

Transportation Service Agreement

This Agreement made by and between the City of Lee's Summit, Missouri a municipal corporation, (hereinafter called CITY) and OATS, Incorporated, a private not-for-profit Corporation organized under the laws of the state of Missouri, (hereinafter called OATS).

WITNESSETH:

WHEREAS, CITY requires general public transportation for its residents and;

WHEREAS, OATS is prepared to provide said professional services and shall give consultation and advice to CITY during the performance of said services;

Now, **THEREFORE**, CITY and OATS in consideration of the mutual covenants contained in this Agreement, agree as follows:

ARTICLE 1 - GOVERNING LAW

This Agreement shall be governed by the laws of the state of Missouri.

ARTICLE 2 - EFFECTIVE DATE

The effective date of this Agreement shall be January 1, 2021.

ARTICLE 3 - SERVICES TO BE PERFORMED BY CONTRACTOR

A. Service Delivery Plan

1. OATS shall provide Non-Emergency Demand Response Transportation for the City of Lee's Summit residents. OATS recognizes that transports will be made within the city limits of Lee's Summit.
2. OATS will provide Non-Emergency Demand Response Transportation in accordance with the following scope of services: \$34.00 per hour for six (6) vehicles in regular service in circulation on a daily basis according to the operational schedule described below. A fare of \$1.50 is collected for each one-way trip and will be administered by OATS to be used to fund the service and reduce the cost of service to CITY.
3. The service shall be operated under the name of RideKC Lee's Summit.
4. West Region Office Staff will take reservations from residents of the City of Lee's Summit by 3:00 p.m. the previous day. Trips can be scheduled up to 2 weeks in advance.
5. OATS service shall be available to and from addresses within the City of Lee's Summit from 7:00 a.m. to 5:30 p.m. Monday through Friday, on a space available basis.
6. OATS shall provide the following services:
 - (a) Curb-to-curb transportation. Door-to-door service is provided for riders who need the additional assistance (seniors, people with disabilities, etc.)

- (b) Sequence, arrange and assign requests for delivery and will call returns.
- (c) Maintain data as necessary
- (d) Telephone service from 7:00 a.m. to 5:00 p.m. Monday through Friday will be provided by West Region Staff.

7. OATS shall recognize the following paid holidays:

- | | |
|------------------------|------------------------|
| New Years Day | Labor Day |
| Martin Luther King Day | Thanksgiving Day |
| President's Day | Day after Thanksgiving |
| Memorial Day | Christmas Day |
| Independence Day | |

- 8. Transportation services may be cancelled any time the Lee's Summit School District cancels-classes due to weather. OATS staff shall notify the CITY directly in the case where OATS decides to cancel the transportation service when school is not in session during the inclement weather event.
- 9. OATS shall provide the CITY with a Certificate of Good Standing and Annual Registration Report.

B. Vehicles

- 1. Vehicles required to provide this service shall be procured by the Kansas City Area Transportation Authority (ATA) using Federal Transit Administration grants. Any federal grant match required for vehicle procurement shall be paid by OATS and reimbursed by the CITY.
- 2. ATA shall be the lien holder on the vehicles with the CITY the 2nd lien holder.
- 3. OATS agrees to pay ATA the sum of one dollar (\$1.00) per vehicle per year to lease the vehicles.
- 4. The vehicles will be used, maintained and repaired by OATS in accordance with the existing rules and regulations of OATS and the CITY. Usage of the vehicles by OATS shall be limited to those uses specifically authorized by the CITY and none other.
- 5. During the lease, any lettering on the exterior of the vehicles shall be done only upon mutual agreement of OATS and the CITY except that OATS, Inc. is required by law to affix a Missouri Division of Transportation sticker and a small sign denoting the vehicles are operated by OATS.
- 6. Normal operating costs, vehicle maintenance and upkeep will be the responsibility of OATS.
- 7. Vehicles shall be returned to the ATA at the termination of the lease in the same condition as received except for normal usage.

8. ATA and the CITY grants OATS the right to install on the vehicle any safety equipment required under the rules and regulations of OATS. Such safety equipment shall remain the property of OATS. OATS shall have the option to purchase said safety equipment upon termination of the lease.
9. OATS will not be responsible for any preexisting mechanical condition of the vehicles as mutually determined by inspection at the lease inception and agreed upon in writing as attached hereto.
10. OATS will not be held responsible for any depreciation during the lease period.
11. ATA is responsible for licensing the vehicles. After the initial licensing of any new vehicle to be leased, the cost of future licensing will be reimbursed by OATS.
12. This section of the Transportation Service Agreement constitutes the Vehicle Lease Agreement as required by the Federal Motor Carrier regulations. A statement as provided for in 376.11(c)(2) of the FMC regulations is carried on the leased vehicle(s) in lieu of a signed copy of the lease.

C. Drivers

1. All drivers shall be over the age of 25 years. No driver shall be employed or retained who has in excess of 4 points assessed to their State of Missouri Drivers License.
2. All drivers shall be required to pass a U.S. Department of Transportation physical prior to employment. The Medical Examiners Certificate card must be carried by OATS drivers at all times.
3. All drivers shall be required to have defensive driving self-instruction, blood borne pathogen, wheelchair securement, child restraints, anti-lock brakes, safe transportation under ADA, evacuation and Department of Transportation alcohol and drug rule training within the first 90 days of employment. All drivers shall be required to have first aid, CPR, evacuation, defensive driving, backing and passenger assistance techniques (PAT) training within the first year of employment and every year thereafter except CPR.
4. All drivers shall wear a picture badge while on duty and any issued uniform clothing with the OATS logo. [Or logo for the service if the name and or logo is different.]

ARTICLE 4 - CONTRACT TERM AND RENEWAL

This contract shall be for a period of one year commencing on the effective date and ending on December 31, 2021. The contract term may be extended at the CITY's discretion for additional one-year periods provided that CITY gives written notice to OATS on or before October 1 and OATS agrees to the extension prior to the end of any term.

ARTICLE 5 - COMPENSATION

For services performed, OATS will provide an itemized billing on a thirty (30) day cycle for services provided to the CITY for riders. ATA will pay OATS an hourly rate in accordance with Article 3 and CITY shall pay ATA the local share not covered by the CITY allocation of FTA Section 5307 Funds in accordance with terms of contract between the CITY and ATA. In the absence of contract between the CITY and ATA for administrative services by ATA to process the compensation of OATS services to CITY, the CITY shall be invoiced directly from OATS and CITY is obligated to pay OATS for services rendered to CITY. The hourly rate is subject to increase or decrease based on the price of gasoline as defined in Article 3. This rate includes ambulatory and wheelchair service and other various trip purposes.

OATS drivers shall record the cash fare of a \$1.50 collected for each one-way trip for each passenger on daily manifest. Fares collected shall be used by CITY to fund the cost of service.

ARTICLE 6 - STANDARD OF CARE

OATS shall exercise the same degree of care, skill and diligence in the performance of the services as is ordinarily possessed and exercised by a contractor under similar circumstances.

OATS drivers shall adhere to the OATS, Inc. Policy on Transporting Individuals using Wheelchairs or Other Mobility Aids as it now exists and as amended in the future, and comply with the Americans with Disabilities Act (ADA) to assure compliance while protecting both the rider and the driver.

ARTICLE 7 - LIABILITY AND INDEMNIFICATION

OATS shall indemnify and hold CITY harmless from and against any and all claims, and/or liabilities of any kind or nature whatsoever arising from actions connected with services provided by or at the direction of OATS, including the cost of reasonable attorney fees and other expenses incurred by or assessed against OATS or the CITY.

ARTICLE 8 - INSURANCE

During the performance of the Services under this Agreement, OATS shall maintain insurance in all categories mandated by Federal, State and Local regulations. OATS shall provide CITY a Certificate of Insurance.

Lessee will provide insurance coverage on the vehicles with minimum limits as follows: \$2,000,000.00 – Auto Liability, Combined Single Limit and \$50,000 – Uninsured/Underinsured Motorist, Combined Single Limit.

ARTICLE 9 - TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

CITY may terminate or suspend performance of this Agreement for CITY's convenience upon written notice to OATS. OATS shall terminate or suspend performance of the Services on a schedule acceptable to CITY. If termination or suspension is for CITY's convenience, CITY shall pay OATS for all the Services performed until the date of the termination by the CITY or suspension expenses. Upon restart, an equitable adjustment shall be made to OATS's compensation.

ARTICLE 10 - NOTICES

Any communication required by this Agreement shall be made in writing to the address specified below:

OATS:

Dorothy Yeager
Executive Director
OATS, Incorporated
2501 Maguire Blvd
Columbia, MO 65201

CITY:

Michael Park
City Traffic Engineer
City of Lee's Summit, Missouri
220 SE Green St.
Lee's Summit, MO 64063

Nothing contained in this Article shall be construed to restrict the transmissions of routine communications between representatives of OATS and CITY.

ARTICLE 11 - WAIVER

A waiver by either CITY or OATS of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 12- ASSIGNMENT

Neither CITY nor OATS shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

ARTICLE 13 – FEDERAL TRANSPORTATION ADMINISTRATION REQUIREMENTS

A list of federal requirements generally applicable to the service, whereby OATS is the SERVICE PROVIDER, is attached and is incorporated for all purposes in Appendix A.

IN WITNESS WHEREOF, CITY and OATS, by and through their authorized officers, have made and executed this Agreement.

CITY OF LEE'S SUMMIT, MO

OATS, INC.

By _____
Stephen Arbo, City Manager

By _____
Dorothy Yeager, Executive Director

Date _____ Date October 12, 2020

Appendix A

Federal Requirements

1. BREACH OF CONTRACT; REMEDIES

- A. If SERVICE PROVIDER shall fail, refuse or neglect to comply with the terms of this AGREEMENT, such failure shall be deemed a total breach of AGREEMENT and the SERVICE PROVIDER shall be subject to legal recourse by CITY, plus costs resulting from failure to comply including the CITY's reasonable attorney fees, whether or not suit be commenced.
- B. The duties and obligations imposed by this AGREEMENT and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law or equity. No action or failure to act by CITY shall constitute a waiver of any right or duty afforded under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

2. CIVIL RIGHTS

- A. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the SERVICE PROVIDER agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the SERVICE PROVIDER agrees to comply with the provisions of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA recipients," 05-13-07 and other applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this AGREEMENT:
 - 1. Race, Color, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*, and Federal transit laws at 49 U.S.C. §5332, the SERVICE PROVIDER agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect the activities undertaken in the course of the

AGREEMENT. The SERVICE PROVIDER agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, sex, sexual orientation, gender identity, national origin, disability or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the SERVICE PROVIDER agrees to comply with any implementing requirements FTA may issue.

2. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the SERVICE PROVIDER agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the SERVICE PROVIDER agrees to comply with any implementing requirements FTA may issue.
3. Disabilities. In accordance with section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 et seq., the SERVICE PROVIDER agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

C. **ADA Access Requirements.** In accordance with section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and U.S. Department of Transportation regulations, “Americans with Disabilities(ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

D. **Environmental Justice.** Except as the Federal Government determines otherwise in writing, the SERVICE PROVIDER agrees to promote environmental justice by:

1. Following and facilitating compliance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, and
2. Following DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997.

3. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. This AGREEMENT is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent.
- B. The SERVICE PROVIDER shall not discriminate on the basis of race, color, creed, sex, sexual orientation, gender identity, national origin, disability or age in the performance of this AGREEMENT. The SERVICE PROVIDER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted AGREEMENT. Failure by the SERVICE PROVIDER 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 CITY deems appropriate. Each subcontract the SERVICE PROVIDER signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).
- C. The SERVICE PROVIDER may not substitute, remove or terminate a DBE subcontractor without CITY's prior written consent. Written consent of termination may be given if the SERVICE PROVIDER has demonstrated good cause. Before submitting its request to terminate or substitute a DBE subcontractor, the SERVICE PROVIDER must give notice in writing to the DBE subcontractor, with a copy to CITY, of its intent to request to terminate and/or substitute, and the reason for the request. The SERVICE PROVIDER must give the DBE five days to respond to the SERVICE PROVIDER's notice and advise CITY and the SERVICE PROVIDER of the reasons, if any, why it objects to the proposed termination of its subcontract and why CITY should not approve the SERVICE PROVIDER's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

4. EMPLOYEE PROTECTIONS

- A. **Public Transportation Employee Protective Arrangements (Standard).** To the extent that the FTA determines that transit operations are involved, the SERVICE PROVIDER agrees to carry out the transit operations work on this AGREEMENT in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this AGREEMENT and to meet guidelines established in 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department of Labor to

the FTA, the employee protective requirements of 49 U.S.C. § 5333(b) (formerly known as Section 13(c) of the Federal Transit Act), and the U.S. Department of Labor certification applicable to the grant from which Federal assistance is provided to support work on this AGREEMENT. The SERVICE PROVIDER agrees to carry out that work in compliance with the conditions stated in that U.S. Department of Labor certification which is incorporated in and made part of this AGREEMENT.

- B. Public Transportation Employee Protective Arrangements (for Elderly and Disabled Transportation).** If the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements are necessary or appropriate on work performed under this AGREEMENT, the SERVICE PROVIDER agrees to comply with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C § 5333(b) (formerly known as Section 13(c) of the Federal Transit Act), U.S. Department of Labor (“DOL”) guidelines established in 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to the FTA, applicable to the grant from which Federal assistance is provided to support work on this AGREEMENT. The SERVICE PROVIDER agrees to perform transit operations in connection with the underlying AGREEMENT in compliance with the conditions stated in that U.S. DOL letter. The SERVICE PROVIDER agrees to comply with U.S. DOL’s certification of public transportation employee protective arrangements for the Project, dated as displayed on the underlying Grant Agreement.

5. ENVIRONMENTAL REGULATIONS

- A. Clean Water.** The SERVICE PROVIDER agrees to comply with all applicable standards, orders, or regulations issued under Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. Sections 1251 through 1377. The SERVICE PROVIDER agrees to report, and require each subcontractor at every tier receiving more than \$100,000 from this AGREEMENT to report any violation of these requirements resulting from any project implementation activity to CITY. The SERVICE PROVIDER understands that CITY will in turn, report each violation as required to assure notification to FTA and the appropriate U.S. EPA Regional Office.
- B. Energy Conservation.** The SERVICE PROVIDER agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* The SERVICE PROVIDER agrees to include the requirements of this clause in all subcontracts under this AGREEMENT.
- C. Clean Air Requirements for Transit Operations.** The U.S. EPA imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the SERVICE PROVIDER agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project including all applicable standards, orders, or regulations

issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. Section 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. Sections 7401 through 7671q.: “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and “Fuel Economy of Motor Vehicles,” 40 CFR Part 600. The SERVICE PROVIDER agrees to report, and to require each subcontractor at any tier receiving more than \$100,000 from this AGREEMENT to report, any violation of these requirements resulting from any project implementation activity to CITY. CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate U.S. EPA Regional Office.

- D. **Recovered Materials/Recycled Products.** To the extent practicable and economically feasible, the SERVICE PROVIDER agrees to provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to products described in U.S. Environmental Protection Agency guidelines at 40 CFR Part 247, which implements Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), and Executive Order 12873. The SERVICE PROVIDER also agrees to include these requirements in each subcontract at every tier receiving more than \$10,000.

6. FEDERAL REQUIREMENTS

- A. **Changes.** SERVICE PROVIDER shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the AGREEMENT, as they may be amended or promulgated from time to time during the term of this AGREEMENT. SERVICE PROVIDERS’ failure to so comply shall constitute a material breach of this AGREEMENT.

B. **Debarment and Suspension Certification.**

1. The SERVICE PROVIDER, its principals and any affiliates, shall certify that it is not included in the “U.S. General Services Administration’s List of Parties Excluded from Federal Procurement or Non-procurement Programs,” as defined in 2 CFR Part 200, Subpart C. The SERVICE PROVIDER must apply DOT’s debarment and suspension requirements to itself and each third party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” 2 CFR Part 180.
2. The SERVICE PROVIDER agrees to refrain from awarding any subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any subcontractor (at any tier) seeking a contract exceeding \$25,000.
3. The SERVICE PROVIDER agrees to provide CITY a copy of each conditioned debarment or suspension certification provided by a prospective subcontractor at any tier,

and to refrain from awarding a subcontract with any party that has submitted a conditioned debarment or suspension certification until FTA approval is obtained.

4. The SERVICE PROVIDER agrees to collect a debarment and suspension certification from the prospective third party contractor, or include a clause in the third party contract requiring disclosure and check the Excluded Parties List System (EPLS) that is now a part of the System for Awards Management (SAM) located at www.sam.gov.

C. **Disclaimer of Federal Government Obligation or Liability.** The SERVICE PROVIDER, and any subcontractors acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this AGREEMENT, absent the express written consent by the Federal Government, the Federal Government is not a party to this AGREEMENT and shall not be subject to any obligations or liabilities to the SERVICE PROVIDER, or any other party (whether or not a party to this AGREEMENT) pertaining to any matter resulting from this AGREEMENT. It is further agreed that the clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

D. **Incorporation of Federal Transit Administration (FTA) Terms.** The provisions in this AGREEMENT include certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the AGREEMENT. SERVICE PROVIDER shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests that would cause CITY to be in violation of the FTA terms and conditions. The SERVICE PROVIDER agrees to include this clause in all subcontracts at any tier. It is further agreed that the clause shall not be modified, except to identify the subcontractors who will be subject to the provision.

E. **ANNUAL AUDITS:** The SERVICE PROVIDER agrees to have an annual audit conducted in accordance with 2 CFR 200 (previously referred to as OMB Circular A-133) if Federal award expenditures are \$750,000 or more in the past fiscal year. A copy of the 2 CFR 200 required audit is to be submitted to the CITY within thirty (30) days of receiving the audit report or nine (9) months after the end of the audit period, whichever occurs earlier.

(A) The SERVICE PROVIDER shall permit the CITY and the FTA, or any of their representatives or designees, to inspect all vehicles, facilities and equipment purchased by the SERVICE PROVIDER as part of the project, all transportation services rendered by the SERVICE PROVIDER by the use of such vehicles, facilities and equipment, and all relevant project data and records.

(B) In addition, the CITY and the FTA, or any of their representatives or designees, shall have full access to and the right to examine, during normal business hours and as often as the CITY or the FTA deems necessary, all of the SERVICE PROVIDER's records with respect to all matters covered by this Agreement. Such rights shall last for three (3) years beyond the longer of the following periods: (a) the period during which any property acquired with funds provided pursuant to this Agreement is used for purposes for which the federal financial assistance is extended, or for another purpose involving the provisions of similar services or benefits; or (b) the period during which the SERVICE PROVIDER retains ownership or possession of such property. All documents, papers, accounting records and other material pertaining to costs incurred in connection with the project shall be retained by the SERVICE PROVIDER for three (3) years from the date of final payment to facilitate any audits or inspections.

F. **Federal Funding Accountability and Transparency Act of 2006:** The Grantee shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 CFR Part 170.

G. **National Intelligent Transportation Systems Architecture and Standards.** The SERVICE PROVIDER agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and SERVICE PROVIDER agrees to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" *66 Fed. Reg. 1455*, January 8, 2001, and any further implementing directives, except to the extent FTA determines otherwise in writing.

7. FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

A. The SERVICE PROVIDER acknowledges that the provisions of 49 U.S.C. Section 5323(l) extends the criminal fraud provisions of 18 U.S.C. Section 1001 to all certificates, submissions, or statements made in connection with any program financed under the Federal transit program. In addition, the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sections 3801 *et seq.*, and DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to any false or fraudulent statement or claim made under the Federal transit program.

B. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Project. Upon execution of the underlying AGREEMENT, the SERVICE PROVIDER certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, or may make pertaining to the project covered under this AGREEMENT. In addition to other penalties that may be applicable, the SERVICE PROVIDER further

acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the SERVICE PROVIDER to the extent the Federal Government deems appropriate.

- C. The SERVICE PROVIDER also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with this AGREEMENT, the Government reserves the right to impose on the SERVICE PROVIDER the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1), to the extent the Federal Government deems appropriate.
- D. The SERVICE PROVIDER agrees to include these clauses in each subcontract under this AGREEMENT, and it is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

8. GOVERNING LAW

This AGREEMENT shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Missouri. Any action of law, suit in equity, or other judicial proceeding to enforce or construe this AGREEMENT, respecting its alleged breach, shall be instituted only in the Circuit Court of Jackson County, Missouri.

9. HEADINGS

The headings included in this AGREEMENT are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of any provision, and shall not be construed to affect, in any manner, the terms and provisions hereof of the interpretation or construction thereof.

10. INDEMNIFICATION

- A. To the fullest extent permitted by law, SERVICE PROVIDER agrees to and shall indemnify, defend and hold harmless CITY, its Commissioners, officers and employees from and against any and all claims, losses, damages, causes of action, suits, liens and liability of every kind, (including all expenses of litigation, expert witness fees, court costs and attorney's fees whether or not suit be commenced) by or to any person or entity (collectively the "Liabilities") arising out of, caused by, or resulting from the acts or omissions of SERVICE PROVIDER, SERVICE PROVIDER'S subcontractors, or sub-subcontractors, their respective agents or anyone directly or indirectly employed by any of them in performing work under this AGREEMENT, and provided such claim is attributable to bodily injury, sickness, disease or death of any person, or injury to or destruction of property, including consequential damages, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, so long as such Liabilities are not caused by the sole negligence or willful misconduct of a party indemnified hereunder. Such obligation shall not be construed

to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

- B. In claims against any person or entity indemnified under this section, by an employee or SERVICE PROVIDER, subcontractor or sub-subcontractor or anyone directly or indirectly employed by any of them, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the SERVICE PROVIDER, SERVICE PROVIDER'S subcontractor, or sub-subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. If any action at law or suit in equity is instituted by any third party against SERVICE PROVIDER arising out of or resulting from the acts of SERVICE PROVIDER in performing work under this AGREEMENT, SERVICE PROVIDER shall promptly notify CITY of such suit.
- C. If any action at law or suit in equity is instituted by any third party against CITY or its commissioners, officers or employees arising out of or resulting from the acts of SERVICE PROVIDER, SERVICE PROVIDER'S subcontractor or sub-subcontractor, their respective agents or anyone directly or indirectly employed by any of them in providing products, equipment or materials, or in performing work or services under this AGREEMENT, and if SERVICE PROVIDER has failed to provide insurance coverage to CITY against such action as required herein or otherwise refuses to defend such action, CITY shall have the right to conduct and control, through counsel of its choosing, the defense of any third party claim, action or suit, and may compromise or settle the same, provided that CITY shall give the SERVICE PROVIDER advance notice of any proposed compromise or settlement.
- D. CITY shall permit SERVICE PROVIDER to participate in the defense of any such action or suit through counsel chosen by the SERVICE PROVIDER, provided that the fees and expenses of such counsel shall be borne by SERVICE PROVIDER. If CITY permits SERVICE PROVIDER to undertake, conduct and control the conduct and settlement of such action or suit, SERVICE PROVIDER shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release from liability with respect to such action or suit to CITY. SERVICE PROVIDER shall promptly reimburse CITY for the full amount of any damages, including fees and expenses of counsel for CITY, incurred in connection with any such action.

11. LOBBYING

- A. The SERVICE PROVIDER is bound by its certification to the Authority regarding the use of federal or non-federal funds to influence, or attempt to influence any federal officer or employee regarding the award, execution, continuation, or any similar action of any federal grant or other activities as defined in 31 U.S.C. 1352, and 49 CFR Part 20. The SERVICE PROVIDER agrees to comply with this requirement throughout the term of the AGREEMENT.

- B. The SERVICE PROVIDER agrees to include these requirements in all subcontracts at all tiers exceeding \$100,000, under this AGREEMENT and to obtain the same certification and disclosure from all subcontractors (at all tiers).

12. TRANSIT ASSET MANAGEMENT

Unless FTA determines otherwise in writing, the SERVICE PROVIDER agrees to develop a Transit Asset Management Plan that complies with the Federal transit laws, specifically 49 U.S.C. § 5326 and 5337(a)(4), as amended by MAP-21, Federal regulations pertaining to the National Transit Asset Management System required to be issued by 49 U.S.C. § 5326(d), as amended by MAP-21, and Performance Measures and Targets required to be issued by 49 U.S.C. § 5326(c)(1), as amended by MAP-21, other applicable Federal laws and regulations.

13. INSURANCE

- A. In addition to other insurance requirements that may apply, the SERVICE PROVIDER agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction having an insurable cost of \$10,000 or more, or an acquisition having an insurable cost of \$10,000 or more. It will comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except as the Federal Government determines otherwise in writing.
- B. The SERVICE PROVIDER agrees to include these requirements in all subcontracts at all tiers exceeding \$100,000, under this AGREEMENT and to obtain the same certification and disclosure from all subcontractors (at all tiers).

14. PROHIBITED INTERESTS

- A. No board member, officer, employee or agent of SERVICE PROVIDER, CITY or of a local public body who has participated or will participate in the selection, award, or administration of this AGREEMENT, nor any member of his or her immediate family, business partner or any organization which employs, or intends to employ any of the above during such period, shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof, to any share or part of this AGREEMENT, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.
- B. No member of, or delegates to, the Congress of the United States shall be admitted to any share or part of the AGREEMENT, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly-owned corporation.

15. RECORD RETENTION AND ACCESS

- A. The SERVICE PROVIDER agrees that, during the course of this AGREEMENT and any extensions thereof, and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to this AGREEMENT. In the event of litigation or settlement of claims arising from the performance of this AGREEMENT, the SERVICE PROVIDER agrees to maintain same until such litigation, appeals, claims or exceptions related thereto have been disposed of.
- B. The SERVICE PROVIDER shall, in accordance with 49 U.S.C. Section 5325(g), permit CITY, the Federal Transit Administration and Department of Transportation officials, the Comptroller General of the United States, to inspect all work, materials, construction sites, payrolls, and other data and records, and to audit the books, records, and accounts of the SERVICE PROVIDER relating to its performance under this AGREEMENT.
- C. The SERVICE PROVIDER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

16. PROCUREMENT

- A. The SERVICE PROVIDER agrees to comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements.
- B. The SERVICE PROVIDER agrees to comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements in effect now and as may be later amended and to follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” and amendments thereto, to the extent consistent with applicable Federal laws, regulations, and guidance, except as FTA determines otherwise in writing

17. SEAT BELT USE POLICY

The SERVICE PROVIDER is encouraged to comply with terms of Executive Order No. 13043 “Increasing Seat Belt Use in the United States” and is encouraged to include those requirements in each subcontract awarded for work relating to this Contract.

18. SEVERABILITY

If any clause or provision of this AGREEMENT is held to be invalid illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this AGREEMENT shall continue in full force and effect. In lieu of each clause or provision of this AGREEMENT that is illegal, invalid, or unenforceable, there shall be added as a part of this AGREEMENT, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

19. TERMINATION

- A. **Termination for Convenience.** The CITY may terminate this AGREEMENT, in whole or in part, at any time by written notice to the SERVICE PROVIDER when it is in CITY's best interest. Upon such termination the SERVICE PROVIDER shall be entitled to compensation for PROJECT activities in accordance with this AGREEMENT which were incurred prior to the effective date of the termination, but not exceeding the federal funds ceiling set forth in the AGREEMENT.
- B. **Termination for Default.** If the SERVICE PROVIDER fails to perform in the manner called for in the AGREEMENT, or if the SERVICE PROVIDER fails to comply with any other provisions of the AGREEMENT, CITY may terminate this AGREEMENT for default. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in the AGREEMENT.

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least forty-five (45) days in advance of such termination date.

- C. **Funding Contingency.** This AGREEMENT is subject to financial assistance provided by the U.S. Department of Transportation; the SERVICE PROVIDER agrees that withdrawal or termination of such financial assistance by the U.S. DOT may require CITY to terminate the Agreement.
- D. **Opportunity to Cure.** CITY in its sole discretion may, in the case of a termination for breach or default, allow the SERVICE PROVIDER an appropriately short period of time in which to cure the defect. In such case, the written notice of termination will state the time period in which cure is permitted and other appropriate conditions. If SERVICE PROVIDER fails to remedy to CITY's satisfaction the breach or default of any of the terms, covenants, or conditions of this AGREEMENT within the time period permitted, CITY shall have the right to terminate the AGREEMENT without any further obligation to SERVICE PROVIDER. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against SERVICE PROVIDER and its sureties for said breach or default.

- E. **Waiver of Remedies for any Breach.** In the event that CITY elects to waive its remedies for any breach by SERVICE PROVIDER of any covenant, term or condition of this AGREEMENT, such waiver by CITY shall not limit CITY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

20. TEXTING WHILE DRIVING AND DISTRACTED DRIVING

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, CITY encourages its SERVICE PROVIDERS to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to encourage each subcontractor to do the same.

21. TRANSIT OPERATION RESTRICTIONS

- A. **Charter Service Operation.** The SERVICE PROVIDER agrees to comply with 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604, which provide that SERVICE PROVIDERS and SERVICE PROVIDERS of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service agreement required by these regulations is incorporated by reference and made part of this AGREEMENT.
- B. **Buy America** – The Grantee agrees to abide by the provisions of the Buy America requirements in 49 CFR Subtitle B, Part 661.
- C. **Drug Use and Testing and Alcohol Misuse and Testing.*** SERVICE PROVIDERS providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.
1. The SERVICE PROVIDER agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655 of the United States Department of Transportation and Federal Transit Administration Regulations.
 2. The SERVICE PROVIDER agrees to produce any documentation necessary to establish its compliance with Parts 40 and Part 655, and permit any authorized representative of the United States Department of Transportation, the Federal Transit Administration or CITY, to inspect all collection and testing facilities, to review all records associated with the implementation of the drug and alcohol testing program and audit and review the testing process as required under 49 CFR Part 40 and Part 655.

3. If the SERVICE PROVIDER is unwilling or unable to comply with the regulations, CITY reserves the right to discontinue using the SERVICE PROVIDER for safety-sensitive duties. SERVICE PROVIDERS that bid on safety-sensitive work will be considered non-responsive if they do not have or are not able to supply documentation that a DOT/FTA compliant drug and alcohol-testing program has been established.

D. Substance Abuse/Drug-Free Workplace. The SERVICE PROVIDER to agrees to comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103 et seq., the U.S. DOT regulations, “Government-wide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. part 32, and any amendments to those regulations when they are issued, and follow and facilitate compliance with U.S. OMB guidance, “Government-wide Federal Transit Laws,” specifically 49 U.S.C. § 5331, as amended by MAP-21.

E. School Bus Operations. The SERVICE PROVIDER will not use FTA assisted facilities or equipment to support exclusive school bus operations except as permitted by 49 U.S.C. § 5323(f) or (g) and FTA regulations “School Bus Operations,” 49 CFR Part 605, to the extent consistent with 49 U.S.C § 5323 (f) or (g).

F. Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 et seq., and Department of Agriculture regulations, “Animal Welfare,” 9 CFR Subchapter A, Parts 1, 2, 3, and 4

G. Reporting Requirements.

1. The SERVICE PROVIDER agrees to provide quarterly reports specified in paragraph 5 of this AGREEMENT. In addition, CITY is required to report to the FTA annually program performance measures and activities. Accordingly, the SERVICE PROVIDER agrees to provide CITY with any additional or follow-up information reasonably requested by CITY, in order to meet CITY’s FTA reporting requirements
2. The SERVICE PROVIDER agrees to collect and maintain all data, using proper procedures, requested by CITY for compliance with the "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, which includes various reports required for FTA's national transit database. The SERVICE PROVIDER shall submit the requested information to CITY no later than April 1st for the previous calendar year.
3. SERVICE PROVIDER's failure to properly collect, maintain, and submit the data will be considered a breach of contract. In addition, the SERVICE PROVIDER shall be liable to CITY for any federal funds not allocated to CITY due to a lack of, or deficient data, or improper procedures used by the SERVICE PROVIDER.

* **Drug and Alcohol Testing.** SERVICE PROVIDERS that receive only Section 5310 program assistance are not subject to FTA's drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver's licenses (49 CFR Part 382).