

AGREEMENT FOR FERRY SERVICE OPERATIONS AND MAINTENANCE

This Agreement for Ferry Service Operations and Maintenance ("Agreement") is made and entered into as of January 28, 2021, by and between the New Orleans Regional Transit Authority ("RTA"), a political subdivision of the State of Louisiana, whose address is 2817 Canal Street, New Orleans, Louisiana, and LABMAR FERRY SERVICES, LLC ("Contractor"), a Louisiana corporation authorized to do business in the State of Louisiana.

RECITALS

WHEREAS, the RTA 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;

WHEREAS, the RTA conducted a competitive procurement process to select a Contractor to operate and maintain Ferry Service operating out of Facilities provided by the RTA;

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, RTA has determined that because of temporary funding issues, that it wished to enter into an interim agreement, evidenced by the Interim Vessel Management Agreement for Ferry Service Operations and Maintenance ("Interim Agreement") entered into with the Contractor as of March 15, 2020;

WHEREAS, at the termination of the Interim Agreement, with an original contract term until December 31, 2020, but extended by the Parties until January 31, 2021, the Parties agreed, subject to funding, to enter into a long-term Agreement for Ferry Service Operations and Maintenance;

WHEREAS, the intent of this Agreement is to fulfill the Parties' covenant as part of the Interim Agreement to enter the long-term agreement referenced to in the above Whereas;

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

1) The RTA 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 RTA in the most efficient and economical manner possible while maintaining the quality and quantity of services as determined by the RTA.

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

4) Contractor shall have authority to enter into, on its own behalf, all contracts necessary to perform the services specified herein, subject to approvals that may be

required as provided herein. Contractor shall not have the authority to contractually bind the RTA.

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 RTA. Contractor shall, at all times during the term of this Agreement, exercise safety precautions for the protection of all Contractor and RTA employees and patrons.

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 RTA 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 RTA will perform oversight over the Contractor's services, as required by the FTA or as otherwise in the best interest of the RTA.

WHEREAS, the RTA and the Contractor have finalized mutually acceptable terms and conditions setting forth the rights and obligations of the Parties in this Agreement.

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

SEC. 1 DEFINITIONS

(1) "Agreement" means this Agreement, including the Exhibits hereto, and any amendments agreed between the Parties 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" or "Approved" means a written determination by the RTA that a particular plan, program, invoice, action, or submittal of the Contractor appears to meet the requirements of this Agreement.

(3) "Change of Control" means the existing owners of the equity interests of the Contractor shall cease to beneficially own 100% of such equity interests, notwithstanding the forgoing, any transfer for estate planning, tax or other similar purposes shall not be deemed a Change of Control.

(4) "Chief Executive Officer" means the RTA Chief Executive Officer or his or her designee.

(5) "Commencement Date" means the effective date of this Agreement, February 1, 2021.

(6) "Contract Month" means a calendar month during a Contract Year, or portion thereof if the Contract Term begins or ends mid-calendar month.

(7) "Contract Term" means the term set forth in Section 4 of this Agreement, which shall include any base term plus any successive extensions (if exercised).

(8) "Contract Year" means 12 successive Contract Months, the first day of which is on January 1, and the corresponding anniversary dates thereafter. However, Year 1 of the Contract will be for a term of February 1, 2021 to December 31, 2021.

(9) "Days" means business days recognized by the RTA, 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, Christmas Eve and Christmas Day; and (B) any holiday recognized by the RTA on a weekday when that holiday falls on a weekend. "Deductions" means amounts assessed to the Contractor set forth in Section 21 of this Agreement.

(10) "Deductions" shall mean amounts assessed to the Contractor set forth in Section 21 of this Agreement.

(11) "DOTD" means the Department of Transportation and Development of the State of Louisiana.

(12) "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.

(13) "Facilities" means the following facilities provided to the RTA by DOTD to be used by the Contractor to provide services and operate and maintain the Vessels and Non-Revenue Vehicles under this Agreement, including all appurtenances thereto: (A) the Algiers Point/Canal Street Ferry Terminals; (B) the Chalmette/Lower Algiers Ferry Terminals; (C) Gretna Ferry Terminal; and (D) the Maintenance Facility located in 7320 Patterson Drive. The term "Facilities" also includes the landing barge therein fitted, including those barges owned by DOTD and chartered and sub-chartered pursuant to individual Charter Orders under the respective Blanket Bareboat Charter Agreements, or any temporary facility and/or landing barges that may be needed by the Contractor to provide the services and operate and maintain RTA's assets under this Agreement. The term "Facilities" shall also include any other facility that RTA may provide to the Contractor as part of any additional Ferry Service that the Parties subsequently agree to be incorporated to this Agreement.

(14) "FTA" means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

(15) "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 and (3) the Gretna-to-Canal Street ferry line (currently suspended). The term "Ferry Service" shall also include any other Ferry Service line that the Parties subsequently agree to be incorporated to this Agreement.

(16) "Force Majeure" means (a) acts of God, such as hurricanes or tropical weather events; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority, including the RTA, the USCG and the State of Louisiana; (g) national, state, Parish or regional emergency; and (h) shortage of adequate power or transportation facilities. It does not include Labor Actions;

(17) "HELM Connect" means the Vessel Maintenance and Management Systems provided by RTA 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.

(18) "Incentive Payment" means amounts awarded to the Contractor set forth in Section 21 of this Agreement.

(19) "Key Personnel" means the Contractor's President, General Manager, Port Captain, Port Engineer and Safety Manager.

(20) "Labor Actions" means labor-related incidents, such as strikes, work stoppages or slowdowns or other industrial disturbances.

(21) "Missed Trip" means a scheduled Trip that was not performed by a Vessel.

(22) "Management Fee" means the management fee due the Contractor, which shall be 10% of all Total Costs or \$55,000 per Contract Month, at the discretion of the Contractor.

(23) "Non-Revenue Vehicle" means a Vehicle that is used to support Work 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 RTA and the Non-Revenue Vehicles provided by the Contractor.

(24) "Operating Subsidy" means State of Louisiana public funding provided to assist in deferring the cost of Ferry Service.

(25) "Party" or "Parties" means the RTA and the Contractor, individually (each a Party) and collectively (the Parties).

(26) "Revenue Service" means the operation of a Vessel during the period which passengers can board and ride on the Vehicle.

(27) "Service Change" means a change to the Work provided by the Contractor under this Agreement as agreed among the Parties.

(28) "Surge Services" means additional Ferry Services above and beyond the normal weekday and weekend hours of service to serve demand created by special events and any emergency services set forth in Sections 18(e)(1) and 25 (including any additional frequency).

(29) "Total Cost" means the expenses incurred in the operation, maintenance, supervision, and support of Ferry Service or Work, including without limitation (i) the costs set forth in Section 5(b)(A)-(G), (ii) any insurance premium, deductible, fees and expenses, (iii) reasonable travel and out-of-pocket expenses incurred by Contractor in connection with the performance of the Work (including oversight of maintenance and repairs of Vessels, Non-Revenue Vehicles, Equipment and Facilities), (iv) all sales, use and excise taxes, ad valorem and any other taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Contractor hereunder that are applicable to the Work, provided, that, in no event shall the RTA pay or be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel or real or personal property or other assets, (v) employee payroll taxes including liability related to worker's compensation, unemployment insurance, social security, and employee benefits, (vi) employee wages, salaries, health benefits, retirement, and other employee benefits and all costs of training, (vii) any audit establishing the conditions of the Vessel and Non- Revenue Vehicle fleet, Facilities and

Equipment used in the Work, (viii) any training costs and employee on-boarding costs, including but not limited to pre-employment physicals, drug testing, background checks; (ix) any auditing costs; (x) any software or systems used in the Ferry Service or Work; (xi) any other expenses incurred in providing Ferry Service or Work, including any Surge Services and (xii) legal fees and expenses related to the foregoing. Total Costs shall include, for the avoidance of doubt, all costs and expenses set forth in 5(b)(A)-(G).

(30) "Trip" means a one-way movement of a Vessel in service from one terminus to another terminus of a single route.

(31) "Vehicle" includes the Non-Revenue Vehicles used by the Contractor in providing services under this Agreement.

(32) "Vessels" includes the ferries owned by DOTD and/or 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. Capt. Neville Levy
3. Col. Frank X. Armiger
4. RTA 1
5. RTA 2

The term "Vessels" shall also include any other ferry that the Parties subsequently agree to be incorporated to this Agreement. 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 expressly defined otherwise herein.

(33) "Work" means all the services and responsibilities to be performed by the Contractor under this Agreement, as specified, stated, or implied in this Agreement, including any Surge Services provided, and material furnished or utilized in the performance of services, and workmanship in the performance of services.

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

(a) Summary of Scope. The Contractor, pursuant to transit and maritime industry recognized guidelines and practices, shall perform all day-to-day operational, maintenance, and other support functions as delineated in 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, customer service, community outreach and branding for Ferry Services under Article IX of the CEA, as described in this Agreement. Furthermore, the Contractor shall perform such Work, pursuant to transit and maritime industry recognized guidelines and practices, in accordance with Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders. In the event that any term or condition of the CEA or Exhibit C Blanket Bareboat Sub-Charter Agreement and Sub-Charter Orders contradicts this Agreement, the contradictory term or condition in this Agreement shall prevail. 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 except where it expressly contradicts. 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 use commercially reasonable efforts to (i) perform all services diligently, carefully, and in a professional manner; to (ii) have and maintain all required authority, licenses, professional ability, skills, training, personnel, and capacity to perform the Contractor's obligations under this Agreement; to (iii) furnish all insurance, labor, supervision, machinery, material, and supplies necessary therefore (other than Equipment supplied by the RTA), as required under this Agreement; and (iv) to comply with all terms and conditions of this Agreement and the other Contract Documents.

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

(1) The Contractor has all licenses and permits necessary to perform the Work in accordance with this Agreement.

(2) The Contractor has reviewed the Work 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 other than as set forth herein.

(3) 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.

(4) As of the date of this Agreement, there are no changes in ownership or control of the Contractor, and none are pending or in process.

(5) As of the date of this Agreement, there are no existing or threatened legal proceedings against the Contractor, known to the Contractor, that would have a material adverse effect on its ability to perform its obligations under this Agreement.

(d) Contractor Covenants. Contractor agrees, during the Contract Term, as follows:

(1) The Contractor shall maintain 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, 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 will comply with all applicable Federal, State, and local laws and regulations and the conditions of any required governmental approvals.

(5) In the event that a Change of Control arises during the Contract Term, Sec. 30 of this Agreement shall apply.

(6) In the event a legal proceeding is threatened, to the Contractor's knowledge, against the Contractor that may have a material adverse effect on its ability to perform its obligations under this Agreement, the Contractor shall provide the RTA notice of no less than ten (10) Days after the Contractor knows of the threatened legal proceeding.

(7) The Contractor agrees to take all action reasonably necessary to ensure the uninterrupted operation of the Ferry Service in the U.S. coastwise trade. Upon the request of the RTA, such action may include obtaining approvals to conduct ferry operations from the USCG, 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 RTA under Section 32 of this Agreement.

(e) 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 each case in accordance with this Agreement.

(3) In operating services under this Agreement, the Contractor shall use commercially reasonable efforts to implement policies which emphasize maintaining courtesy to passengers, adequate training (including training consistent with the RTA's Customer Service Guidelines) 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.

(4) In providing services under this Agreement, the Contractor shall comply with the RTA Procurement Manual; the RTA Accident and Incident Investigation procedure; the RTA Disadvantage Business Enterprise Program; the RTA Drug and

Alcohol Free Workplace; the RTA Equal Employment Opportunity/Affirmative Action Program; RTA's Customer Service Guidelines; the RTA Vehicle Condition Policy; the RTA Maintenance Staffing Requirements; the RTA Uniform Policy; the RTA Fare Collection Policy; the RTA Facility PM Program; the RTA Ferry Vessels Maintenance Plan; the Minimum Wage Requirements set forth in Exhibit D; the RTA 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 RTA; the RTA City Assisted Evacuation Plan set forth in Exhibit G. RTA reserves the right to adopt and/or update any of these policies during the duration of this Agreement. However, the Contractor shall not be required to comply with any policies, or amendments to policies, not provided in writing by RTA, upon reasonable notice", but not within less than five (5) Days.

(5) Contractor acknowledges and agrees to provide information or reports as reasonably requested by the RTA, including but not limited to information relating to Ferry Service operations, reportable accidents and maintenance that is required to be submitted into the National Transit Database.

(6) Contractor acknowledges that it is the policy of the RTA to ensure access to the economic opportunity the agency offers in a manner that is fair and equitable and that affords participation to all citizens regardless of race, gender, ethnicity, age, religious background, sexual orientation and disability. Accordingly, Contractor also acknowledges that RTA has implemented a Disadvantaged Business Enterprise (DBE) Program designed to increase small and disadvantaged business participation in RTA contracts and procurements. The growth and development of small and disadvantaged businesses is important to the New Orleans regional economy. The RTA works to support that growth and development, in part, by providing business opportunities under its DBE Program Legal Authority. The RTA is a recipient of federal transit funds from the U.S. Department of Transportation's FTA. As a condition of receiving this federal funding, RTA is legally required to establish and maintain a DBE program in compliance with Title 49 of the U.S. Code of Federal Regulation, Part 26 (49 CFR Part 26). Contractor acknowledges and agrees to abide by RTA's Disadvantaged Business Enterprise programs or policies set forth in Exhibit D.

(7) 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 RTA 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 FTA's required contract clauses are attached and incorporated into this Agreement as

Exhibit E.

(8) **DBE Participation.** The Parties agree to set a DBE goal of 10 percent (%) of the Total Cost paid by RTA. The DBE goal is for commercially useful services. Contractor shall count only the value of the work actually performed by its DBE subcontractor toward attainment of the DBE goal. Contractor shall also ensure that any work that its DBE subcontractor has subcontracted to a non-DBE firm does not count toward attainment of the DBE goal. Finally, Contractor shall ensure that any fees or expenses paid to its DBE subcontractor are only counted toward attainment of the DBE goal if the DBE subcontractor is performing a commercially useful function under this Agreement.

(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 RTA. 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 RTA, 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 RTA. This clause applies to both DBE and non-DBE subcontractors.

(f) **RTA Duties.** The RTA 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 ridership information, fare data and media including, but not limited to, transfer forms and bus passes; providing marketing and advertising services; paying fuel costs and utility costs for Vessels, Vehicles and Facilities; responsibility for all Vessels, Vehicles, Facility and infrastructure maintenance (to the extent required under this Agreement), including the cost of services, materials, and supplies; planning and scheduling of transit services; conducting community outreach duties, and providing and managing customer call center operations. Consistent with the responsibility to schedule transit services, the RTA may require that the Contractor implement a significantly revised transit deployment plan no more than three (3) times per year, provided that the RTA provide the Contractor thirty (30) calendar days' notice prior to the implementation of any Service Change.

(1) In the event, however, that RTA requires the Contractor to pay for any of RTA's responsibilities listed in the above subsection, such expenses shall not be considered Total Costs, and RTA agrees to reimburse the Contractor, at cost, plus the Contractor's 10% Management Fee, for such expenses. Accordingly, such reimbursable expenses shall not be part of the compensation specified in Section 5 of this Agreement.

(2) RTA agrees to provide Contractor with Ridership Report in order for Contractor to reconcile cash received during voyages.

SEC. 3 [RESERVED]

(a) [RESERVED]

SEC. 4 CONTRACT TERM

(a) Term. The Agreement will become effective on the Commencement Date. The term of this Agreement shall be from its effective date through December 31, 2025.

(b) Option to Extend Contract Period. At least one hundred and twenty (120) calendar days prior to the end of the Contract Term, the RTA shall notify the Contractor in writing whether it intends to exercise its option to extend the term on terms to be agreed to. The decision as to whether to exercise each extension shall be at the RTA's sole discretion.

SEC. 5 COMPENSATION FOR SERVICES

(a) Basis for Compensation. In consideration of the Contractor's full performance of the Work, and in accordance with the terms of this Agreement, the RTA shall pay the Contractor the sum of (i) Total Costs, plus (ii) the Management Fee.

(b) Not to Exceed Amount. The Parties agree that the annual contract amount will not exceed the annual budget submitted by Contractor, as may be supplemented from time to time, and approved by the RTA. Subject to Sec. 44 of this Agreement, the Parties agree that annual contract amount shall not exceed the following amounts:

Contract Year	Amount
1 st	\$7,848,382.00 (for the period commencing February 1, 2021 through December 31, 2021)
2 nd to 5 th	As agreed, but the annual contract for the 2 nd year shall not exceed 3% of \$8,442,843.00. The contract amount for years 3 through 5 shall not exceed 3% increase of prior year's contract amount, allocated to increase in wage costs

(c) Scope of Compensation. The compensation provided to the Contractor as described in this Section shall cover the costs of performing the Work 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 Sections 11(m) and (n)); (B) all costs of maintaining and repairing the Non-Revenue Vehicles (whether supplied by RTA 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 RTA); (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. All repairs pursuant to Section 11(h) of this Agreement are for RTA's account and shall be deemed a Total Cost, subject to the Contractor's 10% Management Fee, provided Contractor pays the vendor for such repairs. The Contractor will have no other

right or claim to compensation, payment, or reimbursement from the RTA, except as otherwise expressly provided in this Agreement.

(d) Compliance with Regulation. The Parties agree to comply with 48 CFR 31.2, if applicable.

SEC. 6 [RESERVED]

SEC. 7 SURGE SERVICE

(a) Surge Services. The RTA may, in its discretion, request the Contractor to operate Surge Services. Any such request shall be made in writing and shall be made not less than twenty-one (21) Days in advance of the date the Surge Services will be needed. The Contractor shall provide the Surge Services requested unless the Contractor provides a reasonable basis to the RTA that providing such services would have an adverse impact on its ability to provide the operations and maintenance services required under this Agreement. If the Surge Services are requested upon notice of less than ten (10) Days, the Contractor agrees it will make a good faith effort to provide such services within the timeframe requested.

SEC. 8 INVOICES

(a) Submittal. During the Contract Term, the Contractor shall submit an invoice for each Contract Month of operations to the RTA, no later than the 10th calendar day of the following month, in the format reasonably prescribed by the RTA. Each invoice shall include all documentation and supporting information reasonably needed to calculate the payment due under Section 5(a), as described in subsection (b). RTA may request the Contractor, however, to submit a separate monthly invoice for certain of the services provided pursuant to this Agreement.

(b) Supporting Materials. Invoices shall be supported by the reports submitted by the Contractor in accordance with Section 22 of this Agreement and other documentation or information reasonably requested by the RTA, including documentation of Total Costs incurred. Any costs not allowed as provided for in 48 CFR 31.2 will not be approved or authorized, and such unallowable costs shall be reimbursed to the RTA upon request within 15 calendar days of the date the invoice is paid by the RTA.

(c) RTA Review and Payment. Payment will be made by the RTA within ten (10) calendar days after the date an invoice is sent by Contractor.

(d) Audits and Reviews. The RTA 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 (including any inconsistency, irregularity, discrepancy, under-billing or over-billing, or unsubstantiated billing) revealed as a result of the audit (or an agreed upon procedure review, in lieu of an audit) may be charged or credited (as the case may be) against future payments due the Contractor. Prior to withholding payment or deducting amounts from future invoices, the RTA 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.

(e) Annual Budget. Sixty (60) days prior to the end of each calendar year, Contractor shall submit an annual budget for the Contractor's services to the RTA for upcoming calendar year (or portion thereof), listing all projected operating expenses.

SEC. 9 STAFFING AND PERSONNEL REQUIREMENTS

(a) Contractor Responsibility; Indemnification.

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

(2) The Contractor shall be solely responsible to the RTA 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 RTA shall have no role in the determination of salaries, wages, benefits, or other terms and conditions of employment.

(3) The Contractor shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security, and the Americans with Disabilities Act, subject to the indemnification set forth in Sec. 9(p)(1).

(b) General Manager. The Contractor shall, from time to time, designate a General Manager who shall oversee the proper operation of the Ferry Services and overall performance of the Work. The General Manager shall be 100 percent dedicated to providing the foregoing services unless the RTA provides prior written Approval for a lesser time dedication, which may be revoked or modified at any time.

(c) Key Personnel. The Contractor shall, from time to time, designate Key Personnel. Key Personnel shall be 100 percent dedicated to providing their services under this Agreement unless the RTA provides prior written Approval for a lesser time dedication, which may be revoked or modified at any time. None of these Key Personnel positions can be combined without the prior written Approval of the RTA.

(d) Changes in Key Personnel. The Contractor shall provide written notice to the RTA if it shall remove or reassign any Key Personnel at any time during the Contract Term.

(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) [RESERVED]

(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 RTA.

(4) [RESERVED]

(f) Uniforms and Appearance. The Contractor shall assure that its employees comply with the RTA Uniform Policy. Vehicle and Vessel operators shall be in

uniform acceptable to the RTA and shall wear tags in clear sight and clearly displaying their names while performing their duties. Upon notice from the RTA concerning any conduct, demeanor, or appearance of any employee not conforming to these requirements, the Contractor shall take all steps reasonably necessary to remove or alleviate the cause of the objection. Employees shall not wear uniforms while off duty. RTA specifically agrees that Contractor's logo will be allowed on all employee uniforms in the form agreed to between RTA and Contractor from time to time.

(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, with whom it has specifically contracted with to perform services under this Agreement, 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 RTA 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 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 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 take reasonable steps to 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 take reasonable steps to assure that all operations and maintenance trainers are fully and adequately trained on the Helm Connect.

(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, USCG, and Louisiana DMV required

qualifications and certifications.

(3) [RESERVED]

(4) The Contractor shall make sure a clock is installed in the Captain's quarter and that the crew will have access to adequate time keeping measures.

(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) [RESERVED]

(j) [RESERVED]

(k) Compliance with Drug and Alcohol Testing Policy. The Contractor shall comply with its Drug and Alcohol Testing Policy and with other drug and alcohol testing rules and regulations as may be required by the FTA or the USCG, as applicable, at all times during the Contract Term. The Contractor shall provide quarterly reports to the RTA, maintain random testing information and make it available for applicable federal regulatory agency's reviews/audits, and shall make other information regarding its surveillance program available to the RTA upon request. The Contractor's drug and alcohol testing and reporting shall specifically cover the Contractor employees performing services for the RTA under this Agreement. Any part of the Policy that 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 Exhibit D and with the requirements of the collective bargaining or protective agreements 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 RTA 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 RTA of such insurance or self-insurance before commencing the performance of Work under this Agreement and annually thereafter.

(n) [RESERVED]

(o) Third Party Agreements. Unless otherwise expressly agreed to in writing by the RTA, 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, subject to federal, state and local laws and regulations: (1) shall not be interpreted or applied to impose any financial, legal, or other obligations on the RTA; and (2) shall not be binding on or applicable to any subsequent contractor providing operations and maintenance services

for the RTA. 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 RTA or any subsequent contractor. Responsibility to review, approve and pay of a Third Party Agreement shall rest solely on the Contractor.

(p) Section 13(c) Obligations.

(1) The Parties acknowledge the CEA requires that the DOTD shall remain solely financially responsible for any FTC (13)(c) liabilities. RTA agrees to enforce such agreement for the benefit of the Contractor, and indemnify and hold Contractor harmless in connection with Claims related thereto. Additionally, the Contractor shall cooperate with the RTA in the resolution or defense of any Section 13(c) claims for which the RTA 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 RTA's contractor and the employer of public transit employees, if applicable, 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.

(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 (if applicable) 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 RTA 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 a background check, drug and alcohol testing or to pass a physical examination appropriate to his or her position.

SEC. 10 OPERATIONS STANDARDS AND PERFORMANCE REQUIREMENTS

(a) [RESERVED]

(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 RTA, including route modifications required as a result of a declared emergency under Section 25.

(3) The Contractor shall use commercially reasonable efforts 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. USCG Operations Requirements, per 46 CFR Subchapter H (Part 71) and 46 CFR Subchapter T (Part 175);
- b. USCG Maritime Security Requirements: Vessels, per 33 CFR Subchapter H (Part 103);
- c. Environmental Protection Agency (EPA) Vessel General Permit (VGP) Requirements; and
- d. USCG 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 RTA in accordance with Sections 22(b)(7) and 23.

(3) Operators must accurately and completely submit the required operating reports each day. Daily reporting includes, but is not limited, to Vessel Captain's timely contacting and notifying RTA's Dispatch on whether there is anticipated disruption in service, or the Vessel has encountered any situation that causes a disruption in service, whether prior to the start of service or before the end of scheduled service, respectively.

(d) Adherence to Schedule.

(1) The Contractor shall use reasonable efforts to adhere to the coordinated system schedule as provided by the RTA, which system schedule shall be based on available equipment and labor and within reasonable running times, and shall assume responsibility for performance on each route.

(e) Farebox. The Contractor is responsible for fare collections and shall provide all necessary cashier and fare collectors. The RTA agrees to provide Contractor with a monthly accounting of riders who use electronic tickets and such other information reasonably requested by Contractor in order to fulfill Contractor's internal controls or audit requirements.

(f) Data Collection. The Contractor shall be responsible for regularly collecting and reviewing all data reasonably requested to be collected and reviewed by the RTA, and for making all such information available to the RTA upon its request. The RTA 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 RTA shall provide sufficient Vessels, including spares, for use by the Contractor in providing the Ferry Service required under this Agreement. The RTA-provided Vessels shall not be used for any non-revenue purposes with the exception of training, regulatory inspections and/or conducting sea-trials to ensure safe operation of the Vessel.

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

(c) Condition Upon Return. Upon termination of this Agreement (for whatever reason), the Contractor shall return such Vessels, Non-Revenue Vehicles, and Equipment to the RTA in a safe and sound mechanical condition, subject to ordinary wear and tear. However, Contractor is exempt from this requirement in the event that the RTA determines that a Vessel will not go through certification, or can't pass certification because of Contractor's inability to perform appropriate maintenance because costs involved were not authorized by RTA.

(d) [RESERVED]

(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 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. Any Contractor-supplied Non-Revenue Vehicles must, at a minimum, be maintained using the same preventive maintenance, graphic, and cleanliness standards as the RTA-provided Non-Revenue Vehicles. Contractor shall determine in its professional judgment whether any Non-Revenue Vehicle must be replaced or may be repaired, and in all such instances where replacement is required, pursuant to the RTA procurement process.

(f) Vehicle and Vessel Appearance.

(1) The Contractor shall be responsible for maintaining the appearance of all Vessels and Non-Revenue Vehicles. All Vessels must display a clean appearance each time the Vessel departs the operating Facility to enter Revenue Service and must be kept clean.

(2) All Vessels and Non-Revenue Vehicles, including Non-Revenue Vehicles provided by the Contractor, shall have the decals, graphics, color-schemes and/or logos prescribed or approved by the RTA, located on the Vessels and Non-Revenue Vehicles in accordance with the RTA's direction, and shall have no other markings or brandings (other than those of Contractor). RTA specifically agrees that Contractor's logo will be allowed on all Vessels and Non-Revenue Vehicles in the form agreed to between RTA and Contractor from time to time.

(g) Inspections.

(1) Each Vessel must receive a daily 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 HELM Connect technology previously provided by the RTA. If the technology is not available, then the operator will conduct and supply a manual daily backup record. Daily inspections must be supplemented by regular time 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 RTA upon request.

(2) The Contractor shall maintain a satisfactory USCG vessel and Louisiana vehicle inspection status, as applicable, throughout the term of this Agreement. If the Contractor receives a deficiency notice or an unsatisfactory rating from the USCG (including form CG-835), State, or municipal authority, the Contractor shall so notify the RTA immediately by telephone and in writing and shall identify steps that will be taken to correct any deficiencies. If any Vessel is withdrawn from service by a USCG, State, or another cognizant authority, including the RTA, such Vessel shall not be operated.

(3) The RTA 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 RTA deems unacceptable. In the event any Vessel or Non-Revenue Vehicle is rejected permanently by the RTA as a result of a condition, the RTA shall be responsible for the replacement of such Vessel or Non-Revenue Vehicle (including on-board Equipment).

(h) Maintenance and Preventive Maintenance.

(1) Contractor shall perform maintenance, including routine preventive maintenance inspections and servicing, on Vessels, Non-Revenue Vehicles, and Equipment as directed by RTA or in Contractor's professional judgment.

(2) Contractor shall maintain all Vessels and Equipment in accordance with the requirements of the Blanket Bareboat Sub-Charter Agreement and Charter Orders.

(3) All maintenance shall be conducted in accordance with the requirements of USCG Inspection & Certification Requirements, per 46 CFR Subchapter H (Part 78) and 46 CFR Subchapter T (Part 175), which shall have precedence over all other requirements.

(4) There shall be an accounting of all maintenance expenses.

(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 RTA provides advance written Approval for the use of specific after-market non-OEM products and supplies.

(j) HELM Record Keeping.

(1) The RTA agrees that Contractor will use HELM Connect Maintenance Management System 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 RTA 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 Helm Connect at any time during the Contract Term, at RTA's expense.

(2) The Contractor shall use HELM Connect 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 Helm Connect to record and report on warranty repair information in accordance with Section 12(b) of this Agreement. The Helm Connect shall be directly interfaced to the RTA's computer system. Within forty-eight (48) hours after work order completion, the Contractor shall enter all of the required data into the Helm Connect 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, as applicable, and meet all requirements of the USCG, 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 USCG regulations, Louisiana Vehicle Safety Standards, and the Americans with Disabilities Act (ADA), as applicable. 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 USCG. Results of such inspections shall be transmitted to the RTA, and any applicable signed certification shall be displayed or carried on the Vessels and Non-Revenue Vehicles.

(l) Permits and Fees.

(1) The RTA shall be responsible for initial and renewal licensing and registration fees that are specifically required by the USCG, DMV, or other governmental bodies for all RTA supplied Vessels and Non-Revenue Vehicles operated under this Agreement (including the cost of initial, duplicate and replacement license plates) (as applicable).

(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.

(m) Vessel, Non-Revenue Vehicle, and Equipment Repairs or Replacements.

In the event that it is necessary to make a replacement or repair to a Vessel, Non-Revenue Vehicle, or Equipment after the period of warranty coverage has expired (or it is otherwise unavailable), the RTA shall pay the cost of that replacement or repair or direct a third-party to perform such replacement or repair.

(n) Payment of Maintenance Costs. Contractor may expend up to \$25,000 for any one outlay of expense of maintenance and/or repair costs on a Vessel and/or Non-Revenue Vehicle (which, for the avoidance of doubt shall be per repair per incident). Any costs over \$25,000 must be approved by the RTA. RTA agrees to timely approve maintenance costs over \$25,000 and agrees that it will not unreasonably withhold approval.

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

(a) Contractor Responsibility. -The Contractor shall use commercially reasonable efforts 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 RTA of the actions it is taking to enforce the warranty. Following commencement of the warranty repair process, the Contractor shall promptly notify the RTA 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 HELM Connect MMS.

(c) RTA Role. The RTA 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 RTA will directly contact the Vessel, Non-Revenue Vehicle, or Equipment manufacturer or supplier to pursue the prompt resolution of warranty issues.

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 USCG Maritime Security Requirements: Facilities, per 33 CFR Subchapter H (Part 104) and/or the State's Fire Marshalls Requirements, which have precedence over all other requirements.

(2) The Contractor shall use the Facilities solely for the purposes of Work 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) The Contractor shall maintain a satisfactory USCG and Louisiana facility inspection status, as applicable, throughout the term of this Agreement. If the Contractor receives a deficiency notice or an unsatisfactory rating from the USCG (including form CG-835), State, or municipal authority, the Contractor shall so notify the RTA immediately by telephone and in writing and shall identify steps that will be taken to correct any deficiencies.

(c) Duty to Maintain.

(1) The Contractor shall be responsible for all maintenance of the Facilities (including all Equipment and materials therein), 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 and cleaning of the Facilities as directed by the RTA or in its professional judgment. The Contractor shall return the Facilities to the RTA 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) hereof.

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

(3) The Contractor shall maintain in good condition the Equipment used in the Facilities. The Contractor shall maintain any 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 RTA's Approval. Replacement Equipment and materials shall be from the OEM or be better or equal in quality and service. The RTA reserves the right to reject the use of any after-market product that the RTA finds is not equal or better in quality or service to the OEM product.

(4) The Contractor may expend up to \$25,000 for any one outlay of expense of maintenance and/or repair costs on to a Facility (which, for the avoidance of doubt shall be per repair per incident). Any costs over \$25,000 must be approved by the RTA. RTA agrees to timely approve maintenance costs over \$25,000 and agrees that it will not unreasonably withhold approval.

(5) In the event that it is necessary to make a replacement of capital Equipment in the Facilities after the period of warranty coverage of that Equipment has expired, or necessary to make repairs to the Facilities, the RTA shall pay for the cost of that replacement or repair or direct a third-party to perform such replacement or repair.

(d) [RESERVED]

(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 RTA shall provide the Contractor with an environmental audit of the Facilities as of the date the Contractor commences operations therefrom. The RTA shall be responsible for any remediation or other action necessary as a result of the audit findings.

(3) [RESERVED]

(4) The Contractor will not be responsible for pre-existing Hazardous Materials at the Facilities that are documented in the environmental audit provided by the RTA under paragraph (2) of this subsection.

(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 use commercially reasonable efforts to monitor

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 RTA 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 RTA's prior written Approval.

SEC. 14 MATERIALS AND EQUIPMENT REQUIREMENTS

(a) General. The Contractor shall be responsible for the proper maintenance of all materials and Equipment used to provide services under this Agreement, subject to the terms and limitations set forth in this Agreement.

(b) Communications Equipment.

(1) (A) The RTA will provide a two-way mobile communications system in each Vessel and RTA-provided Non-Revenue Vehicle and/or cellphones/service and portable radios to assist in communications between Vessels, Non-Revenue Vehicles, the Facilities, supervisory personnel, RTA, and USCG (or other authorities) in a communication network. The RTA shall be responsible for the airtime 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 RTA-provided Vehicles will be according to the Vessel or Non-Revenue Vehicle manufacturer's recommendations and shall be subject to the RTA Approval.

(c) Fare Collection Equipment.

(1) The RTA may provide a complete farebox and related fare collection Equipment for collecting fare revenues and ridership data from the fareboxes, and other necessary Equipment, including CLEVER (if available), or some other device that will assist in passenger count accuracy.

(2) The Contractor shall maintain the fareboxes and all related fare collection Equipment to OEM Standards. Fareboxes shall at all times accept fare media supplied by the RTA. 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 RTA. 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 RTA 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 ("EKMS"), if/when it is provided by the RTA, and the RTA will have the ability to monitor the EKMS. The Contractor shall report lost or misplaced keys to the RTA immediately upon discovery. The RTA 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 RTA shall provide a surveillance system and related surveillance equipment (collectively "Surveillance System"). The RTA 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 RTA 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, which shall be paid for by the RTA.

(f) Destination Signs. The Contractor shall perform required maintenance to ensure constant display on all Vessel destination or service status signs. The Contractor shall from time to time revise destination or service status sign readings to reflect route changes or other relevant service information, as specified in writing or as provided electronically by the RTA.

(g) Spare Parts and Supplies.

(1) 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 Term of this Agreement, until the termination thereof. 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. Prior to the Commencement Date, RTA may 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.

SEC. 16 COMPUTER AND TECHNOLOGY REQUIREMENTS

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

(b) RTA Network. The RTA will provide a network that will be maintained by the RTA. With the RTA'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 RTA's transit services shall be accessed by the RTA as public records and subject to the Louisiana Public Records Act (LA.R.S.44.1 et seq.).

(c) Software. 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 RTA may provide, and the Contractor will maintain, on-site operating facsimile machines.

(e) Landlines (telephone). The RTA shall provide, and the Contractor will maintain, on-site operating landlines.

SEC. 17 FARE COLLECTION

(a) General. The fare structure and accepted fare media (in addition to cash fares) shall be established by the RTA and may be modified by the RTA 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) When the equipment is provided by RTA to the Contractor, the RTA may require that all fare media coupons, tickets, and transfer slips collected by the Contractor staff be turned in daily to the Revenue Agent. 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 date/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 properly accounted for, as per Section 17(f) of this Agreement, and deducted from invoice submitted to RTA as per Section 8 of this Agreement. Such revenues shall be reported to the RTA. 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.

(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 RTA, for its review and Approval. 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 RTA reserves the right, following consultation with the Contractor, to reasonably 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) fully cooperate in any investigation process involving the loss, including, but not limited to, providing all pertinent documentation and information to the RTA; and (B) 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.

SEC. 18 SAFETY AND SECURITY

(a) Contractor Responsibility. The Contractor shall work cooperatively with RTA 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 USCG and FTA rules and regulations regarding the safety and security of Vessels, terminals, and landing barges.

(b) Systems Security and Emergency Preparedness Plan.

(1) [RESERVED]

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

(c) Personnel.

(1) The Contractor's Safety Manager shall attend, on behalf of the Contractor, monthly safety group meetings and special meetings with the RTA.

(2) The Contractor shall be required to participate in activities and

exercises in support of the RTA'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 RTA staff and additional Contractor staff, and shall arrange for the use of appropriate RTA 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, counterterrorism, 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 RTA upon request.

(e) Emergencies.

(1) The RTA 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 RTA, the Contractor shall respond to emergency situations within its service area with Contractor personnel and RTA-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 RTA-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 RTA.

(4) Contractor shall observe USCG's enacted MARSAC levels, and shall comply with the protective measures as provided in the Security Plan approved by the USCG for the Ferry Service.

(f) Access to the Facilities.

(1) The RTA 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 RTA's other property.

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

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

(g) Safety Audits.

(1) [RESERVED]

(2) The RTA 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 RTA's designated representatives as requested.

(h) Reporting. The Contractor shall be responsible for providing the following reports, on forms jointly agreed to between the Contractor and the RTA, to the RTA 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 maritime security (vessel and facilities); and (F) OSHA Hazard Analysis. In addition, the Contractor shall make the minutes of safety meetings available to RTA at the Facility.

(2) Annually. (A) Year End Trend Analysis; and (B) other reports as reasonably requested and/or required by RTA or by Federal, state, or local agencies.

SEC. 19 MARKETING AND ADVERTISING

(a) RTA Rights and Responsibilities. The RTA shall provide for public relations, media relations, marketing activities and advertising services for RTA services at its sole cost and expense.

(b) Contractor Responsibility. The Work shall include Contractor's cooperation in the marketing and advertising related to RTA services (such as through the installation and removal of all interior and exterior signage and decals, including advertising signs, rider alerts, newsletters, and scheduling information).

(d) Communications with the Media. All communications with the media

shall be the sole responsibility of the RTA. The Contractor and its employees, or subcontractors, shall not engage the media as a spokesperson for the RTA. In addition, the Contractor and its employees, or subcontractors, shall not speak on behalf of the RTA 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 concerning the ferry service, such as schedules and fares, amongst other general related question, on-board RTA Vessels, Non-Revenue Vehicles, or as part of its official customer comment system.

(e) Endorsement Policy. The Contractor and its subcontractors may not use the RTA's name, logo, or images in vendor promotional materials, written or oral endorsements, customer profiles, online information, or sales collateral for commercial use unless specifically authorized in writing by the Chief Executive Officer. This provision does not prohibit the Contractor from using the RTA as a reference in responding to a request for proposals or other procurement solicitation.

SEC. 20 SERVICE CHANGES

(a) Any Service Change proposed by the RTA or Contractor shall be transmitted to the other Party in writing, identifying the change and specifying the effective date. If the Contractor is the proposing Party, it shall also include a written response identifying the impact of such change on operations, estimating any resulting cost increase or savings, identifying any feasibility problems the Contractor believes would be created by the proposed Service Change. Oral Service Change orders are not permitted. Within fifteen (15) calendar days after receipt of a written Service Change notice, the receiving Party shall provide the proposing Party a written response identifying (i) in the event the receiving Party is the Contractor, the impact of such change on operations, estimating any resulting cost increase or savings, identifying any feasibility problems the Contractor believes would be created by the proposed Service Change, and (ii) approving the Service Change or providing how the Service Change can be modified to receive approval.

(b) Upon agreement of the Parties on a proposed Service Change, the RTA will issue a bilateral Service 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 Service Change order or within such other period of time as the RTA and Contractor may agree.

(c) For the avoidance of doubt, nothing in this Agreement shall prevent any of the following: adding or deleting segments of routing; extending, deleting, or adding routes or parts of routes; reallocating, decreasing, or increasing service hours or 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, Equipment, or the Facilities.

SEC 21 INCENTIVE PAYMENTS AND DEDUCTIONS

(a) Assessment of Deductions and Awarding of Incentive Payments.

(1) In order to promote compliance with schedule and other performance requirements, the RTA shall have the right, in its reasonable discretion, to assess and collect Deductions, in accordance with the following provisions of this Section. In addition, to acknowledge outstanding performance and achievement of operational efficiencies, the

RTA shall award Incentive Payments in accordance with the following provisions of this Section.

(2) 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 RTA deems appropriate.

(3) The Contractor shall have the opportunity to contest any Deductions assessed on the grounds set forth in subsection (c) of this Section.

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

(5) the 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 Incentive Payments. The RTA shall assess Deductions and make Incentive Payments on the following basis, per Contract Month:

(1) Missed Trip

(i) In the first Contract Year:

<u>Threshold</u>	<u>Incentive Payment/Deduction</u>
95%-100% of all Trips are not Missed Trips	\$5,000 Incentive Payment

(ii) In the second and subsequent Contract Years (or portions thereof, including any option term):

<u>Threshold</u>	<u>Incentive Payment/Deduction</u>
95%-100% of all Trips are not Missed Trips	\$5,000 Incentive Payment
94.0% - 94.9% of all Trips are not Missed Trips	\$1,000 Deduction
90.0% - 93.9% of all Trips are not Missed Trips	\$2,000 Deduction
Less than 90.0% of all Trips are not Missed Trips	\$5,000 Deduction

(d) Contractor Response and Defenses

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

(2) No Deduction shall be made in the event the facts underlying the Deduction were beyond the Contractor's control, including events for which the facts underlying the Deduction are not reasonably foreseeable or preventable by Contractor, and could not have been reasonably mitigated, due to circumstance such as, but not limited to, the date of the annual inspection of any Vessel and the 1-day prior to the annual inspection date, adverse and weather, fog, traffic conditions, delays to due vehicular breakdowns while boarding, departing or on the vessel, passenger loading delays, other Vessel or river traffic operation issues that are beyond Contractor's control, natural disasters, or other Force Majeure events as described in Section 41 of this Agreement, or any (i) epidemic, pandemic or disease outbreak (including without limitation the COVID-19 pandemic, including any evolutions or mutations thereof, any "second" or "subsequent" waves and any further epidemics or pandemics arising therefrom), (ii) any quarantine, "shelter in place", "stay at home", workforce reduction, reduced capacity, social distancing, shut down, closure, sequester, safety or similar law, order, directive or guidelines promulgated by any governmental entity, including the Centers for Disease Control and Prevention, the World Health Organization, the State of Louisiana (including any political subdivision thereof, such as the City of New Orleans), provided the events identified in (i) and/or (ii) are not caused as a result of failure to comply with adopted policies and/or guidelines.

SEC. 22 PROJECT OPERATION RECORDS AND REPORTS

(a) Overall Responsibilities of Contractor.

(1) In order to document the Work, the Contractor shall maintain all project records as reasonably requested by the RTA and as reasonably 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 RTA according to the reporting schedule established in this Section. The Contractor shall permit authorized representatives of the RTA to examine all data and records related to services upon request by the RTA or according to scheduled reporting periods. All service records prepared by the Contractor (and underlying data) shall be owned by the RTA and shall be made available to the RTA at its request and at no additional charge.

(3) The RTA reserves the right to establish a standardized reporting format with which the Contractor must comply, in consultation with Contractor. Reports may be requested in hard copy as well as on flash drive or by computer transfer in a format compatible with RTA 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 RTA:

(1) Service Reports. The Contractor shall submit to the RTA, by not later than close of business on each Wednesday during the Contract Term, a report indicating the actual number of voyages, operated during the previous Sunday through Saturday period. Such information shall be for each route and shall be made in a format approved by the RTA.

(2) Daily Reports. Absent exceptional circumstances, the Contractor shall

submit the National Transportation Database/Rider Count report ("NTD") to the RTA not later than the close of business each Day during the Contract Term, in a format approved by the RTA, the following reports:

(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) 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 and reasonably available) 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.

(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, if/when applicable, vandalism, incident and accident reports, bicycle and scooter carried report, FTE Payroll report, and other requested reports. The Contractor shall submit monthly summary reports to the RTA no later than ten (10) Days after the end of each month.

(5) Monthly Performance Reporting. The Contractor shall provide the RTA 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) Detailed outcome of any Vessel or Non-Revenue Vehicle inspections undertaken by entities other than the RTA and specify whether the inspections resulted in a non-compliance infraction and/or an in-service Vessel being removed from service.

(ii) Actual fare revenue collected.

(iii) Actual ridership volume data.

(iv) Details on any in-service Vessel deemed not fully operable and available to be used in Ferry Service without the need for maintenance, repair or cleaning including the date in which the Vessel was taken out of service.

(v) Actual fuel delivery and cost (as applicable), for diesel fuel and gasoline, in the form of the Monthly Fuel Report.

(6) Annual Performance Reporting. -- Within 90 calendar days after the end of a Contract Year, the Contractor shall provide 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, if received, and describe action taken, if any, regarding these problems or complaints, and forward those complaints to the RTA. Upon request, Contractor will provide RTA with such documentation.

(8) Incident and Accident Reports. The Contractor shall, in accordance with the policy and process established by the RTA, immediately notify the Chief Executive Officer (or other appropriate RTA 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 RTA 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. Contractor will not be penalized for its failure to conduct on-board data sampling if RTA does not provide a list of Trips to be sampled.

(B) The Contractor shall submit the daily random sample Trip sheets, in the form provided by the RTA 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 RTA 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.

(D) As part of the NTD reports, the Contractor shall also provide to the RTA'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.

(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 and maintenance costs (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 RTA, the FTA, or other authority at any time within this period.

(11) Disadvantaged Business Enterprise (DBE) Report. DBE Report. Contractor must complete and submit to the DBE Liaison Officer for the RTA (DBELO) monthly reports of DBE firm participation under this Agreement. Failure to report DBE activity is a material breach of this agreement that shall result in such remedy as the RTA deems appropriate and may include withholding payment of invoices until such time as the monthly reports are received or penalties of \$100 per day. All RTA contract awarded vendors are required to register contract information including their subcontractor information into the B2GNOW database. <https://norta.dbesystem.com>. The RTA reserves the right to request additional information on the DBE report.

(12) Equal Employment Opportunity (EEO) Affirmative Action Report. The Contractor, at RTA's expense, shall create, 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 calendar 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 RTA 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 RTA 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 RTA NTD Safety and Security Responsibility. RTA 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 RTA's Chief Executive Officer, or his or her designee, and appropriate RTA 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

Upon receipt of a complaint from RTA's customer service department, the Contractor shall address all passenger complaints regarding operational or service deficiencies through the use of RTA designated software as follows:

(1) If the complaint relates to safety or serious operational deficiencies, the Contractor shall use commercially reasonable efforts to (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 RTA explaining the results of the investigation within three (3) Days after the complaint is filed.

(2) If the complaint is of a less serious nature (not covered by paragraph (1)) the Contractor shall use commercially reasonable efforts to contact the person filing the complaint, investigate the complaint, and file a report with the RTA within five (5) Days after the complaint is filed.

(3) 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 shall be subject to inspection and testing by the RTA at all times and places during the Contract Term. All inspections by the RTA shall be made in such manner as to not unduly delay the Work.

(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. In the event the Contractor fails promptly to perform the Work again, the RTA shall have the right, either by contract or otherwise, to have the Work performed in conformity with such requirements, 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 RTA 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 RTA shall be obligated to compensate the Contractor, during such period of declared emergency, for services that 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. -- The Contractor shall be required to provide, and to maintain at all times during the Contract Term, 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 with any watercraft exclusion deleted under both the General Liability and Contractual Liability coverage parts.
 - (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:
 - (a) hull and machinery insurance, per the American Institute Hull Clauses (June 2, 1977) or equivalent form, covering fire, explosions and marine perils, together with full four-fourths collision and running down clauses in an amount equal to the full insurable value of the Vessels;
 - (b) protection and indemnity insurance, per the SP-23 Form (Revised 1/56) or equivalent including excess Collision, in the amount of \$2,000,000; and
 - (c) and all other insurance required including terrorism and marine pollution liability coverage on the WQIS form or its equivalent for operation of the RTA'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 and LHWCA.** The Contractor shall obtain and maintain worker's compensation insurance as required by the laws of the State of Louisiana and/or Longshore and Harbor Workers' Compensation Act, and any other local, state, or federal requirement applicable to Contractor's operation of the RTA's Marine operations pursuant to the Blanket Bareboat Charter Agreement and Blanket Bareboat Charter Sub-Agreement, contained within Exhibit B and Exhibit C.
 - (5) **Maritime Employer's Liability** providing coverage for transportation, wages,

maintenance and cure; with an *in rem* endorsement (providing a claim “in rem” shall be treated as an “in personam” claim) and including coverage for crew claims (if not included under P&I coverage)

- (6) Errors and Omissions/Professional Liability. The Contractor shall obtain and maintain errors and omissions/professional liability insurance in the amount of \$1,000,000.
 - (7) Directors and Officers. The Contractor shall obtain and maintain directors' and officers' liability insurance in the amount of \$2,000,000.
- (b) Evidence of Insurance. The Contractor shall update its insurance information provided in Section (a)(1) through (a)(7), 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 RTA, its officers, agents, and employees, and members of the RTA Board of Commissioners (“RTA Group”) shall be included as additional insureds on all insurance policies identified at §26(a)(1)-(3); provided that no member of the RTA Group shall have any liability for the payment of premiums or assessments under the policies other than as set forth in this Agreement. The additional insured endorsements on Contractor’s liability policies shall state that the coverage provided to the RTA Group is primary and non-contributing with respect to any other insurance available to the RTA Group and on which the RTA Group are the named insureds.
 - (2) Contractor’s insurances required herein are primary with respect to the additional insured coverage afforded the RTA Group and no insurance held or owned by the RTA additional Insureds as the named insured shall be called upon to contribute to any loss for which coverage is provided under the Contractor’s insurances required herein.
 - (3) The Contractor’s insurances shall be obtained from carriers with an A.M. Best rating of “A” or better, and authorized and licensed, or otherwise approved, to transact insurance business or otherwise provide insurance in the State of Louisiana.
 - (4) The Contractor’s insurances 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 RTA 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) Any insurance afforded by the Contractor's policies for contractual liability coverage (subject to the terms, conditions and exclusions applicable to such insurances) shall include liability assumed by the Contractor under any valid and enforceable defense, indemnification and/or hold harmless provisions of this Agreement. The Parties further agree that the insurance provided RTA Group, as an additional insured under any of Contractor's insurance, is not to be effective to provide coverage for RTA Group in any instance where Regional Transit Authority has an obligation under this Agreement to release, defend, indemnify and/or hold harmless Contractor Group. Further, any waiver of subrogation by Contractor's insurers in favor of RTA Group or any requirement that the additional insurance provided by Contractor will be primary, shall not apply to any indemnity, release and hold harmless obligations owed to Contractor Group by Regional Transit Authority under this Agreement, and shall apply only to those indemnity, release and hold harmless obligations offered by Contractor in this Agreement.
- (d) Modification of Coverage. The RTA 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.
- (e) Subrogation. Contractor's insurance providers shall waive all rights of subrogation and contribution against the RTA Group 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.
- (f) 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 RTA may, after a 72-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).
- (g) 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 RTA, and to ensure that such persons comply with any applicable insurance statutes.

SEC. 28 INDEMNIFICATION AND HOLD HARMLESS

- (a) For purposes of this Section, "RTA Group" is defined as above at §26(c)(1). Also, for purposes of this Section, "Contractor Group" is defined to include, individually, and in any combination, Contractor, its parent(s) and subsidiaries and affiliates, Contractor's contractors and subcontractors of any tier (other than RTA Group), and all of their respective owners, co-owners, general partners, partners, members, stockholders, directors, officers, managers, employees, agents, representatives, invitees, spouses, heirs, survivors, legal representatives, assigns and successors, and insurers and underwriters of all of the foregoing.
- (b) [RESERVED]
- (c) RTA Indemnification. Regional Transit Authority shall fully release, defend, indemnify and hold the Contractor Group, 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 RTA Group or a third party, for any and all claims, contractual, tort or otherwise, including 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 of RTA Group, whether real or personal (collectively "Claims"). It is the specific and expressed intent and agreement that RTA's obligations set forth in the prior sentence shall not be applied to any Claims that arise from the gross negligence and/or willful misconduct of the Contractor Group.
- (d) Pollution Indemnification. Each Party shall, solely to the extent of it its own fault or negligence, fully release, defend, indemnify and hold the other Party and its Group 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 or entity, 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. It is the specific and expressed intent and agreement that each Party's obligations set forth in the prior sentence shall not be applied to any Claims that arise from the gross negligence and/or willful misconduct of the other Party and/or the other Party's Group.

- (e) **Attorney Fees for Enforcing Indemnity Recoverable.** The Parties agree that the defense, indemnity, release and hold harmless obligations provided hereunder shall extend to all reasonable attorney fees and legal expenses related to successfully pursuing and judicially enforcing those obligations.

SEC. 29 DISPUTES

(a) General. Any dispute between the Contractor and the RTA 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 RTA's Chief Operations Officer, or his or her designee, and the appropriate Contractor Key Personnel.

(c) Further Review/Resolution. If a dispute remains unresolved after review by the RTA'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.

(d) 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, other than to subcontractors pursuant to Section 31, unless the RTA 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 this Agreement or policies listed in Section 3(c), as Approved by the RTA. 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 RTA must be through the Contractor.

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

(c) 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 RTA 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 compliance with 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.

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 (including, without limitation, fees for the Vessels and RTA-supplied Non-Revenue Vehicles) shall be the responsibility of the RTA. 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 RTA, 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 RTA Board of Commissioners and applicable Federal and State laws and regulations, including the Louisiana Code of Governmental Ethics.

(2) RTA'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 RTA 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 RTA of any such organizational conflict that arises. In the event of any such post-award organizational conflict, The RTA 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 applicable to 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. If this Agreement is 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 RTA certificates of compliance with all such laws, orders, and regulations.

SEC. 36 CANCELLATION OF CONTRACT

In any of the following cases, the RTA shall have the right to cancel the Agreement immediately upon notice to the Contractor and without further expense to the RTA: (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 RTA'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 RTA and/or Contractor in accordance with this Section in whole, or from time to time in part, whenever the Contractor and/or RTA, upon recommendation of the Chief Executive Officer, determines that such termination is in the best interest of the respective party. Any such termination shall be effected by delivery to either the RTA or the Contractor (depending upon who the terminating party is) of a written notice of termination, provided not less than seventy-five (75) 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 by Contractor. Upon receipt of a notice of termination, and except as otherwise directed by the Chief Executive Officer, the Contractor shall, upon payment of any compensation due under Section 5: (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 RTA 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 any 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 RTA, 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 RTA 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 RTA; (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 RTA has or may acquire an interest. Payments by the RTA to the Contractor shall be made by the date of termination but not thereafter.

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 RTA in this Agreement, terminate for convenience pursuant to Section 37, and terminate for default pursuant to Section 40.

(b) Warning Notice. The RTA may give the Contractor written notice of unacceptable performance ("Warning Notice"). The Warning Notice shall specify the performance shortcomings giving rise to its issuance. Upon receipt of the Warning Notice, the Contractor and the RTA shall work cooperatively and in good faith to mitigate, rectify or protect against such circumstances underlying the Warning Notice.

SEC. 40 TERMINATION FOR DEFAULT

(a) This Agreement may be terminated by either party for default. However, prior to any termination for default, the terminating party shall immediately notify the alleged defaulting party and provide it with thirty (30) Days in which to cure such default. Failure to cure such default or to commence a cure within such time frame, or within such reasonable additional period as the terminating party may allow, this Agreement shall terminate on the date specified in the notice of default.

(b) Events of Default. Subject to the provisions of this Section, the termination of this Agreement, in whole or in part, may occur, but is not limited to, in any one of the following circumstances:

(1) The Contractor fails to perform in accordance with the material requirements and standards set forth in this Agreement, including the Attachments hereto.

(2) 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.

(3) The Contractor assigns or transfers this Agreement or any right or interest herein, without prior written authorization by the RTA.

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

(5) RTA fails to pay Contractor for services rendered under the terms of

the contract.

(c) Procurement of Replacement Services. In the event that the RTA terminates this Agreement in whole or in part under this Section, the RTA 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 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 RTA 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

Except for the obligation to make payment and the obligation to indemnify all as set forth herein, a delay in or failure to perform by the Contractor shall not constitute a default that exposes it to liability for breach, if and to the extent the delay or failure to perform is caused by an occurrence beyond the reasonable control of the Contractor, including, but not limited to any failure of a Vessel or Force Majeure.

SEC. 42 DISRUPTIONS IN SERVICE

(a) Disruption Events. If the Contractor is unable, due to a Labor Action not caused by RTA or a Force Majeure, to provide services in full compliance with the requirements of the Agreement (a "Disruption Event"), the Contractor shall provide the RTA, 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 notify the RTA as soon as reasonably possible 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 RTA's satisfaction within ten (10) calendar days after such Disruption Event, the RTA 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 RTA 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) Limitation on Contractor's Compensation. The only compensation due and payable to the Contractor by the RTA during any Disruption Event shall be for the Work actually performed during such period.

SEC. 43 AUDIT AND INSPECTION OF RECORDS

The Contractor agrees that the RTA, 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 RTA 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 RTA is subject to its receipt of funds adequate to cover fees due hereunder 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 reduce or cease operation of the Ferry Service and modify or terminate this Agreement immediately, subject to payment of all compensation due to Contractor hereunder.

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 RTA 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 either Party 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 either Party 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 or the United States Maritime Laws. The Contractor hereby consents and submits to the jurisdiction of Orleans Parish Civil District Court or the U.S. District Court for the Eastern District of Louisiana 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 RTA:
Alex Wiggins, CEO
Regional Transit Authority
2817 Canal Street
New Orleans, LA 70119

To Contractor:
John Peter Laborde, President
LabMar Ferry Services, LLC 601
Poydras St # 1725
New Orleans, LA 70130

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 that 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 H 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 applicable 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.*).

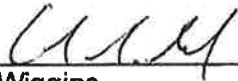
SEC. 53. COUNTERPARTS

This Agreement may be executed and delivered in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile and/or “.pdf” and with separate signature pages with the same effect as though all Parties had executed and delivered the same original signature page.

[SIGNATURE PAGES TO FOLLOW]

The Parties hereto have caused this Agreement to be duly executed with all the formalities required by law.

REGIONAL TRANSIT AUTHORITY

By: 
Alex Wiggins
Chief Executive Officer
Regional Transit Authority

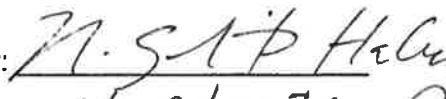

Authority Date:
1/29/2021

Witnessed by:



Date: 1/29/2021

APPROVED AS TO FORM

By: 
1/29/2021 

Accepted and Agreed:

LABMAR FERRY SERVICES, LLC

By: _____
John Peter Laborde, President

Date: _____

The Parties hereto have caused this Agreement to be duly executed, with all the formalities required by law.

REGIONAL TRANSIT AUTHORITY

By: _____
Alex Wiggins
Chief Executive Officer
Regional Transit Authority

Authority Date:

Witnessed by:

Date:

APPROVED AS TO FORM

By: _____

Accepted and Agreed:

LABMAR FERRY SERVICES, LLC

By: 
John Peter Laborde, President

Date: 1/28/21

Acknowledged and agreed:

STATE OF LOUISIANA

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

By: _____

Secretary

RECOMMENDED FOR APPROVAL:

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 was provided to Contractor as part of the Interim Agreement, as 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 was provided to Contractor as part of the Interim Agreement, as 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 was provided to Contractor as part of the Interim Agreement, as 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 Documents and Minimum Wage Requirements

The following documents are currently available at RTA's network drive H:, accessible to Contractor:

- RTA Procurement Manual
- RTA Accident and Incident Investigation procedure
- RTA Disadvantage Business Enterprise Program
- RTA Fare Collection Policy
- RTA Facility PM Program
- RTA Ferry Vessels Maintenance Plan
- 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

This exhibit was provided to Contractor as part of the Interim Agreement, identified as 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

Copy of Regional Transit Authority System Safety Program Plan / Agency Safety Plan available at RTA's network drive H:, accessible to Contractor.

Exhibit G City Assisted Evacuation Plan

This exhibit was provided to Contractor as part of the Interim Agreement, as 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 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.