall assure that its employees comply with the Regional Transit Authority Uniform Policy. Vehicle operators shall be in uniform acceptable to the Regional Transit Authority, and shall wear tags clearly displaying their names while performing their duties and shall display nameplates in their Revenue Vehicles. Upon notice from the Regional Transit Authority concerning any conduct, demeanor, or appearance of any employee not conforming to these requirements, the Contractor shall take all steps necessary to remove or alleviate the cause of the objection. Employees shall not wear uniforms while off duty.

(g) DMV and Background Checks.

(1) The Contractor shall conduct pre-employment Department of Motor Vehicles (DMV) checks of all prospective employees intending to perform work under this Agreement and shall check DMV records at least every twelve (12) months for accidents, vehicle code violations, and valid driver's licenses of all employees whose jobs require them to operate Non-Revenue Vehicles. The Contractor shall have any Approved subcontractors conduct pre-employment DMV checks of all prospective employees intending to perform work under this Agreement and check DMV records at least every twelve (12) months for accidents, vehicle code violations, and valid driver's license of all employees whose jobs require them to operate the Non-Revenue Vehicles. The Contractor shall notify the Regional Transit Authority of the results of such checks and the corrective actions taken, if any. The Contractor shall also conduct pre-employment criminal background checks on all prospective employees intending to perform work under this Agreement and shall not, subject to the qualifications in paragraph (3)

below, knowingly hire any individual with a felony conviction or other offense that makes such individual unsuitable for work on services under this Agreement.

(2) The Contractor shall also conduct annual criminal background checks on all employees intending to perform work under this Agreement and shall not, subject to the qualifications in paragraph (3) below, knowingly retain in service any individual with a felony conviction or other offense that makes such individual unsuitable for work or services under this Agreement.

(3) Any decision by the Contractor to fail or refuse to hire or retain an individual due to a prior felony conviction or other offense shall be made on a case by case basis, and shall be justified on the grounds it is job related in accordance with Equal Employment Opportunity Commission requirements.

(h) Specific Qualifications for Operators, Mechanics, and Supervisors.

(1) The Contractor shall assure that all operators, maintenance, and other personnel are fully and adequately trained, and shall have all required licenses and certifications, to carry out their respective responsibilities regarding the operation, maintenance, and fueling of the Vessels and Non-Revenue Vehicles employed in services under this Agreement, and the operation and maintenance of all Equipment and systems used in the performance of the Work, including fareboxes, destination signs, and surveillance equipment. The Contractor shall also assure that all operations and maintenance trainers are fully and adequately trained on the MMS.

(2) The Contractor shall require each Vessel and Non-Revenue Vehicle operator to have and maintain all required licenses, certifications, Louisiana driver's licenses, medical certificates, and other DOTD, U.S. Coast Guard, and Louisiana DMV required qualifications and certifications.

(3) The Contractor shall assure that the minimum maintenance staffing levels and other requirements set forth in the Contractor's Approved Staffing Plan are complied with throughout the Contract Term.

(4) The Contractor shall require each operator and supervisor to have an accurate timepiece available and nameplate and in clear sight at all times during the operation of any Vessel or other performance of their duties.

(5) The Contractor shall require each operator to have a copy of required licenses and medical card in his or her possession at all times during the operation of a Vessel or other performance of his or her duties. The Contractor shall randomly check operators to assure full compliance with this requirement.

(i) Additional Personnel and Services. -- If service under this Agreement is increased, requiring changes in the number of Vessels, number of routes, and/or service frequency, the Contractor must have available, or be able to acquire in a timely fashion, any additional personnel required for the provision of such additional service.

(j) Compliance with Training Plan. -- The Contractor shall comply with its Approved Training Program throughout the Contract Term. The Program shall include the designation of an employee as the Maintenance Training Coordinator, and shall provide for ongoing training of mechanics and the development of technical skills of mechanics and other employees throughout the Contract Term.

(k) Compliance with Drug and Alcohol Testing Policy. -- The Contractor shall comply with the Drug and Alcohol Testing Policy it submitted in response to the RFP in compliance with 49 CFR Parts 653 and 654, and shall comply with that policy and with other drug and alcohol testing rules and regulations as may be required by the FTA, at all times during the Contract Term. The Contractor shall provide quarterly reports to the Regional Transit Authority, maintain random testing information and make it available for FTA reviews/audits, and shall make other information regarding its surveillance program available to the Regional Transit Authority upon request. The Regional Transit Authority reserves the right to oversee monthly and random testing. The Contractor's drug and alcohol testing and reporting shall specifically cover the Contractor employees performing services for the Regional Transit Authority under this Agreement. Any part of the Policy which is held to be unenforceable will not affect the other provisions of the Policy.

(l) Minimum Wage. -- The Contractor shall comply with the Minimum Wage requirements of the City of New Orleans for employees of City Contractors set forth in Attachment D and with the requirements of the collective bargaining agreement in compliance with subsection (p) of this Section and shall also comply with any modifications to those requirements that take effect during the Contract Term. These requirements are intended as minimum wage levels for work performed by the Contractor's employees under this Agreement. The Regional Transit Authority reserves the right, during this Agreement term, to require

documentation of compliance with these requirements through payroll records or other evidence.

(m) Worker's Compensation. -- The Contractor certifies that it is aware of the provisions of Louisiana Revised Statutes Section 1161 of Title 23, Labor and Workers' Compensation which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees that, as required by Section 26(a)(4) of this Agreement, it will comply with such provisions and submit satisfactory evidence to the Regional Transit Authority of such insurance or self-insurance before commencing the performance of Work under this Agreement and annually thereafter.

(n) Terms of Hiring. – Except for those employees expressly hired by the Regional Transit Authority, all employees of the Regional Transit Authority's incumbent (previous) contractor, except for those performing managerial functions, shall be hired by the Contractor into comparable positions, without examination, and such employees shall be credited with their years of service for purposes of seniority, vacations, and other applicable benefits in accordance with the incumbent contractor's records and applicable collective bargaining agreements. The Contractor shall assume the obligations of the incumbent contractor with regard to wages, hours, working conditions, health and welfare, and retirement provisions for employees. No employee shall suffer any worsening in his or her wages, seniority, retirement, vacation, health and welfare insurance or any other benefits. The Contractor shall be liable for any claims demonstrated to be valid that an employee was worsened in the hiring process. Nothing under this subsection (n) precludes the Contractor from dismissing an employee for cause, for failure to satisfy applicable drug and alcohol testing requirements, or for failure to comply with any applicable local, State or Federal requirements.

(o) Third Party Agreements. – Unless otherwise expressly agreed to in writing by the Regional Transit Authority, all obligations of the Contractor arising under any contract or agreement between the Contractor and a third party relating to the services the Contractor provides hereunder (Third Party Agreement) are the sole responsibility of the Contractor, and: (1) shall not be interpreted or applied to impose any financial, legal, or other obligations on the Regional Transit Authority; and (2) shall not be binding on or applicable to any subsequent contractor providing operations and maintenance services for the Regional Transit Authority. In particular, any such Third Party Agreement that has a term or duration that extends beyond the

then-current term of this Agreement shall not impose obligations on, apply to, or otherwise affect the Regional Transit Authority or any subsequent contractor.

(p) Section 13(c) Obligations.

(1) The Contractor shall be responsible for any Section 13(c) claims or obligations that arise out of acts or omissions of the Contractor that are not expressly directed or authorized by the Regional Transit Authority. In addition, the Contractor shall cooperate with the Regional Transit Authority in the resolution or defense of any Section 13(c) claims for which the Regional Transit Authority has responsibility (such as through the provision of employee payroll records and other employee information, in accordance with existing law), and in the implementation of any Section 13(c) remedies.

(2) As the Regional Transit Authority's contractor and the employer of public transit employees, the Contractor is obligated to bargain collectively with any union representing its employees, to comply with the terms and conditions of any collective bargaining agreement it enters into with such union, and to comply with the requirements of subsection (n), Terms of Hiring, of this Section. Any Section 13(c) claims relating to the failure of the Contractor to comply with these obligations shall be the responsibility of the Contractor.

(q) Accrued Liabilities. – The Contractor shall be responsible for the payment of all liabilities to its employees accrued during the Contract Term (including any option periods), including accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between the Contractor and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by the Contractor at the end of the Contract Term and no additional compensation shall be provided by the Regional Transit Authority for such accrued liabilities. The Contractor shall not have any obligation for the liabilities of the prior contractor to its employees.

(r) Limitation. -- Nothing in this Section shall be construed as requiring the Contractor to hire any employee who fails to successfully complete drug and alcohol testing or to pass a physical examination appropriate to his or her position.

SEC. 10 OPERATIONS STANDARDS AND PERFORMANCE REQUIREMENTS

(a) Contractor Responsibility. – The Contractor shall be responsible for project management according to the operations standards and performance requirements set forth in this Section, the other provisions of this Agreement, and the other Contract Documents. The Regional Transit Authority may, after consultation with the Contractor, establish additional standards and procedures that are appropriate and reasonable for operation of service.

(b) Operating Performance Standards. -- The Contractor shall adhere to the following operating performance standards:

(1) Vessels and Non-Revenue Vehicles shall be operated with due regard for the safety, comfort, and convenience of passengers and the general public.

(2) Service shall be provided as scheduled or according to any adjusted schedule established by the Regional Transit Authority, including route modifications required as a result of a declared emergency under Section 25.

(3) The Contractor shall strive to maintain on-time performance in accordance with published schedules.

(4) The Contractor shall provide staff to manage vehicular and passenger queues and provide information to passengers.

(5) Ferry Service shall be operated in accordance with the requirements of the following which shall have precedence over all other requirements:

a. United States Coast Guard (USCG) Operations Requirements, per 46 CFR Subchapter H (Part 71);

b. United States Coast Guard Maritime Security Requirements: Vessels, per 33 CFR Subchapter H (Part 103);

c. Environmental Protection Agency (EPA) Vessel General Permit (VGP) Requirements; and

d. United States Coast Guard Non Tank Vessel Response Plan (NTVRP), per 33 USC 1321(j)(5).

(6) Ferry Services may be reduced or suspended for safety reasons in the sole discretion of the Master of any Vessel at any time, who shall as soon as practically possible notify the Chief Executive Officer or his or her designee.

(c) Personnel Performance Standards. -- The Contractor shall adhere to the following personnel performance standards:

(1) Regularly assigned operators or a trained backup must be available daily to ensure consistent and reliable service under this Agreement.

(2) All Contractor personnel are responsible for knowledge of the service. Contractor personnel must maintain a courteous attitude, answering to the best of their ability any questions from the public regarding the provision of service. Customer service training must include a focus on passenger relations including sensitivity training. Contractor personnel must also promptly report all passenger complaints and/or operation problems to the General Manager or his or her designee. All passenger complaints must be addressed and reported to the Regional Transit Authority in accordance with Sections 22(b)(7) and 23.

(3) Operators must accurately and completely submit the required operating reports each day.

(4) While in uniform, operators must be in conformance with the Regional Transit Authority uniform regulations, whether on-duty or off-duty.

(d) Adherence to Schedule.

(1) The Contractor shall adhere to the coordinated system schedule as provided by the Regional Transit Authority, which system schedule shall be based on available equipment and labor and within reasonable running times, and shall assume responsibility for on-time performance on each route. The Contractor's schedule adherence/on-time performance will be evaluated utilizing data from RTA provided technology, or other method to be determined by the Regional Transit Authority. The Regional Transit Authority will review service on each route by departures at the first and subsequent Time-Points up to the last Time-Point. On-time performance at the last Time-Point will be evaluated by arrival time. Early arrivals at the last Time-Point will not be assessed Deductions under Section 21.

(2) On-Time departure is defined in Section 1 of this Agreement. Early departures from the final Time-Point will not be considered violations of on-time performance requirements.

(3) The Contractor shall be responsible for ensuring that no mid-Trip relief (i.e., in-service change in Vessel operators) occurs on any route or Trip operated by the Contractor under this Agreement.

(e) Farebox. – The Contractor is responsible for fare collections and shall provide all necessary cashier and fare collectors.

(f) Data Collection. – The Contractor shall be responsible for regularly collecting and reviewing all transaction logs, pull-out sheets, incident logs, and other information collected or reported on the data reporting system provided by RTA, and for making all such information available to the Regional Transit Authority upon its request. The Regional Transit Authority shall provide the Contractor with templates and reporting software to prepare these reports.

SEC. 11 VESSEL AND NON-REVENUE VEHICLE MAINTENANCE, APPEARANCE, AND RELATED REQUIREMENTS

(a) Vessels. – The Regional Transit Authority shall provide sufficient Vessels, including spares, for use by the Contractor in providing the services required under this Agreement. The Regional Transit Authority-provided Vessels shall not be used for any non-revenue purposes with the exception of training. The list of Vessels provided to the Contractor at the commencement of services under this Agreement is set forth in Section 1.

(b) Non-Revenue Vehicles. – The Regional Transit Authority shall provide Non-Revenue Vehicles for use by the Contractor in providing the services required by this Agreement. The Regional Transit Authority-provided Non-Revenue Vehicles may be used by the Contractor solely for the performance of services under this Agreement.

(c) Initial Inspection and Condition Upon Return.

(1) During the transition, the Contractor shall participate with the Regional Transit Authority in an inspection of all the Regional Transit Authority-provided Vessels, Non-Revenue Vehicles, and Equipment in accordance with Section 6 of this Agreement. Upon the Commencement Date, the Contractor shall assume responsibility for maintenance and repair of all Vessels, Non-Revenue Vehicles, and Equipment in accordance with this Agreement.

(2) Upon termination of this Agreement (for whatever reason), the Contractor shall warrant that the Vessels, Non-Revenue Vehicles, and Equipment have been properly serviced and maintained, and are in good repair, in accordance with this Agreement, and shall return such Vessels, Non-Revenue Vehicles, and Equipment to the Regional Transit Authority in a safe and sound mechanical condition, subject to ordinary wear and tear.

(d) Turnover Audit Process.

(1) At least thirty (30) Days prior to the termination date of this Agreement, the Regional Transit Authority, the Contractor, and the company (if any) taking over operations and maintenance responsibility (New Contractor), shall participate in the turnover audit process set forth in this subsection. Unless the Regional Transit Authority determines otherwise, this audit will be consolidated with the initial Vessel, Non-Revenue Vehicle, Equipment, and Facility inspection conducted during the transition and start-up period of the New Contractor.

(2) The turnover audit will be performed by an independent third party (or third-parties), selected by the Regional Transit Authority, who is experienced in Vessel, Non-Revenue Vehicle, and Equipment inspections. The Contractor shall be solely responsible for the cost and expense of the audit.

(3) The purpose of the audit will be to establish the condition of the Vessel and Non-Revenue Vehicle fleet and the Equipment, as of the audit date, and to determine the specific repairs and maintenance that needs to be performed in order to assure that all Vessels, Non-Revenue Vehicles, and Equipment will meet the standards referenced in subsection (c)(2). The audit shall also include, at the discretion of the Regional Transit Authority, an inspection of the Facilities to assure that they meet the standards set forth in Section 13(b)(2) of this Agreement.

(4) The Contractor shall be solely responsible for promptly completing all repairs and/or maintenance to the Vessels, Non-Revenue Vehicles, Equipment, and Facilities that are identified in the audit as necessary to meet the standards, in subsection (c)(2) or Section 13(b)(2), as applicable, and shall also be solely responsible for the cost of all such repairs and maintenance. The Contractor shall not be eligible for any additional compensation for the costs of the audit or the costs of the necessary repairs or maintenance resulting therefrom.

(5) If any dispute arises in the turnover audit process, the Regional Transit Authority shall first attempt to facilitate the resolution of such dispute through meetings and conferences with the Contractor, the New Contractor, and the independent third party. If the dispute remains unresolved for thirty (30) Days, the Regional Transit Authority shall require the Contractor and the New Contractor to participate in a mediation process conducted by a neutral third party selected by the Regional Transit Authority. If the dispute is not resolved in a timely fashion through this mediation, the Regional Transit Authority will invoke a mandatory arbitration process, using an outside neutral arbitrator selected by the Regional Transit Authority, for a final and binding decision on all matters in dispute. In selecting a neutral mediator and/or arbitrator under this paragraph, the Regional Transit Authority will consult with, and obtain recommendations from, the Contractor and the New Contractor.

(6) By execution of this Agreement, the Contractor hereby consents to the mediation and arbitration process described in paragraph (5) hereof and further agrees to comply fully with any resulting arbitration decision.

(7) The costs of any mediation or arbitration under this subsection shall be borne equally by the Contractor and the Regional Transit Authority.

(e) Vehicle Maintenance and Condition Standards. -- The Contractor shall, at all times during the Contract Term, comply with its approved Vessel and Non-Revenue Vehicle Maintenance Program and with the mechanical, safety, and appearance standards. The Contractor shall, at its sole expense, cause all components of each Vessel and Non-Revenue Vehicle, including body, engines, batteries, transmissions, tires, frame, furnishings, mechanical, electrical, pneumatic, hydraulic, or other operating systems, to be maintained in proper working condition and free from damage and malfunction or otherwise to be replaced. The Contractor shall, at its sole expense, cause any such Vessel or Non-Revenue Vehicle damaged in any accident or otherwise to be repaired or replaced. In the case of damage impairing the safe mechanical operation or proper appearance of the Vessel or Non-Revenue Vehicle, such replacement must be made immediately. Any Contractor-supplied Non-Revenue Vehicles must, at a minimum, be maintained using the same preventive maintenance, graphic, and cleanliness standards as the Regional Transit Authority-provided Non-Revenue Vehicles.

(f) Vehicle Appearance.

(1) The Contractor shall be responsible for maintaining the appearance of all Vessels and Non-Revenue Vehicles. All Vessels must display a clean and glossy

appearance each time the Vessel departs the operating facility to enter Revenue Service and must be kept clean including, but not limited to, the following actions: (A) the exterior (including front and rear) must be washed at least weekly; (B) interiors must be swept or vacuumed daily; (C) all dirt, debris, graffiti, and trash must be removed daily; and (D) any worn, broken, cut, torn or vandalized components that are visible, or accessible by the public, must be repaired or replaced promptly to eliminate hazards, minimize discomfort, and/or maintain appearance.

(2) All Vessels and Non-Revenue Vehicles, including Non-Revenue Vehicles provided by the Contractor, shall have the decals, graphics and/or logos prescribed or approved by the Regional Transit Authority, located on the Vessels and Non-Revenue Vehicles in accordance with the Regional Transit Authority's direction, and shall have no other markings or brandings.

(g) Inspections.

(1) Each Vessel must receive a daily pre-trip inspection by the operator scheduled to operate the inspected Vessel prior to being placed in service and at each change in operators. The operator will utilize pre-trip technology provided by the Regional Transit Authority. If the technology is not available, then the operator will conduct and supply a manual pre-trip backup record. Daily pre-trip inspections must be supplemented by regular time and mileage maintenance inspections to ensure safe and proper operating condition of Vessels. A record of all such inspections shall be kept by the Contractor in the operators' Daily Reports and shall be available to the Regional Transit Authority upon request.

(2) The Contractor shall maintain a satisfactory U.S. Coast Guard vessel and Louisiana vehicle inspection status, as applicable, throughout the term of this Agreement. If the Contractor receives an unsatisfactory rating from the U.S. Coast Guard, State, or municipal authority, the Contractor shall so notify the Regional Transit Authority immediately by telephone and in writing and shall identify steps which will be taken to correct any deficiencies. If any Vessel is withdrawn from service by a U.S. Coast Guard, State, or another cognizant authority, including the Regional Transit Authority, such Vessel shall not be operated, and the Contractor shall be subject to Deductions under Section 21 of this Agreement, until a satisfactory inspection report is obtained. If the Vessel is withdrawn from service due to a defect or failure which the Regional Transit Authority agrees was due to the manufacturer, or due to circumstances beyond the Contractor's control as described in Section 21(c), the Deductions shall not apply.

(3) The Regional Transit Authority reserves the right, in its sole discretion, to review maintenance records, and to inspect and reject temporarily or permanently, by notice to the Contractor, any Vessel or Non-Revenue Vehicle which the Regional Transit Authority deems unacceptable. In the event any Vessel or Non-Revenue Vehicle is rejected temporarily by the Regional Transit Authority as a result of deficient condition or appearance, the Contractor shall be subject to Deductions under Section 21, until the condition is corrected by the Contractor to the satisfaction of the Regional Transit Authority. In the event any Vessel or Non-Revenue Vehicle is rejected permanently by the Regional Transit Authority as a result of a condition, the Contractor shall be responsible: (A) during the first half of such Vessel or Non-Revenue Vehicle's useful life, for the replacement cost of such Vessel or Non-Revenue Vehicle (including on-board Equipment); and (B) thereafter, for the straight line depreciated value of such Vessel or Non-Revenue Vehicle or the amount of any insurance proceeds received, whichever is greater.

(h) Maintenance and Preventive Maintenance. Contractor shall perform maintenance, including routine preventive maintenance inspections and servicing, on Vessels, Non-Revenue Vehicles, and Equipment in accordance with the Approved Maintenance Program. Contractor shall maintain all Vessels and Equipment in accordance with the requirements of the Blanket Bareboat Sub-Charter Agreement and Charter Orders. All maintenance shall be conducted in accordance with the requirements of United States Coast Guard Inspection & Certification Requirements, per 46 CFR Subchapter H (Part 78), which shall have precedence over all other requirements.

(i) Parts and Supplies. – In carrying out all scheduled and unscheduled Vessel and Non-Revenue Vehicle maintenance and repairs, the Contractor shall use parts and supplies from the original Equipment manufacturer (OEM), unless the Regional Transit Authority provides advance written Approval for the use of specific after-market non-OEM products and supplies.

(j) MMS Record Keeping.

(1) The Regional Transit Authority will provide an automated Maintenance Management System (MMS) for the Vessels and Non-Revenue Vehicles, to be used as a stand-alone system or in addition to the Contractor's standard record keeping system. The Regional Transit Authority reserves the right to require the use of different software systems for

operations and for maintenance reporting, and also reserves the right to require the use of additional or alternative software in the MMS at any time during the Contract Term.

(2) The Contractor shall use the MMS to record, monitor, and report on all Vessel and Non-Revenue Vehicle maintenance, inspections, parts inventory and utilization, fueling, and repair activities. In addition, the Contractor shall use the MMS to record and report on warranty repair information in accordance with Section 12(b) of this Agreement. The MMS shall be directly interfaced to the Regional Transit Authority's computer system. Within forty-eight (48) hours after work order completion, the Contractor shall enter all of the required data into the MMS system.

(k) Applicable Codes and Regulations. -- The Contractor shall be responsible for assuring that all Vessels and Non-Revenue Vehicles utilized in service under this Agreement are safe for operation on the Mississippi river or public streets and freeways and meet all requirements of the U.S. Coast Guard, Louisiana Vehicle Code, or other authorities. All parts of Vessels and Non-Revenue Vehicles and all Equipment mounted on or therein shall conform to the U.S. Coast Guard regulations, Louisiana Vehicle Safety Standards, and the Americans with Disabilities Act (ADA). Each Non-Revenue Vehicle is required to be inspected at least annually in accordance with Article XI, Chapter 154 of the New Orleans City Code. Vessels shall be inspected in accordance with the regulations of the United States Coast Guard. Results of such inspections shall be transmitted to the Regional Transit Authority, and any applicable signed certification shall be displayed or carried on the Vessels and Non-Revenue Vehicles.

(l) Permits and Fees.

(1) The Regional Transit Authority shall be responsible for initial licensing and registration fees which are specifically required by the U.S. Coast Guard, the Department of Motor Vehicles (DMV), or other governmental bodies for all Regional Transit Authority supplied Vessels and Non-Revenue Vehicles operated under this Agreement (including the cost of initial license plates). The Contractor will be responsible for all fees associated with obtaining duplicate and replacement license plates.

(2) The Contractor shall be responsible for assuring that all Non-Revenue Vehicles are equipped with a license plate and valid Inspection Certificate, and that registration and proof of insurance are on board each Non-Revenue Vehicle at all times. The Contractor shall also be responsible for the cost of replacing license plates on Non-Revenue Vehicles when necessary due to damage or wear and tear (e.g., because of chemicals used for cleaning).

(3) The Contractor shall be responsible for all parking tickets, moving violations, and fees incurred in connection with the use of any Non-Revenue Vehicle under this Agreement.

(m) Vessel, Non-Revenue Vehicle, and Equipment Repairs or Replacements -- In the event that it is necessary to make a significant replacement or repair to a Vessel, Non-Revenue Vehicle, or Equipment after the period of warranty coverage has expired, the Contractor may request that the Regional Transit Authority participate in the cost of that replacement or repair. The Regional Transit Authority will participate in such cost (by change order), or direct a third-party to perform such replacement or repair, if the Chief Executive Officer determines that: (A) the Contractor has complied with the applicable manufacturer's preventative maintenance schedule and the RTA approved Maintenance Program; and (B) the need for such replacement or repair was not due to any act or omission of the Contractor. For purposes of this paragraph, a replacement or repair is "significant" if the total cost (Equipment, materials, and labor) of that replacement or repair exceeds \$25,000.

SEC. 12 VESSEL AND NON-REVENUE VEHICLE AND EQUIPMENT WARRANTY REPAIRS

(a) Contractor Responsibility. -- The Contractor shall be responsible for the exercise and enforcement of all warranties relating to the Vessels and Non-Revenue Vehicles and all systems, components, and subcomponents thereof, and all warranties relating to the Equipment, and shall also be responsible for taking all available actions to assure that all warranty covered repairs are performed in a timely fashion.

(b) Notice of Defects. -- If the Contractor detects a defect or malfunction within the applicable warranty period, the Contractor shall promptly notify the Regional Transit Authority of the actions it is taking to enforce the warranty. Following commencement of the warranty repair process, the Contractor shall promptly notify the Regional Transit Authority of any disagreements or disputes with the Vessel, Non-Revenue Vehicle, or Equipment manufacturer or supplier regarding warranty coverage. Such notice shall include a description of the disagreement or dispute and a suggested plan for resolution. The Contractor shall also record all warranty repairs in the MMS.

(c) Training. -- The Contractor shall assure that all appropriate maintenance personnel receive a training class on warranty procedures for the Vessels and Non-Revenue Vehicles and all systems, components, and subcomponents thereof and for the Equipment.

(d) Regional Transit Authority Role. – The Regional Transit Authority agrees that it will take whatever actions may be appropriate to assist the Contractor in assuring timely warranty repairs and resolving any warranty disputes. Upon request of the Contractor, the Regional Transit Authority will directly contact the Vessel, Non-Revenue Vehicle, or Equipment manufacturer or supplier to pursue the prompt resolution of warranty issues.

(e) Deductions. -- If the Contractor fails to satisfy its obligations regarding maintenance, fails to implement and comply with its Preventive Maintenance Plan, or fails to properly exercise and enforce all warranties relating to the Vessels, Non-Revenue Vehicles, or the Equipment therein, the Contractor shall be subject to Deductions in accordance with Section 21.

SEC. 13 OPERATIONS AND MAINTENANCE FACILITIES

(a) Contractor Use.

(1) Facilities, including Ferry terminals and landings, shall be operated in accordance with the requirements of United States Coast Guard Maritime Security Requirements: Facilities, per 33 CFR Subchapter H (Part 104), which have precedence over all other requirements.

(2) The Contractor shall use the Facilities solely for the purposes of operating service and maintaining Vessels, Non-Revenue Vehicles, and Equipment under this Agreement. The Contractor's right to use the Facilities may not be transferred or assigned. The terminals and maintenance facilities shall be utilized for a public purpose consistent with Article VII, Section 14 of the Louisiana State Constitution.

(3) The Contractor shall be deemed to have a revocable license to use the Facilities during the term of this Agreement. This right shall not be construed as creating a lease (express or implied) or as giving rise to any of the legal rights or interests associated with a leasehold interest in property.

(b) Initial Inspection and Condition Upon Return; Turnover Audit.

(1) Prior to the Commencement Date, the Contractor and the Regional Transit Authority will conduct a joint inspection of the Facilities in accordance with Section 6(e) hereof to establish the overall condition of the Facilities as of the time the Contractor assumes responsibility for Ferry Service under this Agreement (the Commencement Date).

(2) Upon termination of this Agreement (for whatever reason), the Contractor shall return the Facilities (and the Equipment therein) to the Regional Transit Authority in sound physical condition, and in a clean, orderly, and well maintained condition, subject to ordinary wear and tear. At the Regional Transit Authority's discretion, a Property Condition Assessment of the Facilities may be included in the turnover audit process conducted in accordance with Section 11 at the end of the Contract Term. Any expenses of repairing, maintaining, or cleaning the Facilities or the Equipment therein in order to assure that both meet the conditions in this paragraph shall be borne by the Contractor.

(c) Duty to Maintain.

(1) The Contractor shall be responsible for all maintenance and non-significant repair of the Facilities (including all Equipment and materials therein) as well as the replacement of components at the Facilities, except as provided for in this Section. The Contractor shall maintain the Facilities in a clean and orderly condition at all times during the Contract Term, and shall conduct all maintenance, non-significant repair, and cleaning of the Facilities at its sole expense and in compliance with the terms of the Facility Maintenance Manual and its approved Facility Maintenance Plan. The Contractor shall return the Facilities to the Regional Transit Authority upon the termination of this Agreement, or on an earlier date if applicable, in a condition that meets the standards set forth in subsection (b)(2) hereof.

(2) The Contractor shall not make any structural modifications to the Facilities without the Regional Transit Authority's prior written Approval.

(3) The Contractor shall, at its sole expense, repair, maintain in good condition, and replace (as necessary) the Equipment used in the Facilities. The Contractor shall maintain all Equipment in accordance with the manufacturer's preventative maintenance program. All replacements made by Contractor shall be of like size, kind, and quality to the items replaced, as such items existed when originally installed, and shall be subject to the Regional Transit Authority's Approval. Replacement Equipment and materials shall be from the OEM or be better or equal in quality and service. The Regional Transit Authority reserves the right to reject the use of any after-market product that the Regional Transit Authority finds is not equal or better in quality or service to the OEM product.

(4) In the event that it is necessary to make a significant replacement of capital Equipment in the Facilities after the period of warranty coverage of that Equipment has expired, or necessary to make significant repairs to the Facilities, the Contractor may request

that the Regional Transit Authority participate in the cost of that replacement or repair. The Regional Transit Authority will participate in such cost (by change order), or direct a third-party to perform such replacement or repair, if the Chief Executive Officer determines that: (A) the Contractor complied with the applicable manufacturer's preventative maintenance schedule and RTA approved Maintenance Plan; and (B) the need for such replacement or repair was not due to any act or omission of the Contractor. For purposes of this paragraph, a replacement or repair is "significant" is the total cost (Equipment, materials, and labor) exceeds \$25,000.

(d) Inspections and Repairs. – The Regional Transit Authority shall have the right but not the obligation, upon giving Contractor reasonable notice of the Regional Transit Authority's election to do so, to make repairs or perform maintenance or replacements on behalf of and for the account of Contractor. The Contractor shall, upon demand, pay to the Regional Transit Authority the cost and expenses incurred by the Regional Transit Authority's performance on behalf of Contractor.

(e) Environmental Requirements.

(1) During the Contract Term, the Contractor shall be responsible for the proper handling, use, storage, and disposal of all waste oil and Hazardous Materials produced or utilized at the Facilities, and shall comply with all applicable Federal, State, and local laws, regulations and requirements.

(2) The Regional Transit Authority shall provide the Contractor with an environmental audit of the Facilities as of the date the Contractor commences operations therefrom.

(3) The Contractor shall, at its sole expense, conduct an environmental audit of the Facilities, prepared by an independent certified environmental engineer, immediately prior to the end of the Contract Term. The Regional Transit Authority shall have the right to select the person or firm that will perform such audit. The Contractor warrants that it will return the Facilities to the Regional Transit Authority in compliance with all Federal, State, and local environmental laws, regulations, and requirements, and that it will take all remedial actions necessary to remove any Hazardous Materials from the Facilities that are present at the Facilities due to acts or omissions of the Contractor or that otherwise result from any occurrence during the Contract Term.

(4) The Contractor will not be responsible for pre-existing Hazardous Materials (those in existence on or before the Commencement Date) at the Facilities that are documented in the environmental audit provided by the Regional Transit Authority under paragraph (2) of this subsection provided that the Contractor shall be responsible for any negligent handling, use, or disposal of such pre-existing Hazardous Materials.

(5) In this Section, the term “Hazardous Materials” includes flammable, explosive, or radioactive materials, chemicals, hazardous wastes, toxic wastes or materials, any petroleum products or derivatives deemed hazardous by Federal, State, or local law, and any other material or substance defined as a “hazardous substance”, “hazardous waste”, or “hazardous material” under applicable Federal or State statute or regulations.

(f) Warranties.

(1) The Contractor shall be responsible for the exercise and enforcement of all warranties related to the Facilities and the Equipment therein. The Contractor shall exercise due diligence in monitoring all warranties relating to the Facilities and Equipment, and shall conduct appropriate inspections prior to the end of all warranty periods.

(2) The Contractor shall promptly notify the Regional Transit Authority of any actions it takes to enforce such warranties and of any disputes regarding warranty coverage. The Contractor may not waive any such warranties without the Regional Transit Authority’s prior written Approval.

(g) Deductions. -- If the Contractor fails to satisfy its obligations regarding the maintenance of the Facilities, fails to implement and comply with its Facility Maintenance Plan, fails to comply with the Facility Maintenance Manual, or fails to properly exercise and enforce all warranties relating to the Facilities and the Equipment therein, the Contractor shall be subject to Deductions in accordance with Section 21.

SEC. 14 MATERIALS AND EQUIPMENT REQUIREMENTS

(a) General. -- The Contractor shall be responsible for the proper maintenance and repair of all materials and Equipment used to provide services under this Agreement.

(b) Communications Equipment.

(1) (A) The Regional Transit Authority will provide a two-way mobile communications system in each Vessel and Regional Transit Authority-provided Non-Revenue

Vehicle and will pay the airtime costs of such system. The Regional Transit Authority will also provide portable radios to assist in communications between Vessels, Non-Revenue Vehicles, the Facilities, supervisory personnel, Regional Transit Authority, and U.S. Coast Guard (or other authorities) in a communication network. The Regional Transit Authority shall be responsible for the air time costs of such portable radios.

(B) The Contractor shall be responsible for maintaining all communications and radio systems in good operating condition, in accordance with applicable maintenance standards and procedures, and for making any necessary repairs.

(2) Any re-installation of radios or installation of new radios in Vessels or Regional Transit Authority-provided Vehicles will be according to the Vessel or Non-Revenue Vehicle manufacturer's recommendations and shall be subject to the Regional Transit Authority Approval.

(c) Fare Collection Equipment.

(1) The Regional Transit Authority will provide a complete farebox and related fare collection Equipment, and other necessary Equipment for collecting fare revenues and ridership data from the fareboxes.

(2) The Contractor shall repair and maintain the fareboxes and all related fare collection Equipment to OEM Standards. Fareboxes shall at all times accept fare media supplied by the Regional Transit Authority. Fare media will be determined to be fully functional when accepted/processed at a 97 percent acceptance level by the test farebox maintained by the Regional Transit Authority. Any failure of a farebox to accept fully functional media will be considered to be a Contractor farebox malfunction.

(3) The Contractor shall be responsible for assuring that the fare collection Equipment is functional at all times (other than during maintenance). In the event fare collection Equipment is not functional and repairs cannot be completed within twenty-four (24) hours, the Contractor shall submit a report to the Regional Transit Authority that tracks the maintenance efforts. This maintenance report shall include: (A) the reason(s) why the Equipment is not functional; (B) the reason(s) why repairs could not be completed; and (C) the anticipated date the Equipment will again be functional.

(4) The Contractor shall also be responsible for: (A) the proper operation, and maintenance of all diagnostic Equipment; (B) training employees on the use of such

Equipment; (C) probing (downloading ridership data) and collecting fare revenue at the end of daily revenue operation on every Vessel used; and (D) ensuring that the data received is accurate and timely.

(5) The Contractor shall secure keys to fare collection Equipment at all times through the use of an Electronic Key Management System provided and monitored by the Regional Transit Authority. The Contractor shall report lost or misplaced keys to the Regional Transit Authority immediately upon discovery. The Regional Transit Authority reserves the right to rekey, in its sole discretion and at the Contractor's expense, fare collection Equipment (fareboxes, receivers, vaults, cashboxes, etc.) whenever a key has been lost or misplaced.

(d) Surveillance System Equipment.

(1) The Regional Transit Authority provides a surveillance system and related surveillance equipment (collectively "Surveillance System"). The Regional Transit Authority will also provide other necessary Equipment for monitoring and managing the Surveillance System.

(2) The Contractor shall repair and maintain the Surveillance System and all related surveillance Equipment to OEM Standards.

(3) The Contractor shall be responsible for assuring that the Surveillance System is functional at all times (other than during maintenance). In the event any element of the Surveillance System is not functional and repairs cannot be completed within twenty-four (24) hours, the Contractor shall submit a report to the Regional Transit Authority that tracks the maintenance efforts. This maintenance report shall include: (A) the reason(s) why the specific Surveillance System equipment is not functional; (B) the reason(s) why repairs could not be completed; and (C) the anticipated date such equipment will again be functional.

(4) The Contractor shall also be responsible for: (A) the proper operation and maintenance of all diagnostic Equipment; and (B) training employees on the use of such Equipment.

(e) Tires. -- The Contractor shall be responsible for providing (through purchase or lease) all tires and spares for all Non-Revenue Vehicles.

(f) Destination Signs. -- The Contractor shall perform required maintenance to ensure constant display on all Vessel destination signs. The Contractor shall from time to time

revise destination sign readings to reflect route changes or other relevant service information, as specified in writing or as provided electronically by the Regional Transit Authority.

(g) Spare Parts and Supplies.

(1) At its sole expense, the Contractor shall provide, and maintain stores of, spare parts, supplies, and lubricants necessary for the orderly and timely maintenance and operation of Vessels and Non-Revenue Vehicles and for other Equipment and systems used to provide the service, at all times during the Contract Term, including the Option Years. The Contractor shall properly store and dispose of all materials, without limitation, required in the operation of the services under this Agreement.

(2) At the termination of this Agreement, for whatever reason, the Contractor shall offer to sell the spare parts and supplies to the New Contractor for their fair market value or for such other price as may be negotiated by the parties.

(h) Replacement Materials and Equipment. -- The Contractor shall use replacement materials and Equipment from the OEM or materials and Equipment that are better or equal in quality and service.

SEC. 15 INVENTORY REQUIREMENTS

(a) Initial Inventory. – The Regional Transit Authority shall provide the Contractor with an initial inventory of Equipment, tools, and other property to be used to provide services under this Agreement. The initial inventory may be added to by the Contractor, and the inventory list updated accordingly, during the Contract Term.

(b) Obligations of Contractor. – Once provided the initial inventory during the transition and start-up period, and upon the Commencement Date, the Contractor acknowledges receipt of initial inventory. The Contractor shall be responsible for returning to the Regional Transit Authority, at the termination of this Agreement, property and Equipment of equivalent type, value (as of the date acquired), and condition as that identified in the updated inventory list, subject to normal wear and tear.

(c) Final Inventory. – The Regional Transit Authority shall conduct a final inventory during the last month of the Contract Term. If any property or Equipment is determined, on the basis of a comparison of the updated inventory list to the final inventory list, to be missing, damaged, otherwise unavailable for use, or in a condition that is in excess of ordinary wear and tear, the Contractor shall be responsible for either replacing such property or

Equipment or compensating the Regional Transit Authority for its replacement value. The Regional Transit Authority may deduct any amount due for the replacement of property or Equipment from payments due to the Contractor. If the amount due for replacement exceeds the amount of the payments due, the Contractor shall pay the Regional Transit Authority that excess amount within thirty (30) Days after notification from the Regional Transit Authority.

SEC. 16 COMPUTER AND TECHNOLOGY REQUIREMENTS

(a) Regional Transit Authority-Supplied Computer Equipment. – The Regional Transit Authority will supply computers to run Regional Transit Authority mandated software applications in support of services provided under this Agreement. The Contractor shall be responsible for the proper care and handling of all Regional Transit Authority provided computer and network Equipment. The Contractor may not load any additional software on Regional Transit Authority-owned computers. The Contractor may not move or relocate any Regional Transit Authority-owned computers without the express prior written Approval of the Regional Transit Authority's IT Department.

(b) Regional Transit Authority Network. -- The Regional Transit Authority will provide a network that will be maintained by the Regional Transit Authority. With the Regional Transit Authority's Approval, the Contractor may establish a separate network at the Contractor's expense provided that all records relating to operations and maintenance of the Regional Transit Authority's transit services shall be accessed by the Regional Transit Authority as public records and subject to the Louisiana Public Records Act (LA.R.S.44.1 et seq.).

(c) Software. – Regional Transit Authority-owned computers at the Facilities will be equipped with the necessary software applications. No additional software may be loaded on Regional Transit Authority-owned computers by the Contractor without prior Approval of the Regional Transit Authority. The Contractor is responsible at its sole expense for ensuring all Vehicle diagnostic software is up to date, complete, and properly licensed.

(d) Facsimile. -- The Contractor shall also provide and maintain on-site operating facsimile machines.

(e) Telephone System. – The Contractor shall be responsible for all costs of operating and maintaining the telephone system supplied by the Regional Transit Authority and shall utilize that system to meet all of its obligations under this Agreement.

SEC. 17 FARE COLLECTION

(a) General. -- The fare structure and accepted fare media (in addition to cash fares) shall be established by the Regional Transit Authority, and may be modified by the Regional Transit Authority during the Contract Term.

(b) Contractor Responsibility.

(1) The Contractor shall conduct training so that relevant staff will be aware of and adhere to the fare structure to ensure the proper collection and recording of fares of accepted fare media.

(2) The Regional Transit Authority may require that all fare media coupons, tickets, and transfer slips collected by the Contractor staff be turned in daily to the General Manager. The Contractor shall require relevant staff to log on to the farebox using the Control Unit (Operator Control Unit/Driver Control Unit) before starting any Revenue Service and log off at the end of Revenue Service. Information shall be reported as required under this Agreement.

(c) Farebox Data. -- The Contractor shall probe and vault daily each and every Vessel upon its return from Revenue Service and/or before any maintenance is performed on a Vessel. The Contractor shall assure that all revenues collected are properly secured (placed in collection vaults) and that ridership data/information is properly downloaded to the fare collection system computer providing accurate and timely ridership data/information.

(d) Farebox Receipts. -- The Contractor shall assure that total farebox revenues (cash receipts) are transferred to a Regional Transit Authority money room for accounting by staff or a vendor designated by the Regional Transit Authority. Such revenues shall be reported to the Regional Transit Authority. Fare collection training shall be conducted by the Contractor, and proper fare collection shall be enforced by all project personnel.

(e) Records and accounts. -- The total amount of farebox revenue delivered must equal, at a minimum, the farebox revenues actually deposited. The Contractor shall be held accountable for any variance or discrepancies between the farebox revenues reported. Delivery of greater than amounts reported on the reports will be deemed correct, however deliveries of less than amounts reported on the reports will be considered a shortage for which the Contractor shall be held accountable. All delivery shortages greater than 0.5 percent (five tenths

of one percent) will be deducted from the Contractor's monthly invoice in accordance with Section 8 hereof.

(f) Security of Fare Collection System.

(1) The Contractor shall provide a written set of fare collection system security policies, procedures, and practices to the Regional Transit Authority, for its review and Approval, as set forth in Section 3(c). Such fare collection security policies, procedures, and practices shall conform to accepted public transit industry standards and best practices as articulated by the American Public Transportation Association (APTA).

(2) The Regional Transit Authority reserves the right, following consultation with the Contractor, to establish, update, modify, and/or adjust security policies, procedures, and practices for the handling, storage, control, and counting of farebox receipts or to conduct actual cash counts to verify system accuracy and/or system security. This may include but is not limited to counting daily farebox receipts prior to delivery of these receipts to the bonded collection/deposit provider for verification against amounts actually deposited.

(3) If the fare collection security system is breached internally, by an employee or subcontractor of the Contractor, or by any other person for whom the Contractor is legally or contractually responsible, the Contractor shall (A) reimburse the Regional Transit Authority for the full amount of fare receipts lost, as verified by fare collection system reports, plus the costs associated with any resulting investigation; (B) fully cooperate in any investigation process involving the loss, including, but not limited to, providing all pertinent documentation and information to the Regional Transit Authority; (C) cooperate with local law enforcement efforts to arrest and prosecute any employee or subcontractor of the Contractor, or any other person for whom the Contractor is legally or contractually responsible, who intentionally breaches the fare collection security system; and (D) reimburse the Regional Transit Authority for any damage or repairs necessary to make the fare collection security system whole.

SEC. 18 SAFETY AND SECURITY

(a) Contractor Responsibility. -- The Contractor shall be responsible for the safety and security of the passengers and the Facilities and Equipment provided by the Regional Transit Authority for the Contractor's use. The Contractor shall work cooperatively with Regional Transit Authority staff, other contractors, and local, State and Federal representatives in developing and implementing security procedures described in this Section. The Contractor must follow any

applicable U.S. Coast Guard and Federal Transit Administration rules and regulations regarding the safety and security of Vessels, terminals, and landing barges.

(b) Systems Security and Emergency Preparedness Plan.

(1) As described in Section 3(c), the Contractor shall develop and submit to Regional Transit Authority a Systems Security and Emergency Preparedness Plan (SSEPP), Guidelines for Transit Threat Management, a Continuity of Operations Plan, a plan to implement the Regional Transit Authority's Hurricane Preparedness Plan, an Emergency Response and Operations Plan and a plan to comply with the Regional Transit Authority's System Safety Program Plan/Agency Safety Plan set forth in Exhibit F of this Agreement. The Contractor shall train its employees on all such plans, and shall update such plans as necessary and appropriate over the Contract Term. The Contractor shall comply with all such plans and with all State, local, and Federal requirements for safety and security.

(2) The Contractor's Safety Manager shall develop and coordinate annual training plans with Regional Transit Authority's staff assigned to safety responsibilities, and shall coordinate with Regional Transit Authority to participate as members of the Regional Transit Authority Transit/Contractor Safety and Security Advisory Working Group.

(c) Personnel.

(1) The Contractor, as part of its Staffing Plan, shall provide at least one staff person dedicated to safety, system security and emergency preparedness. Such person shall have sufficient training and expertise to carry out and manage the Contractor's safety and security obligations under this Agreement.

(2) The Contractor's dedicated staff person shall attend, on behalf of the Contractor, monthly safety group meetings and special meetings with the Regional Transit Authority.

(3) The Contractor shall be required to participate in activities and exercises in support of the Regional Transit Authority's efforts to meet and prepare for Federal, State, or local emergencies. The Contractor's dedicated staff person shall coordinate these events with the designated Regional Transit Authority staff and additional Contractor staff, and shall arrange for the use of appropriate Regional Transit Authority assets if needed.

(d) Training Program. -- The Contractor's Training Program shall provide for safety and security training of all managers, supervisors, and front line employees in accordance with Federal, state and local requirements and recommendations, and shall include:

- (1) training in emergency management, incident response, counter-terrorism, improvised explosive devices (IEDs) and weapons of mass destruction (WMD);
- (2) personal security training (e.g., Drug Free Work Place Initiatives, Amber Alert and Community Safe House Programs, Employee Assistance Programs, and Workplace Violence Prevention and Awareness Programs);
- (3) safety/OSHA related training (e.g., first aid, personal protective Equipment, etc.); and
- (4) refresher and/or re-training on an annual basis.

The Contractor shall maintain documentation of training (e.g. sign in sheets, certificates, signed acknowledgements of training), and shall maintain such documentation in a separate training file and provide it to Regional Transit Authority upon request.

(e) Emergencies.

(1) The Regional Transit Authority serves as a critical component of the New Orleans City Assisted Evaluation Plan and will provide appropriate resources to fully participate in its obligations under the plan. Upon verbal or written authorization from the Regional Transit Authority, the Contractor shall respond to emergency situations within its service area with Contractor personnel and Regional Transit Authority-owned Vehicles. In the event of a major emergency or natural disaster, such as a fire, flood, or man-made catastrophe, the Contractor shall make labor, management, transportation, and communications resources available to the extent feasible for emergency assistance.

(2) The Contractor shall be responsible for the safety of its personnel and for any worker's compensation claims that might result from performance of emergency service.

(3) The Contractor shall not be responsible for damage to Regional Transit Authority-owned Vessels or vehicles that results directly from any incident outside of the control of the Contractor while it is performing emergency services as authorized or directed by the Regional Transit Authority.

(f) Access to the Facilities.

(1) The Regional Transit Authority shall provide Facility keys and an access control system that will be used to develop badges and program building access devices, to the Contractor, and shall determine the appropriate access control system for the Facilities and the Regional Transit Authority's other property.

(2) The Regional Transit Authority shall be responsible for the secure distribution and tracking of all Vessel, Non-Revenue Vehicle, and Facility access devices provided by the Regional Transit Authority, and for issuing badges to Contractor employees, subcontractors, and vendors (as directed by the Regional Transit Authority). The Regional Transit Authority shall be responsible for key and badge control, and shall maintain a key issuance log and badge issuance log and any associated documentation, which shall be provided to the Regional Transit Authority upon request. The Regional Transit Authority shall be responsible for providing written notice to its employees, contractors, visitors, and vendors regarding the policies, procedures, and responsibilities associated with being issued a Regional Transit Authority key and/or Regional Transit Authority badge. The Regional Transit Authority shall maintain this information with the key and badge log and shall make such information available to the Contractor upon request.

(3) The Regional Transit Authority shall be solely liable and responsible for any expenses which result, as determined by the Regional Transit Authority in its discretion, from inadequate key or badge control and require the Regional Transit Authority to re-key or replace access control items. The Regional Transit Authority shall also be responsible for replacing any damaged related Equipment. Contractor shall notify the Regional Transit Authority immediately to report damaged Equipment.

(g) Audits.

(1) In April of each year of the Contract Term, the Contractor shall conduct a self-audit on safety, security, and emergency preparedness on an annual basis. These audits/monitoring will be based upon Federal, State, and local programs and guidelines, audit results, and the APTA best practices. The Contractor shall also participate in periodic Regional Transit Authority audits and monitoring and shall also assist the Regional Transit Authority during any Federal, state, or local safety or security audits.

(2) The Regional Transit Authority may conduct site visits of the Facilities at any time during the Contract Term for purposes of audits and monitoring. The Contractor shall

make available any and all records, files, logs and associated documentation to the Regional Transit Authority's designated representatives as requested.

(h) Reporting. -- The Contractor shall be responsible for providing the following reports to the Regional Transit Authority relating to system safety and security:

(1) Monthly. -- (A) Security and Emergency Incident Report/Trend Analysis; (B) NTD Safety and Security Report; (C) safety meeting agenda, including corrective actions taken as a result of items identified through the safety committee; (D) Vandalism/Incident Tracking Report; (E) training sessions completed related to transit security; and (F) OSHA Hazard Analysis. In addition, the Contractor shall make the minutes of safety meetings available to Regional Transit Authority at the Facility.

(2) Annually. -- (A) Year End Trend Analysis; and (B) other reports as required by Regional Transit Authority or by Federal, state, or local agencies.

SEC. 19 MARKETING AND ADVERTISING

(a) Regional Transit Authority Rights and Responsibilities. -- The Regional Transit Authority shall provide for public relations, media relations, marketing activities and advertising services.

(b) Contractor Responsibility. -- The Contractor shall cooperate in the marketing and advertising related to Regional Transit Authority services (such as through the installation and removal of all interior and exterior signage and decals, including advertising signs, rider alerts, newsletters, and bus scheduling information) at no additional expense to the Regional Transit Authority. The Contractor may not use the Regional Transit Authority name or logo without the Regional Transit Authority's prior written consent.

(c) Riders' Guides. -- The Contractor shall be responsible for ensuring proper care, protection, handling, and maintenance of the Regional Transit Authority Riders' Guides, and other printed schedule materials, and for ensuring that there is an adequate supply of Riders' Guides onboard each Vessel for the period of time designated by the Regional Transit Authority. Riders' Guides or other printed schedule materials shall be used solely for the intended purpose of providing information to passengers, and shall not be used for other purposes (such as cleaning, seat cushions, etc.).

(d) Communications with the Media. -- All communications with the media shall be the sole responsibility of the Regional Transit Authority. The Contractor and its employees

shall not engage the media as a spokesperson for the Regional Transit Authority. In addition, the Contractor and its employees shall not speak on behalf of the Regional Transit Authority in any online forum or social media site, at official public meetings, or to members of the press. The Contractor will limit its public engagement with customers to answering customer questions on-board Regional Transit Authority Revenue Vehicles, at bus stops, or as part of its official customer comment system.

(e) Endorsement Policy. – The Contractor and its subcontractors may not use the Regional Transit Authority’s name, logo, or images in vendor promotional materials, written or oral endorsements, customer profiles, online information, or sales collateral unless specifically authorized in writing by the Chief Executive Officer. This provision does not prohibit the Contractor from using the Regional Transit Authority as a reference in responding to a request for proposals or other procurement solicitation, provided that the Contractor shall coordinate all requests for references with the Chief Executive Officer.

SEC. 20 SERVICE CHANGES

(a) General. -- Changes to the services provided under this Agreement or the Scope of Work may only be made by written change notification from the Regional Transit Authority to the Contractor in accordance with this Section, except in cases of a declared emergency by the Chief Executive Officer. The Contractor shall be liable for all costs resulting from any Service Change undertaken that was not properly ordered or approved in writing and signed by the Chief Executive Officer. Oral Service Change orders are not permitted.

(b) Allowable Service Changes. -- Allowable Service Changes may include, but are not limited to: adding or deleting segments of routing; extending, deleting, or adding routes or parts of routes; reallocating, decreasing, or increasing Revenue Services, Platform Service Hours, Revenue Service Miles, or the frequency of service; adding commuter express service or routes, or other types of new services needed to meet changing transit demand and market conditions; or modifying requirements or scope relating to the maintenance of Vessels, Non-Revenue Vehicles, or the Facilities.

(c) Process for Change Orders.

(1) Any Service Change proposed by the Regional Transit Authority shall be transmitted to the Contractor in writing, identifying the change and specifying the effective date. Within fifteen (15) Days after receipt of a written Service Change notice from the Regional Transit Authority, the Contractor shall provide the Regional Transit Authority a written response

identifying the impact of such change on operations, estimating any resulting cost increase or savings, and identifying any feasibility problems the Contractor believes would be created by the proposed Service Change.

(2) Upon agreement of the Parties on a proposed Service Change, the Regional Transit Authority will issue a bilateral Change Order, which will be executed by both Parties. The Contractor shall then proceed to implement the Service Change within fifteen (15) calendar days after execution of the Change Order or within such other period of time as the Regional Transit Authority may specify in the Change Order. If the Parties are unable to agree on a proposed Service Change within ten (10) Days after the Contractor's written response under paragraph (1), the Regional Transit Authority may issue a unilateral Change Order, and any dispute regarding such Change Order shall be resolved in accordance with the disputes clause in Section 29 of this Agreement. Notwithstanding the pendency of any such dispute, the Contractor shall proceed, within twenty (20) Days after issuance of such unilateral Change Order, to implement the Service Change as ordered by the Regional Transit Authority.

(d) Changes in Platform Service Hours. -- The Contractor agrees that Regional Transit Authority may, through the Service Change process, increase or decrease the total number of Ferry Platform Service Hours by ten (10) percent from the Base Year without renegotiation of the Ferry Platform Service Hourly Rate, Lump Sum for Indirect Costs and Insurance, and Fixed Fee. A proposed increase or decrease in the total number of Ferry Platform Service Hours in excess of ten (10) percent from the Base Year shall give rise to negotiations between Regional Transit Authority and the Contractor, which may result in the Ferry Platform Service Hourly Rate, Lump Sum for Indirect Costs and Insurance, and/or Fixed Fee increasing, decreasing, or remaining the same.

(e) Changes in Law or Regulations. -- In the event of an unanticipated and exceptional change in applicable Federal, State, or Local laws or regulations after the date of execution of this Agreement that results in additional costs of providing operations and maintenance services hereunder, the Contractor may request an adjustment in its Ferry Platform Service Hourly Rate, Lump Sum for Indirect Costs and Insurance, and/or Fixed Fee by submitting a written request to the Regional Transit Authority, supported by appropriate documentary justification. The Regional Transit Authority agrees to review, discuss, and consider in good faith any request of the Contractor under this paragraph, but the decision as to whether or not to agree to such request shall be in the sole discretion of the Regional Transit Authority.

(f) Contractor Suggestions. -- The Contractor may suggest alternatives to any Service Changes proposed by Regional Transit Authority, and may also propose Service Changes or operating efficiencies it believes are appropriate for more efficient or improved services under this Agreement.

SEC. 21 KEY PERFORMANCE MEASURE ACHIEVEMENT

(a) Assessment of Deduction and Awarding of Incentives.

(1) In order to promote compliance with schedule and other performance requirements, the Regional Transit Authority shall have the right, in its discretion, to assess and collect Deductions in accordance with the following provisions of this Section. In addition, to acknowledge outstanding performance, the Regional Transit Authority shall award Incentives in accordance with the following provisions of this Section provided that the amount of awarded Incentives for any given month shall not exceed the Deductions assessed for that month.

(2) The Regional Transit Authority intends to assess Deductions and award Incentives primarily on a monthly basis in accordance with the Key Performance Measures set forth in subsection (b) of this Section. Assessment and award will be based on information obtained through the Reports provided pursuant to Section 22 of this Agreement, Vessel and Non-Revenue Vehicle and Facility inspections, ride checks, visual observations, and such other means as Regional Transit Authority deems appropriate.

(3) The Contractor understands and agrees that if it fails to achieve the Key Performance Measures set forth in subsection (b) of this Section, the Regional Transit Authority will suffer damages which cannot be quantified as of the date of execution of this Contract. The Contractor hereby agrees to pay (or to have deducted from its invoices) the Deductions amounts stated in this Section. The Contractor further agrees that amounts payable under this Section are in the nature of liquidated damages and are not a penalty, and that such amounts are reasonable in light of the actual or anticipated harm incurred and the difficulties of proof of actual loss.

(4) The Contractor shall have the opportunity to contest any Deductions assessed on the grounds set forth in subsection (c) of this Section, but this opportunity shall not affect the right of the Regional Transit Authority to deduct the amounts from the monthly or annual amount, as appropriate, due the Contractor, pending resolution of the dispute.

(5) The Regional Transit Authority reserves the right to adjust the Incentives and Deductions described in Section 21(b) annually based on the All Urban Consumer Price Index.

(6) For purposes of initial implementation of services under the Agreement, the Regional Transit Authority will review the Contractor's performance during each of the first six (6) months of operations and indicate the amount of the Deductions (if any) attributable to the Contractor's performance for each of those months. However, the Regional Transit Authority will forego assessing Deductions for the Contractor's performance during those months in accordance with the following schedule:

(i) for the first and second months of operations, the Regional Transit Authority will not impose assessed Deductions;

(ii) for the third and fourth months of operations, the Regional Transit Authority will impose 33 percent of applicable Deductions;

(iii) for the fifth and sixth months of operations, the Regional Transit Authority will impose 66 percent of applicable Deductions; and

(iv) for the remaining term of the Agreement, the Regional Transit Authority may impose 100 Percent of all applicable Deductions.

Notwithstanding the reduced level of Deductions that may be imposed during the first six (6) months of service operations, the full value of the Deductions that could have been assessed by the Regional Transit Authority, absent this subsection, may be taken into account by the Regional Transit Authority for purposes of remedial actions (e.g., issuance of a cure notice pursuant to Section 39, Termination for Default). Notwithstanding the Regional Transit Authority's forbearance of a level of Deductions during the first six (6) months of operations, Incentives shall be awarded to the extent earned during all months of operations.

(7) RTA reserves the right to delay application of the Incentives and Deductions for any performance standard described in Section 21(b) if the RTA determines that satisfactory progress is being made towards that performance standard.

(8) RTA will create a working group with the Contractor to problem solve issues relating to the performance standards described in Section 21(b).

(b) Categories of Deductions and Incentives. – The Regional Transit Authority may assess Deductions and award Incentives on the following basis:

(1) On-time Performance – Following a 180-day period, the following Deductions and Incentives shall be assessed and/or awarded if the On-time performance does not meet, or surpasses the thresholds.

(i) The Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made for Contract Months during the first Contract Year (after 180 days from Commencement Date).

Threshold	Deduction
86% - 90% of trips are On-time.	\$1,000, per route, per Contract Month.
81% - 85% of trips are On-time.	\$2,000, per route, per Contract Month.
80% or fewer trips are On-time.	\$5,000, per route, per Contract Month.
Threshold	Incentive
95% or more trips are On-time.	\$10,000, per Contract Month.

(ii) The Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made during the second Contract Year.

Threshold	Deduction
88.5% - 92.5% of trips are On-time.	\$1,000, per route, per Contract Month.
84.4% - 88.4% of trips are On-time.	\$2,000, per route, per Contract Month.
84.3% or fewer trips are On-time.	\$5,000, per route, per Contract Month.
Threshold	Incentive
96% or more trips are On-time.	\$10,000, per Contract Month.

(iii) The Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made subsequent to the second Contract Year.

Threshold	Deduction
91% - 95% of trips are On-time.	\$1,000, per route, per Contract Month.
86% - 90% of trips are On-time.	\$2,000, per route, per Contract Month.

85% or fewer trips are On-time.	\$5,000, per route, per Contract Month.
Threshold	Incentive
97% or more trips are On-time.	\$10,000, per Contract Month.

(2) Missed Trip -- The following Deductions shall be assessed in each Contract Month if more than 3.0% of Trips in a route in a Contract Month are measured as Missed Trips. The Deductions shall follow the thresholds and amounts below.

Threshold	Deduction
96.0% - 96.9% of all trips are not Missed Trips.	\$1,000, per route per Contract Month.
95.0% - 95.9% of all trips are not Missed Trips.	\$2,000, per route per Contract Month.
Lower than 95.0% of all trips are not Missed Trips.	\$5,000, per route per Contract Month.

(3) Last Trip of the Day – The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

Any Missed Trip is the last Trip of the day on that route. The Deduction shall be \$2,000 per occurrence.

(4) Service Interruptions – Any Service Interruption of Ferry Service will result in a \$5,000 Deduction per occurrence.

(5) Preventable Accidents – Any Preventable Accident will result in a \$10,000 Deduction per occurrence.

(6) ADA Requirements -- The following Deductions shall be assessed if the following incident occurs:

Contractor is found to be non-compliant with ADA requirements or the Regional Transit Authority’s ADA policies. These include putting a Vessel into service with an inoperable ramp, or relevant securement devices, or where staff fails to accommodate a passenger request to board using accessibility features. The Deduction shall be \$500 per occurrence.

(7) Volume of Customer Complaints -- The following Deductions and Incentives shall be assessed for:

The number of customer complaints received in which the Contractor or its Staff is alleged to have failed to perform the required service appropriately. The Authority will not consider arguments pertaining to complaint validity, as embedded within this standard is an allowance for potentially invalid complaints.

The Deductions shall follow the thresholds and amounts below, applicable in each Contract Month.

Threshold	Deduction
Ferry – more than 2.0 complaints per 100,000 Boardings	\$1,000

The Incentives shall follow the threshold and amount below, applicable in each Contract Year.

Threshold	Incentive
Complaints decrease at least 20.0% year-over-year, and decrease quarter-over-quarter.	\$2,500

(8) Processing of Customer Complaints -- The following Deductions shall be assessed if the following incident occurs:

Contractor fails to comply with the Complaint Processing Procedure. The Deduction shall be \$100 per occurrence, and may be applied for each Day thereafter the relevant information is not provided to the Regional Transit Authority.

(9) Contractor Staff Conduct -- The following Deductions shall be assessed if the following incident occurs:

Contractor Staff fails to comply with the Regional Transit Authority’s standards set forth in the Regional Transit Authority Uniform Policy and Customer Service Guidelines regarding appearance, conduct, and communicating to customers or the public. The Deduction shall be \$250 per occurrence, and may be applied maximum once per day per Staff.

(10) Vessel & Facility Cleanliness -- The following Deductions shall be assessed if the following incident occurs:

Any Vessel or Facility which is the responsibility of the Contractor fails to comply with the Regional Transit Authority’s standards regarding appearance and sanitation Regional Transit Authority Vehicle Condition

Policy. The Regional Transit Authority reserves the right to direct the Contractor to replace Vessels which are in-service which are observed to be excessively non-compliant to the appearance and cleanliness standards. The Deduction shall be \$250 per Vessel or Facility, and may be applied maximum once per day.

(11) Vessel Inspection -- The following Deductions shall be assessed if the following incident occurs:

Any non-compliance with respect to a regulatory safety inspection conducted by the Regional Transit Authority, U.S. Coast Guard, and/or law enforcement agencies. The Deduction shall follow the thresholds and amounts below.

Threshold	Deduction
Non-compliance resulting in anything other than the in-service Vessel being removed	\$500
Non-compliance resulting in the Vessel being removed due to unsatisfactory safety rating.	\$1,000, and may be applied for each day thereafter the Vessel remains out of service.

(12) Vessel Fit-for-Use -- The following Deductions shall be assessed if the following incident occurs:

An in-service Vessel is found to be not Fit-for-Use. The Deduction shall be \$250 per occurrence, in addition to the trip on which the Vessel is in the midst of to be a Missed Trip. The Deduction may be applied for each day thereafter the Vessel remains not Fit-for-Use.

(13) Fare Revenue Collection -- The following Deductions shall be assessed in each Contract Month, if the following incident occurs:

The proportion of fare collection which is the responsibility of the Contractor in actual terms, is below 99%. The Deduction shall follow the thresholds and amounts below, measured as (actual fare revenue collected / Ridership Revenue) in each Contract Month.

Threshold	Deduction
98.1% - 99.0%	\$5,000
97.1% - 98.0%	\$10,000
97.0% or below	\$15,000

(14) Reporting-- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

Contractor fails to submit a Scheduled Report, with complete and accurate information as well as on an on-time basis. The Deduction shall be \$500 per occurrence, and may be applied once per week following the initial Deduction until the Scheduled Report is submitted with complete and accurate information.

(15) Compliance - Regional Transit Authority Inspection -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

An inspection by the Regional Transit Authority finds the Contractor to be in violation of applicable law requirements or the Regional Transit Authority's policies and procedures. The Deduction shall be \$1,000 per occurrence.

(16) Compliance - Regulator Inspection -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor fails to provide timely, accurate and/or complete data to the Regional Transit Authority for which it was the Contractor's responsibility, resulting in a funding source entity, permitting entity, or other regulatory body penalizing the Regional Transit Authority. The Deduction shall be the value of the penalty levied by the regulatory body and suffered by the Regional Transit Authority.

(17) Traffic Violations -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor commits a traffic or parking violation. The Deduction shall be \$1000 per occurrence, and in addition the Contractor shall be responsible for any resulting fine.

(18) Contractor Personnel Pre-Approval -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor makes changes to its Key Personnel, as identified in this Agreement, without the prior review and written approval of the Regional Transit Authority. The Deduction shall be \$50,000 per occurrence.

(19) Availability of General Manager -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor's General Manager, or an approved designate, is not Available 24/7/365 for any purposes related to the services rendered to the Regional Transit Authority under this Agreement. The Deduction shall be \$500 per occurrence, and may be applied maximum once per day.

(20) Contractor Staff Qualifications -- The following Deduction shall be assessed if the following incident occurs during the Agreement Term:

Proof of licenses, qualifications and registrations of each Contractor Staff member is not made available or provided to the Regional Transit Authority within two (2) Days of the Contractor receipt of the Regional Transit Authority's request. The Deduction shall be \$500 per occurrence, and may be applied once per week following the initial Deduction until the proof is made available or provided.

(c) Contractor Response and Defenses

(1) If the Contractor believes it has a defense to any Deductions assessed by the Regional Transit Authority, it shall provide a written response to the Regional Transit Authority within five (5) Days of receiving a notice of Deduction, setting forth the evidence or documentation in support of its defense to the assessment.

(2) The Regional Transit Authority may, in its discretion, provide the Contractor with relief (in whole or in part) from any Deduction that could have been assessed under this Section if the Contractor provides sufficient evidence or documentation to the Regional Transit Authority that the events giving rise to the Deduction in question were beyond the Contractor's control and could not have been reasonably mitigated, due to circumstance such as, but not limited to, adverse and unusual weather or traffic conditions, natural disasters, or other Force Majeure events as described in Section 41 of this Agreement.

(3) Delays which could have been reasonably anticipated due to usual conditions in any given area or any given roadway shall not be a defense to Deductions.

SEC. 22 PROJECT OPERATION RECORDS AND REPORTS

(a) Overall Responsibilities of Contractor.

(1) In order to document services under this Agreement, the Contractor shall maintain all project records as requested by the Regional Transit Authority and as required for good business practices. The project operation records are intended to provide documentation of daily operations and to serve as a database to monitor and evaluate productivity of the services provided and the service requirements and methods.

(2) The Contractor shall submit all project operation records to the Regional Transit Authority according to the reporting schedule established in this Section. The Contractor shall permit authorized representatives of the Regional Transit Authority to examine all data and records related to services upon request by the Regional Transit Authority or according to scheduled reporting periods. All service records prepared by the Contractor (and underlying data) shall be owned by the Regional Transit Authority and shall be made available to the Regional Transit Authority at its request and at no additional charge.

(3) The Regional Transit Authority reserves the right to establish a standardized reporting format with which the Contractor must comply. Reports may be requested in hard copy as well as on flash drive or by computer transfer in a format compatible with Regional Transit Authority computer hardware and software.

(b) Specific Reporting Requirements and Records. -- The Contractor shall prepare and maintain the following records and documents, and shall submit the following reports to the Regional Transit Authority:

(1) Service Reports. -- The Contractor shall submit to the Regional Transit Authority, by not later than 1:00 P.M. on each Wednesday during the Contract Term, a report indicating the actual number of total hours, Ferry Platform Service Hours, total miles, and Revenue Service Miles operated during the previous Sunday through Saturday period. The report shall also include any missed miles and hours and be subtracted from the total. Such information shall be for each route and shall be made in a format approved by the Regional Transit Authority.

(2) Daily Reports. -- The Contractor shall submit to the Regional Transit Authority not later than 1:00 p.m. on each Day during the Contract Term, in a format approved by the Regional Transit Authority, the following reports:

(A) A report of the previous day's Incomplete Scheduled Trips, early trips, and trips delayed more than 15 minutes.

(B) A copy of the Maintenance Department down Vessel and Non-Revenue-Vehicle list that includes Vessel or Non-Revenue Vehicle number, the date the Vessel or Non-Revenue Vehicle was downed, the reason the Vessel or Non-Revenue Vehicle was downed, the date the Vessel or Non-Revenue Vehicle is expected to be returned to service, and (if applicable) the reason for the delay in returning to service (e.g., parts on order). In addition, this list shall identify any Vessels or Non-Revenue Vehicles that are off-property for repair, their location, and the expected date of return.

(3) Weekly Summaries. -- The Contractor shall prepare weekly summary reports that include:

(A) The previous week's warranty recovery submittals to vendors for Vessels and Non-Revenue Vehicles under warranty.

(B) Weekly on-time performance for the previous four weeks.

(C) Weekly Preventable Accidents statistics for the previous four (4) weeks.

(D) Weekly Mechanical Service Interruptions for the previous four (4) weeks.

(E) The number of active operators and maintenance technicians employed in the provision of services under this Agreement during the previous week.

(4) Monthly Summaries. -- The Contractor shall prepare monthly summaries of the various required reports in accordance with established reporting schedules. These summaries shall include but are not limited to: route-by-route operating data, accident report, wheelchair use report, bicycle rack use report, FTE Payroll report, and other requested reports. The Contractor shall submit monthly summary reports to the Regional Transit Authority no later than five (5) Days after the end of each month.

(5) Monthly Performance Reporting. -- The Contractor shall provide the Regional Transit Authority with a Monthly Performance Report that includes all the information and data necessary to verify the invoice amount for each Contract Month pursuant to Section 8 of this Agreement. No later than ten (10) calendar days after the end of a Contract Month, the Contractor shall submit a Monthly Performance Report that includes no less than the following:

- (i) Actual arrival and departure times for all scheduled Trips.
- (ii) Actual Revenue Service Miles on all Trips, for all routes along with information on missed Revenue Service Miles.
- (iii) Actual number of Service Interruptions.
- (iv) Actual number of Preventable Accidents.
- (v) Detailed outcome of any Vessel or Non-Revenue Vehicle inspections undertaken by entities other than the Regional Transit Authority and specify whether the inspections resulted in a non-compliance infraction and/or an in-service Vessel being removed from service.
- (vi) Actual fare revenue collected.
- (vii) Actual ridership volume data.
- (viii) Detailed outcome of any traffic or parking violations, including the amount of the resulting fine.
- (ix) Actual Revenue Service Hours on all Trips for all routes.
- (x) Details on any in-service Vessel deemed not Fit-for-Use including the date in which the Vessel was taken out of service.
- (xi) Actual utility consumption amounts, for diesel fuel and gasoline, in the form of the Monthly Utility Consumption Report.

(6) Annual Performance Reporting. -- Within 40 calendar days after the end of a Contract Year, the Contractor shall provide, at a minimum, an amalgamation of the Monthly Performance Reports provided within the last Contract Year in the form of an Annual Performance Report.

(7) Passenger Complaint Reports. -- The Contractor shall document operational problems and passenger complaints (whether received directly or through the Regional Transit Authority) and describe any action taken regarding these problems or complaints. Copies of such documentation shall be input into the Customer Comment Tracking System on the day following identification of the operational problem or receipt of such passenger complaint. The Contractor shall address all passenger complaints in accordance with the complaint categories and procedures set forth in Section 23.

(8) Incident and Accident Reports. -- The Contractor shall, in accordance with the policy and process established by the Regional Transit Authority, immediately notify the Chief Executive Officer (or other appropriate Regional Transit Authority management staff if the Chief Executive Officer cannot be contacted) in the event of any Vessel or Non-Revenue Vehicle accident involving personal injury or substantial property damage or any other significant non-routine incident or event occurring in the operation of services.

(9) National Transit Database.

(A) In order to assure compliance with the annual National Transit Database (NTD) reporting requirements, the Contractor shall conduct on-board data sampling to statistically compute valid passenger mile data. The Contractor shall use additional on-board data collection personnel (who shall be a third party, and not the Vessel operator) to conduct sampling on the Vessel, and shall otherwise conduct its sampling in a manner that will assure maximum accuracy in reporting and that is consistent with the techniques described in FTA Circular 2710.1A (dated July 18, 1988). The Regional Transit Authority will provide to the Contractor a list of all Trips to be sampled at a minimum of 2 (two) weeks prior to the sample date.

(B) The Contractor shall submit the daily random sample Trip sheets, in the form provided by the Regional Transit Authority via MS Excel worksheets for each route/direction, no later than 1:00 P.M. on Wednesday for the previous Sunday through Saturday sampled Trips. The weekly NTD data shall be compiled into a weekly report/form furnished by the Regional Transit Authority via an MS Excel worksheet. The Contractor shall prepare a quarterly report of the random Trips to be submitted no later than 30 Days after the end of each quarter and also prepare an annual summary to be submitted no later than 30 Days after the end of the fiscal year.

(C) The Contractor shall be responsible for ensuring that all reported NTD data meets FTA requirements and definitions, and for maintaining the most recent NTD data collection procedures. The Contractor shall reimburse the Regional Transit Authority for the cost of the audit (or Agreed-Upon Procedures report, if performed in lieu of an audit) that contains the NTD report.

(D) As part of the NTD reports, the Contractor shall also provide to the Regional Transit Authority's designee or submit directly into the NTD reporting module, by the 15th day of each month for the preceding month, the monthly ridership activities and the safety and security reports required by FTA (as more specifically described in paragraph (16) hereof).

(10) Financial Records. -- The Contractor shall establish and maintain separate accounts of all project expenditures under this Agreement and any other relevant financial records or documents, and shall maintain bank records reflecting all farebox receipts (if applicable). The project expenditures will include, but not be limited to, the actual costs to maintain Vessels, Non-Revenue Vehicles, and Facilities. The Contractor's financial records shall be kept on a strict accrual basis. All source documents shall be maintained for three (3) fiscal years following final payment (or the completion of any litigation arising from services provided under this Agreement, whichever time period is later in time) and may be audited by the Regional Transit Authority, the FTA, or other authority at any time within this period.

(11) Disadvantaged Business Enterprise (DBE) Report. -- The Contractor shall prepare a quarterly DBE report to be submitted no later than thirty (30) Days after the end of each quarter and an annual DBE report to be submitted no later than thirty (30) Days after the end of the fiscal year. The report shall include (A) a listing of all and payments to DBE firms used; (B) the type of procurement in which DBEs were involved; and (C) a percent (by dollar amount) of purchases from DBE firms, as measured against all other purchases. The Regional Transit Authority reserves the right to request additional information on the DBE report.

(12) Equal Employment Opportunity (EEO) Affirmative Action Report. -- The Contractor shall maintain and implement an Equal Employment Opportunity/Affirmative Action Program and policy in accordance with FTA guidelines. The Contractor shall, not later than 30 Days after the end of each fiscal year, prepare an EEO report which consists of the following:

- (A) Workforce Analysis for each job category;
- (B) Job Group Analysis for each job category;
- (C) Hiring Analysis for each job category;
- (D) Promotional Analysis for each job category;
- (E) Termination Analysis for each job category;

(F) Utilization Analysis that shows the ethnic and gender breakdown for each job category as well as indicates the short term and long term goals for achieving under-utilized minority groups; and

(G) Availability Analysis that compares the current workforce against the available workforce.

(13) Surveys. – The Regional Transit Authority may, in its discretion, obtain additional documentation of service through the use of passenger surveys. These surveys may be administered by authorized representatives of the Regional Transit Authority or its designee. The Contractor shall ensure the cooperation of all personnel with any operational procedures relating to such surveys, including the distribution of survey questionnaires or other actions necessary to obtain service related information.

(14) NTD Safety and Security Reporting. -- The Contractor shall submit Safety and Security reports regarding accidents and incidents (including information required by NTD and all relevant documents) in accordance with direction from the Chief Executive Officer or his or her designee.

(15) The Regional Transit Authority NTD Safety and Security Responsibility. -- Regional Transit Authority shall be responsible for (A) entry of all Safety & Security 40 (S&S 40) Major Incidents meeting NTD thresholds into the NTD Internet Reporting System on a monthly basis; (B) review and verification of the accuracy of all Safety and Security Reports, both S&S 40 Major and S&S 50 Minor; and (C) all NTD Safety and Security Monthly final submissions.

(c) Meetings. – The Regional Transit Authority’s Chief Executive Officer, or his or her designee, and appropriate Regional Transit Authority management staff and the Contractor’s General Manager and appropriate Key Personnel shall meet (1) at least once each month to review the overall performance of the Contractor and the administration of this Agreement; (2) at least quarterly to review Americans with Disability Act issues and related matters; and (3) at least quarterly to review NTD reportable Safety and Security incidents and related matters.

SEC. 23 PASSENGER COMPLAINTS

The Contractor shall address all passenger complaints regarding operational or service deficiencies through the use of Regional Transit Authority designated software as follows:

(1) If the complaint relates to safety or serious operational deficiencies, the Contractor shall (A) contact the person filing the complaint within twenty-four (24) hours after it is filed; and (B) investigate the complaint and file a report with the Regional Transit Authority explaining the results of the investigation within three (3) calendar days after the complaint is filed.

(2) If the complaint is of a less serious nature (not covered by paragraph (1)) the Contractor shall contact the person filing the complaint, investigate the complaint, and file a report with the Regional Transit Authority within five (5) calendar days after the complaint is filed. In all cases, the Contractor shall make (and document) at least three (3) attempts to contact the person filing the complaint unless the customer has indicated, through the comment intake process, that they do not want to be contacted regarding the resolution of the investigation.

SEC. 24 INSPECTION OF WORK

(a) General. -- All Work (which term in this Section includes service performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and testing by the Regional Transit Authority at all times and places during the Contract Term. All inspections by the Regional Transit Authority shall be made in such manner as to not unduly delay the Work. The Regional Transit Authority shall have the right to enter the premises used by the Contractor for the purpose of inspecting and auditing all data and records which pertain to the Contractor's performance under this Agreement.

(b) Re-performance. -- If any Work performed is not in conformity with the requirements of this Agreement, the Chief Executive Officer or his or her designee shall have the right to require the Contractor to perform the Work again in conformity with such requirements at the Contractor's sole expense and with no increase in the amount of compensation hereunder. In the event the Contractor fails promptly to perform the Work again, the Regional Transit Authority shall have the right, either by contract or otherwise, to have the Work performed in conformity with such requirements and charge to the Contractor any costs to the Regional Transit Authority that are directly related to the performance of such Work, or to terminate this Agreement for default as provided in Section 40. When the work to be performed is of such a nature that the defect cannot be corrected by re-performing the work, the Regional Transit Authority shall have the right to: (1) require the Contractor to immediately take all necessary steps to ensure future performance of the Work in conformity with the requirements

of this Agreement; and (2) reduce the amount paid to the Contractor under this Agreement to reflect the reduced value of the work performed.

SEC. 25 OPERATION DURING A DECLARED EMERGENCY

In the event of a declared emergency by the Chief Executive Officer, the Contractor shall deploy Vessels and Non-Revenue Vehicles in a manner described by the Chief Executive Officer.

During a declared emergency, the Contractor shall comply with the City Assisted Evacuation Plan when activated. The Regional Transit Authority shall be obligated to compensate the Contractor, during such period of declared emergency, for services which significantly exceed the normal expense of operating services under this Agreement, as documented by the Contractor and agreed upon by the Parties.

SEC. 26 INSURANCE

(a) Required Program of Insurance. -- Without limiting Contractor's indemnification of Regional Transit Authority under Section 28, the Contractor shall be required to provide, and to maintain at all times during the Contract Term, at its sole expense, a program of insurance that includes each of the following:

(1) **General Liability.** -- The Contractor shall obtain, and maintain in full force and effect, commercial general liability insurance in the amount of \$2,000,000 total.

(2) **Auto Liability.** -- The Contractor shall obtain and maintain in full force and effect, automobile liability insurance, extending to owned, non-owned, and hired vehicles, in the amount of \$1,000,000 total.

(3) **Hull and Machinery, Protection and Indemnity, and other coverage for Marine Operations.** -- The Contractor shall obtain and maintain in full force and effect hull and machinery insurance, protection and indemnity insurance, and all other insurance required for operation of the Authority's Marine operations pursuant to the Blanket Bareboat Charter Agreement and Blanket Bareboat Charter Sub-Agreement, contained within Exhibit B and Exhibit C.

(4) **Workers' Compensation.** -- The Contractor shall obtain and maintain worker's compensation and employer's liability insurance as required by the laws of the State of Louisiana, Jones Act, Longshore and Harbor Workers' Compensation Act, and any other local, state, or federal requirement.

(5) Errors and Omissions/Professional Liability. -- The Contractor shall obtain and maintain errors and omissions/professional liability insurance in the amount of \$1,000,000.

(b) Evidence of Insurance. -- The Contractor shall, within five (5) Days after the Request following Award under Section 3 of this Agreement, provide the Regional Transit Authority with certificates of insurance from its carrier(s) showing proof of all coverages required under subsection (a). The Contractor shall update its insurance information, including proof of coverages, annually or when changes occur to the coverages or insurance policies during the Contract Term.

(c) Required Conditions. -- The Contractor also agrees to the following conditions relating to insurance:

(1) The Regional Transit Authority, its officers, agents, and employees, and members of the Regional Transit Authority Board of Commissioners shall be included as additional insureds on all liability insurance policies except worker's compensation and errors and omissions/professional liability; provided that no such person included as an additional insured shall have any liability for the payment of premiums or assessments under the policies. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.

(2) The Contractor's insurance required herein is primary and no insurance held or owned by the Regional Transit Authority shall be called upon to contribute to the loss.

(3) The Contractor's insurance shall be obtained from carriers with an A.M. Best rating of "A" or better, and authorized and licensed to transact insurance business in the State of Louisiana.

(4) The insurance shall not be canceled, materially reduced in coverage or limits, or nonrenewed in the case of a continuous policy, except after thirty (30) calendar days' written notice, or ten (10) calendar days' written notice in the event of cancellation due to non-payment of premium, by mail or personal delivery to the Regional Transit Authority at its office at the address set forth in Section 48 hereof. In the event of any such cancellation, reduction in coverage, or non-renewal, the Contractor shall obtain and have in place, prior to the effective date of any such change, replacement insurance that complies with all coverage requirements and other conditions set forth in this Section. Any failure to provide such insurance on a timely

basis shall be a material breach of this Agreement.

(5) The insurance afforded by the policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) shall include liability assumed by the Contractor under the indemnification and/or hold harmless provisions of this Agreement.

(d) Aggregate Limits/Blanket Coverage. -- If any of the required insurance coverage contains aggregate limits or applies to other operations or tenancy of the Contractor outside this Agreement, the Contractor shall give the Regional Transit Authority prompt written notice of any incident, occurrence, claims settlement, or judgment against such insurance which may diminish the protection such insurance affords the Regional Transit Authority. The Contractor shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

(e) Modification of Coverage. – The Regional Transit Authority reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Contractor sixty (60) calendar days advance written notice. In that event, the Parties will negotiate any appropriate adjustments to the Lump Sum for Indirect Costs and Insurance, based on documentation from the Contractor as to any actual increased cost of insurance.

(f) Subrogation. – The insurance providers shall waive all rights of subrogation and contribution against the additional insureds, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to the perils insured against in relation to those activities described generally above with regard to operations performed by or on behalf of the Contractor regardless of any prior, concurrent, or subsequent active or passive negligence by the additional insureds.

(g) Failure to Procure Insurance. – The Contractor's failure to procure or maintain required insurance shall constitute a default and material breach of contract under which the Regional Transit Authority may, after a 24-hour opportunity to cure, immediately either terminate this Agreement, or at its discretion, purchase the insurance and charge the cost to the Contractor or deduct such cost from payments due to the Contractor hereunder, or enforce the performance bond under Section 27(c).

(h) Underlying Insurance. -- The Contractor shall be responsible for requiring indemnification and insurance, of such types and with such limits of liability, as the Contractor deems appropriate from its subcontractors, employees receiving mileage allowance, consultants, and agents, if any, to protect the interests of the Contractor and the Regional Transit Authority, and to ensure that such persons comply with any applicable insurance statutes.

SEC. 27 BONDING REQUIREMENTS

(a) Performance Bond. – The Contractor shall procure, at its sole expense, and keep in effect at all times during the Contract Term, a performance bond equivalent to ten (10) percent of the cost of service for the then current Contract year, in favor of the Regional Transit Authority and executed by a corporate surety with an A.M Best rating of “A” or better and authorized to conduct business as a surety in the State of Louisiana. The Contractor shall provide a fully notarized performance bond to the Regional Transit Authority within five (5) Days after the Request following Award issued by the Regional Transit Authority pursuant to Section 3 of this Agreement. The Contractor shall provide any necessary updates, renewals, or modifications to the performance bond on an annual basis thereafter or before each anniversary date of Contract Award.

(b) Performance Bond Renewal. -- The performance bond must be kept in full force and effect at all times during the Contract Term. The bond shall be conditioned upon faithful performance by Contractor of the terms and conditions of this Agreement and shall be renewed to provide for continuing liability in the amount set forth in subsection (a) notwithstanding any payment or recovery thereon. Such bond shall not be subject to cancellation except after notice to the Chief Executive Officer by registered mail at least forty-five (45) Days prior to the date of cancellation. Failure to maintain such surety bond shall be a default of this Agreement and may, at the Regional Transit Authority’s discretion, result in cancellation or termination of this Agreement.

(c) Enforcement of Performance Bond. -- If the Regional Transit Authority determines that the Contractor has defaulted on or substantially failed to keep and perform the covenants, conditions, and obligations under in this Agreement and the RFP, then the Regional Transit Authority may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, the Chief Executive Officer shall notify the Surety and give the Surety an opportunity to perform within a reasonable time certain. If the Surety fails to perform, the Chief Executive Officer shall perform

and assess the Surety on its bond for the cost of such performance. The cost of such performance includes the costs of all labor and Equipment reasonably necessary to perform the work in the Contractor's absence.

SEC. 28 INDEMNIFICATION AND HOLD HARMLESS

(a) Compliance with Respective Blanket Bareboat Charter Agreements. – The Parties shall comply with the indemnification and insurance provisions of the applicable respective Blanket Bareboat Charter Agreement and respective Charter Orders.

(b) Contractor's Indemnification. – Contractor shall fully release, defend, indemnify and hold the Regional Transit Authority, its officers, agents, and employees and the members of the Regional Transit Authority Board of Commissioners, free and harmless from and against all claims, demands, suits, causes of action, losses, liabilities, damages, judgments, awards, and other costs of every kind and character (including, without limitation, court costs and attorney's fees), known or unknown, whether the underlying claim, demand or suit is groundless, false or fraudulent, brought by or on behalf of any party or person, for any and all personal injury, emotional distress, pain and suffering, illness, disease or death of any person (including any survivor's action), any loss of wages, consortium services or support, and for all damage to or loss of use of property, whether real or personal, of any person or entity, and for any and all claims (including, without limitation, any fines, penalties, attorney's fees, court costs, and all costs to respond to, contain, assess, clean up, handle, remediate, remove and dispose of all contaminates, resulting contaminated media, pollutants, resulting polluted media) resulting from pollution, contamination, harm to the environment (including air, water, soil or other media), and any damage to or loss of any natural resources (including, without limitation, the replacement cost and loss of use thereof) arising directly or indirectly out of or in any way involving the Ferry Services or any Equipment or Facility described herein that arise after the Commencement Date (collectively "Claims"). It is the specific and expressed intent and agreement that Contractor's obligation to release, defend, hold harmless and indemnify the Regional Transit Authority, its officers, agents, and employees and the members of the Regional Transit Authority Board of Commissioners as previously set forth herein shall not be applied to any Claims that arise from the sole negligence, gross negligence and/or willful misconduct of the Regional Transit Authority, its officers, agents, and employees and the members of the Regional Transit Authority Board of Commissioners.

(c) Disclaimer of Liability. -- Regional Transit Authority, its officers, agents, and employees and the members of the Regional Transit Authority Board of Commissioners will not hold harmless or indemnify the Contractor for any liability whatsoever.

SEC. 29 DISPUTES

(a) General. – Any dispute between the Contractor and the Regional Transit Authority relating to the implementation or administration of this Agreement will be resolved in accordance with this Section.

(b) Resolution. – The Parties shall first attempt to resolve the dispute informally in discussions between Regional Transit Authority’s Chief Operations Officer, or his or her designee, and the appropriate Contractor Key Personnel. If these individuals are unable to resolve the dispute within fifteen (15) Days after it arises, the matter in dispute will be submitted to the Contractor’s General Manager and the Regional Transit Authority’s Chief Executive Officer for resolution. If the dispute remains unresolved fifteen (15) Days after that submittal, the Contractor may request that the Chief Executive Officer issue a recommended decision on the matter in dispute. The Chief Executive Officer shall issue the recommended decision in writing and provide a copy to the Contractor.

(c) Board Review. – The recommended decision of the Chief Executive Officer shall become final unless, within fifteen (15) Days of receipt of such recommended decision, the Contractor submits a written request for review to the Regional Transit Authority Governing Body. In connection with any such review, the Contractor’s representative and the Chief Executive Officer shall be afforded an opportunity to be heard and to offer evidence on the issues presented.

(d) Further Review/Resolution. – If a dispute remains unresolved after review by the Regional Transit Authority’s Board under subsection (c), the Parties agree that prior to initiating any litigation they will make a good faith effort to utilize mediation, arbitration, or other alternative dispute resolution procedures to resolve the dispute. If the dispute still remains unresolved, either party may seek judicial review and resolution in an appropriate court of the State of Louisiana.

(e) Obligation to Proceed. – Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with this Agreement and the direction or recommended decision of the Chief Executive Officer.

SEC. 30 ASSIGNMENT

This Agreement or any portion hereof shall not be assigned, nor shall the interests, rights, duties or responsibilities of the Contractor be transferred, unless the Regional Transit Authority in its sole discretion grants prior written Approval thereto. This requirement applies to any merger or consolidation involving the Contractor which would cause its responsibilities under this Agreement to be transferred to or assumed by a new, different, or restructured entity, or would result in a reduction or other adverse change in its financial capacity and/or liquidity. This provision is separate and apart from the provisions concerning subcontracting set forth in Section 31 hereof.

SEC. 31 SUBCONTRACTING

(a) Effect of Subcontracting. -- The Contractor shall be fully responsible for all work performed by any subcontractor. The Contractor may not, by subcontract, modify its obligation to perform in full accordance with its Proposal and its BAFO, change its Key Personnel, alter any of its plans, programs, or policies listed in Section 3(c), as Approved by the Regional Transit Authority, or otherwise modify the basis upon which the Contractor was selected and Contract award made. Any action of the Contractor in violation of the preceding sentence shall constitute a breach of this Agreement and an Event of Default. Further, the entering into of a subcontract shall not, under any circumstances, relieve the Contractor of its liability and obligations under this Agreement, and all transactions with the Regional Transit Authority must be through the Contractor.

(b) Approval by the Regional Transit Authority. – The Contractor may not subcontract more than five (5) percent of the annual contract amount without the prior written Approval of the Regional Transit Authority (excluding subcontractors that are certified Disadvantaged Business Enterprises). Any Approval of a subcontract shall not be construed as making the Regional Transit Authority a party to such subcontract, giving the subcontractor privity of contract with the Regional Transit Authority, or subjecting the Regional Transit Authority to liability of any kind to any subcontractor.

(c) Full and Open Competition for Subcontracts. – The Contractor shall assure a full and open competitive process in the selection of subcontractors, which shall utilize one of the following procurement procedures, subject to applicable law: (1) work to be subcontracted through low-bid, with the bids publicly solicited and a fixed price contract awarded to the responsive and responsible bidder whose bid, conforming to the material terms and conditions

of the invitation for bids, is lowest in price; (2) work to be subcontracted through best value based selection, with the request for proposals publicized, evaluation factors identified in the solicitation document and used to review proposals, and award made to the firm whose proposal is most advantageous or offers the best value to the Project, with price and other identified factors considered; and (3) work to be subcontracted under a sole source award where justified in accordance with applicable law and regulations.

(d) Federal Requirements. -- The Contractor shall include the applicable Federal requirements in Exhibit E in all of its subcontracts.

SEC. 32 INDEPENDENT CONTRACTOR

Under the terms of this Agreement, the Contractor is an independent contractor and shall have and retain full control and supervision over the services it performs, and also has full control over the employment and direct compensation and discharge of all persons, other than Regional Transit Authority employees and agents, assisting in the performance of its services. The Contractor shall be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the Contract Term. The Contractor shall be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees (including the negotiation of labor agreements if applicable and compliance with any prevailing wage rates), and for compliance with social security, payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor shall be required to comply fully with the worker's compensation laws and prevailing wage laws of the State of Louisiana regarding the Contractor and its employees, and to indemnify and hold harmless the Regional Transit Authority from any failure to comply with such laws.

SEC. 33 LICENSES, PERMITS, AND TAXES

The Contractor shall be appropriately licensed for the services to be performed under this Agreement. The cost for any required licenses or permits (fees for the Vessels and Regional Transit Authority-supplied Non-Revenue Vehicles) shall be the responsibility of the Regional Transit Authority. The Contractor shall be responsible for the cost of replacement license plates that are required to be replaced prematurely due to reasons other than normal wear and tear. The Contractor shall also be liable for any and all taxes due as a result of performance of services under this Agreement.

SEC. 34 CONFLICT OF INTEREST(a) General.

(1) No Commissioner of the Regional Transit Authority, officer, or employee shall participate in the selection, or in the award or administration, of this Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict is determined in accordance with the Conflict of Interest Code adopted by the Regional Transit Authority Board of Commissioners and applicable Federal and State laws and regulations, including the Louisiana Code of Governmental Ethics.

(2) Regional Transit Authority's Board of Commissioners, officers, and employees shall neither solicit, demand, nor accept from any person anything of a pecuniary value for or because of any action taken or to be taken, in the performance of their duties.

(b) Organizational Conflict of Interest. – Prior to entering into this Agreement, the Contractor has informed the Regional Transit Authority of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the Work. During the Contract Term, the Contractor shall be responsible for informing the Regional Transit Authority of any such organizational conflict that arises. In the event of any such post-award organizational conflict, The Regional Transit Authority may take appropriate action, including terminating the Agreement or establishing procedures or requirements to avoid or mitigate the conflict.

SEC. 35 COMPLIANCE WITH LAWS AND PERMITS

The Contractor agrees to comply with all existing and future Federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Agreement, including, but not limited to, the Federal laws identified in Exhibit E and any other laws or regulations referred to in this Agreement or the other Contract Documents. If the Contract Documents are at variance with any such law or regulations in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to the Regional Transit Authority certificates of compliance with all such laws, orders, and regulations.

SEC. 36 CANCELLATION OF CONTRACT

In any of the following cases, the Regional Transit Authority shall have the right to cancel the Agreement immediately upon notice to the Contractor and without expense to the Regional Transit Authority: (1) the Contractor knowingly misrepresents any material fact in securing or performing this Agreement; (2) the Agreement is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Agreement conflicts with any statutory or constitutional provision of the State of Louisiana or the United States. This Section shall not be construed to limit the Regional Transit Authority's right to terminate the Agreement for convenience or default, as provided in Sections 37 and 40, respectively.

SEC. 37 TERMINATION FOR CONVENIENCE

(a) General. -- The performance of Work under the Agreement may be terminated by the Regional Transit Authority in accordance with this Section in whole, or from time to time in part, whenever the Regional Transit Authority determines, upon recommendation of the Chief Executive Officer, that such termination is in the best interest of the Regional Transit Authority. Any such termination shall be effected by delivery to the Contractor of a notice of termination, provided not less than forty-five (45) calendar days prior to the termination date, specifying the extent to which performance of Work under the Agreement is terminated and the date upon which such termination becomes effective.

(b) Notice of Termination; Required Actions. – Upon receipt of a notice of termination, and except as otherwise directed by the Chief Executive Officer, the Contractor shall (1) stop Work under the Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination; (4) assign to the Regional Transit Authority in the manner, at the times, and to the extent directed by the Chief Executive Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such terminated orders and subcontracts, with the approval or ratification of the Regional Transit Authority, to the extent the Chief Executive Officer may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to the Regional Transit Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Chief Executive Officer, supplies, Equipment, and other material produced as a part of, or acquired in connection with the

performance of, the Work terminated, and any information and other property which, if the Agreement had been completed, would have been required to be furnished to the Regional Transit Authority; (7) complete any such part of the Work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the Chief Executive Officer may direct, for the protection and preservation of the property related to the Agreement which is in the possession of the Contractor and in which the Regional Transit Authority has or may acquire an interest. Payments by the Regional Transit Authority to the Contractor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.

SEC. 38 TERMINATION BY MUTUAL AGREEMENT

The Agreement may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination for convenience or default provisions contained in Sections 37 and 40.

SEC. 39 REMEDIAL MEASURES

(a) Available Rights and Remedies. -- Nothing in this Section shall be considered to limit the rights and remedies of the Regional Transit Authority in this Agreement, including to assess Deductions pursuant to Section 21, terminate for convenience pursuant to Section 37, and terminate for default pursuant to Section 40.

(b) Warning Notice. The Regional Transit Authority may give the Contractor written notice of unacceptable performance ("Warning Notice"). The Warning Notice shall specify the performance shortcomings giving rise to its issuance.

(c) Bases for Issuance. -- The Regional Transit Authority may issue a Warning Notice in the event any of the following occur:

- (1) On-time Performance for any Ferry route in a Contract Month is lower than 75%;
- (2) Fewer than 90% of trips in a Contract Month are not Missed Trips for any Ferry route;
- (3) More than 2 Service Interruptions occur for Ferry service in a Contract Month;

(4) More than 2.0 Preventable Accidents occur for Ferry service in a Contract Month;

(5) The proportion of (actual fare revenue collected / Ridership Revenue) is lower than 95% in a Contract Month;

(6) The volume of customer complaints increases more than 15% in a Contract Year from the previous Contract Year; or

(7) Any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Regional Transit Authority in respect of any Scheduled Report delivered by the Contractor to the Regional Transit Authority in accordance with this Agreement.

(d) Remedial Action Plan – Within five (5) Days of the issuance of the Warning Notice, the Contractor shall submit a report (“Remedial Action Plan”) which provides a rationale behind the occurrence of the relevant failure, defect or non-compliance; and provides detailed steps the Contractor will take to mitigate, rectify or protect against such circumstances. The Remedial Action Plan shall specify in reasonable detail the additional measures to be taken by the Contractor in response to the matters which led to the Warning Notice being sent. The Contractor shall bear its own costs and expenses and shall bear all reasonable costs, charges and expenses of the Regional Transit Authority properly incurred as a consequence of failures giving rise to the Warning Notice.

(e) Regional Transit Authority Review. -- The Remedial Action Plan shall be subject to the Regional Transit Authority’s review and Approval. The Regional Transit Authority may, upon review of the Remedial Action Plan, approve or provide revisions including additional and/or alternative necessary or expedient steps to mitigate against the relevant failure, defect or noncompliance.

(f) Failure to Submit. -- In the event the Contractor fails to submit the Remedial Action Plan within five (5) Days of the Regional Transit Authority’s issuance of the Warning Notice, the Regional Transit Authority may apply the Reporting Deduction pursuant to Section 21(b)(16). In addition, the Regional Transit Authority may pursue other remedies under the Agreement, including termination for default pursuant to Section 40 of this Agreement.

(g) Evidence of Default. – Without limiting the circumstances pursuant to which the Regional Transit Authority may initiate default proceedings under Section 40, the following

failures of performance constitute prima facia evidence of default under Section 40 of this Agreement:

- (1) Contractor receives six (6) or more Warning Notices during a Contract Year;
- (2) On-time Performance for any Ferry route in a Contract Month is lower than 60%;
- (3) Fewer than 75% of trips are not Missed Trips for any Ferry route in a Contract Month;
- (4) More than 4 Service Interruptions occur for Ferry service in a Contract Month;
- (5) More than 4.0 Preventable Accidents occur for Ferry service in a Contract Month;
- (6) The proportion of (actual fare revenue collected / Ridership Revenue) is lower than 90% in a Contract Month; or
- (7) The volume of customer complaints increases more than 30% in a Contract Year from the previous Contract Year

SEC. 40 TERMINATION FOR DEFAULT

(a) Events of Default. -- Subject to the provisions of this Section, the Regional Transit Authority may terminate this Agreement in whole or in part in any one of the following circumstances:

- (1) The Contractor fails to provide services in accordance with the requirements and standards set forth in this Agreement, including the Attachments hereto.
- (2) The Contractor fails to perform any of the provisions of this Agreement in accordance with its terms.
- (3) The Contractor fails to make progress in the prosecution of the Work under this Agreement so as to endanger such performance.

(4) The Contractor files for bankruptcy, becomes insolvent, or is unable or otherwise fails to pay or otherwise satisfy, in the ordinary course of business, its financial obligations to its suppliers, subcontractors, or employees.

(5) The Contractor assigns or transfers this Agreement or any right or interest herein, without prior written authorization by the Regional Transit Authority.

(6) The Contractor fails to maintain the insurance or bonds required under this Agreement or fails to provide the indemnification required hereunder.

(b) Cure Notice. – If the Regional Transit Authority determines that an Event of Default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor within thirty (30) Days in which to cure such default. If the Contractor fails to cure such default or to commence a cure within such time frame, or within such reasonable additional period as the Regional Transit Authority may allow, the Regional Transit Authority may declare the Contractor to be in default and terminate the Agreement in whole or in part.

(c) Procurement of Replacement Services. – In the event that the Regional Transit Authority terminates this Agreement in whole or in part under this Section, the Regional Transit Authority may procure, upon such terms and in such manner as the Chief Executive Officer may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the Regional Transit Authority for the following: (1) the costs associated with the termination of the Agreement and the procurement of replacement services by the Regional Transit Authority; (2) any excess costs of such similar supplies or services; and (3) any increase in the total Agreement cost, from the date of termination to the expiration date of the original Agreement, as a result of the re-procurement of services. The Contractor shall continue the performance of the Agreement to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and the Regional Transit Authority are subject to resolution pursuant to Section 29.

(d) Settlement of Claims. -- Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance to the provisions set forth in 48 CFR Part 49, as amended from time to time.

SEC. 41 FORCE MAJEURE

The Contractor shall not be liable for any failure to perform if acceptable evidence has been submitted to the Regional Transit Authority that failure to perform the Agreement was due to

causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to, acts of God, civil disturbances, fire, war, or floods, but do not include labor-related incidents, such as strikes or work stoppages.

SEC. 42 DISRUPTIONS IN SERVICE

(a) Disruption Events. -- If the Contractor is unable, due to a strike, work stoppage, or other event not caused by Regional Transit Authority and not covered by the force majeure exception in Section 41 (a Disruption Event), to provide services in full compliance with the requirements of the Agreement, the Contractor shall provide the Regional Transit Authority, within twenty-four (24) hours after such Disruption Event occurs, with a plan and specific timetable for restoring the services in compliance with this Agreement. In addition, if the Contractor has reason to believe that a Disruption Event is likely to occur, the Contractor shall immediately notify the Regional Transit Authority and provide a plan and timetable for addressing such Disruption Event.

(b) Use of Alternative Services. – If the Contractor fails to submit a timely plan for restoring services after a Disruption Event as required under subsection (a), or fails to restore services to the Regional Transit Authority’s satisfaction within ten (10) calendar days after such Disruption Event, the Regional Transit Authority may, in lieu of finding the Contractor in default, obtain the services of an alternative operator or provide the services with its own resources (collectively referred to as “alternative services”). The Regional Transit Authority may utilize such alternative services as a substitute for all or any part of the Contractor’s services, and may maintain such alternative services in effect until the Contractor is able to resume performance in full compliance with the Agreement.

(c) Contractor’s Duty to Reimburse. – If The Regional Transit Authority utilizes alternative services under this Section, the Contractor shall be liable to the Regional Transit Authority for (1) the actual amount by which the cost of such alternative services exceeds the amount that would have been payable under this Agreement for comparable services by the Contractor; and (2) all costs (including staff and administrative costs) incurred by the Regional Transit Authority in soliciting and obtaining the alternative services.

(d) Limitation on Contractor’s Compensation. -- The only compensation due and payable to the Contractor by the Regional Transit Authority during any period in which alternative services are being provided shall be for any Ferry Platform Service Hours actually

provided by the Contractor, plus the a pro rata share (based on the amount of time the Contractor provides services) of the then-applicable Lump Sum for Indirect Costs and Fixed fee.

(e) Savings Clause. – Any actions taken by the Regional Transit Authority pursuant to this Section by reason of the Contractor’s failure to perform shall not preclude Regional Transit Authority from subsequently finding the Contractor in default for the same of any related failure to perform.

SEC. 43 AUDIT AND INSPECTION OF RECORDS

The Contractor agrees that the Regional Transit Authority, the Legislative Auditor of the State of Louisiana, the Office of the Governor Division of Administration auditors, the Comptroller General of the United States, and the Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all Work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to this Agreement and the performance of Work under this Agreement, including but not limited to all contracts, leases, vouchers, checks, invoices, receipts and other documents prepared or executed in connection with the services provided under this Agreement, unless otherwise protected or restricted by local, state, or federal regulations. The Regional Transit Authority may also authorize representatives of other project funding partners to inspect and audit the records of the Contractor relating to the performance of Work under this Agreement. Further, the Contractor agrees to maintain all required records for at least five (5) years after the later of: (1) final payment to the Contractor under this Agreement; or (2) the resolution of any litigation, disputes, or related actions arising under this Agreement.

SEC. 44 LACK OF FUNDS

The entering into the Agreement by the Regional Transit Authority is subject to its receipt of funds adequate to cover Operating Costs and to carry out the provisions of the Agreement in full from the Operating Subsidy and passenger fares. The obligations of the Parties under this Agreement are contingent upon the appropriation of funds to fulfill the requirements of this Agreement by the Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the Ferry Services, or if such appropriation is reduced by veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Ferry

Services, RTA may cease operation of the ferry service and terminate this Agreement immediately.

SEC. 45 NO FEDERAL GOVERNMENT OBLIGATIONS

The Federal Government shall not be subject to any obligations or liabilities to the Contractor, or any other person other than the Regional Transit Authority in connection with the performance of this Agreement. Notwithstanding any concurrence that may be provided by the Federal Government in or approval of any solicitation or contract, the Federal Government has no obligations or liabilities to any party, including the Contractor.

SEC. 46 WAIVER OF TERMS AND CONDITIONS

The failure of the Regional Transit Authority or the Contractor to enforce one or more of the terms or conditions of the Agreement or to execute any of its rights and privileges, or the waiver by the Regional Transit Authority of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

SEC. 47 INTERPRETATION, JURISDICTION, AND VENUE

This Agreement shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of Louisiana. The Contractor hereby consents and submits to the jurisdiction of Orleans Parish Civil District Court for adjudication of any suit or cause of action arising under or in connection with this Agreement, or the performance of services hereunder, and further agrees that any such suit or cause of action may be brought in any such court.

SEC. 48 OFFICIAL RECEIPT DURING CONTRACT PERFORMANCE

Communications in connection with the performance of services under this Agreement shall be considered received at the time actually received by the addressee or designated agent. Communications should be addressed as follows:

To the Regional Transit Authority:

To Contractor:

Either Party may change the authorized representative to whom and/or address at which such party desires to receive written notice by delivery of written notice of such change to the party as set forth herein. Any notice given under this Section will be deemed to have been given, and will be effective, on delivery to the notice address then applicable for the Party to which the notice is directed, provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated will not defeat or delay the giving of a notice.

SEC. 49 SEVERABILITY

In the event any provision of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Agreement and each provision of the Agreement will be and is deemed to be separate and severable from each other provision.

SEC. 50 ACKNOWLEDGEMENT OF RIVERWALK MARKETPLACE (NEW ORLEANS) LLC LEASE

As evidenced by Exhibit I Riverwalk Marketplace, LLC Lease, Contractor acknowledges Riverwalk Marketplace (New Orleans) LLC's rights and obligations pursuant to its Original Lease dated August 14, 1986, and recorded on October 7, 1988 in the Orleans Parish Conveyance Office under N. A. No. 668101 in COB 808G, folio 301-321 and the Amendment of the Agreement of Lease dated October 21, 2013, and recorded on October 23, 2013 in the Orleans Parish Conveyance office under N.A. No. 2013-39896.

SEC. 51 SURVIVAL

The parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding financial obligations or payments, indemnification, compliance with laws, and representations and warranties, shall survive any termination or expiration of this Agreement.

SEC. 52 LEGAL COMPLIANCE

The parties to this Agreement shall comply with all federal, state, and local laws, regulations, rules, and ordinances, as shall all those employed in carrying out the provisions of this

Agreement, including, specifically, the Louisiana Code of Governmental Ethics (R.S. 42:1101, *et seq.*).

The parties hereto have caused this Agreement to be duly executed on <Month> <Day>, <Year>, with all the formalities required by law.

REGIONAL TRANSIT AUTHORITY

By: _____

Flozell Daniels, Jr.

Chairman, Regional Transit Authority

Witnessed by: _____

Alex Wiggins

Chief Executive Officer, Regional Transit Authority

CONTRACTOR

By: _____

[NAME AND TITLE]

APPROVED AS TO FORM

By: _____

Exhibit A Cooperative Endeavor Agreement for Ferry Services between State of Louisiana, Department of Transportation and Development and the New Orleans Regional Transit Authority

This exhibit may be found at <https://www.norta.com/Business-Center/How-to-do-Business-with-RTA/New-Orleans-Ferry-Services-RFP> and/or <http://www.drivertaforward.com/operating-information>.

Exhibit B Blanket Bareboat Charter Agreement and Charter Orders

This exhibit may be found at <https://www.norta.com/Business-Center/How-to-do-Business-with-RTA/New-Orleans-Ferry-Services-RFP> and/or <http://www.drivertaforward.com/operating-information>.

Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders

This exhibit may be found at <https://www.norta.com/Business-Center/How-to-do-Business-with-RTA/New-Orleans-Ferry-Services-RFP> and/or <http://www.drivertaforward.com/operating-information>.

Exhibit D Minimum Wage Requirements

Sec. 70-806. - Living wage required.

(1) Every covered employer shall pay covered employees no less than the living wage for all hours worked as a covered employee. The living wage shall be \$10.55, plus any applicable adjustment provided in subpart (2).

(2) The living wage shall be annually indexed to inflation as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except in no instance shall the living wage be adjusted downward. The first indexing adjustment shall occur on July 1, 2017 using the Consumer Price Index figures provided for the calendar year ended December 31, 2016, and thereafter on an annual basis.

(3) The designated department shall make the current living wage rates publicly available, including on the city's website.

(M.C.S., Ord. No. 26521, § 1, 8-6-15)

Exhibit E Federal Requirements

Federal Requirements are provided as Attachment 6 to Request for Proposal 2019-030.

Exhibit F Regional Transit Authority System Safety Program Plan / Agency Safety Plan

Regional Transit Authority System Safety Program Plan / Agency Safety Plan will be available for review upon request.

Exhibit G City Assisted Evacuation Plan

This exhibit may be found at <https://www.norta.com/Business-Center/How-to-do-Business-with-RTA/New-Orleans-Ferry-Services-RFP> and/or <http://www.drivertaforward.com/operating-information>.

Exhibit H Approved Staffing Plan

Review and approval by Regional Transit Authority of staffing plan shall be contingent upon submission by Contractor.

Exhibit I Riverwalk Marketplace, LLC Lease

This exhibit may be found as Exhibit "I" to the Cooperative Endeavor Agreement for Ferry Services between State of Louisiana, Department of Transportation and Development and the New Orleans Regional Transit Authority.