

Laketrans Terms and Conditions

To reduce paper consumption, the standard terms and conditions which shall apply to this procurement are not contained here. They can be found in a separate document entitled "Laketrans Standard Contractual Terms and Conditions", which is available upon request. Laketrans Standard Terms and Conditions are hereby incorporated by reference into and made a part of this IFB/RFP just as if they were reproduced in their entirety here. Further, Laketrans Standard Terms and Conditions are extremely important, and are applicable to and binding upon each bidder/proposer and will become contractual to and binding upon each successful bidder/proposer to whom a contract is awarded. It is the bidder's/proposer's responsibility and obligation to have read and understood Laketrans Standard Terms and Conditions. A summary of these terms and conditions follows:

2.1	Independent Contractor	2.36	Davis Bacon & Copeland Anti-Kickback
2.2	Contractor's Obligation	2.37	Conflict of Interest
2.3	Buyer's Obligation	2.38	Fraud, Waste, Abuse or Other Legal Matters
2.4	Contract Period	2.39	Fraud & False Claims
2.5	Performance Bond	2.40	No Federal Government Obligations to Third Parties
2.6	Notice to Proceed	2.41	Privacy
2.7	Contract Modification	2.42	Procurement
2.8	Subcontracts	2.43	Special Requirements for Transit Operations Contracts
2.9	Civil Rights	2.44	Seismic Safety
2.10	DOL EEO Clause for Construction	2.45	Hatch Act/Work Day and Work Week Standards
2.11	Bus Testing	2.46	Cargo Preference
2.12	Delivery	2.47	Fly America
2.13	Payment	2.48	Clean Air Act & Federal Water Pollution Control Act
2.14	Liquidated Damages	2.49	Energy Conservation
2.15	Taxes	2.50	Debarment and Suspension
2.16	Inspection	2.51	Compliance with Laws and Regulations
2.17	Audit and Inspection of Records	2.52	Applicable Law and Jurisdiction
2.18	Right to Adjust Cost	2.53	Integrated Agreement
2.19	Failure to Meet Specifications	2.54	Laketrans Understanding
2.20	Warranties	2.55	Incorporation of FTA Terms
2.21	Indemnification	2.56	Non-Smoking Policy
2.22	Hold Harmless	2.57	Funding Agencies
2.23	Disputes	2.58	Prohibition on certain telecommunications & video surveillance services or equipment.
2.24	Notification of Proceedings	2.59	Solid Wastes
2.25	Termination/Breach of Contract	2.60	Safe Operation of Motor Vehicle
2.26	Assignment	2.61	Human Trafficking
2.27	Covenant Against Contingent Fees	2.62	Restrictions on Lobbying
2.28	Patent Rights & Intellectual Property	2.63	Veteran's Hiring Preference
2.29	Release of Information	2.64	ITS Projects
2.30	Ownership of Documents	2.65	Tax Liability and Felony Convictions
2.31	Retention of Records	2.66	Severability
2.32	Workmens' Compensation Act		
2.33	Social Securities Act/Unemployment Compensation, Etc.		
2.34	Federal Assistance		
2.35	Work Hours Act		

Special Transit Terms & Conditions

The successful contractor will be required to comply with these terms and conditions.

2.1 Independent Contractor

Contractor, for purpose of this agreement shall be considered as an independent Contractor who covenants and agrees to perform and/or deliver for the stated compensation herein, all of the services and/or equipment described under the section of this contract titled Scope of Work. Contractor agrees to complete the work in a workmanlike manner with a high degree of professionalism and to ensure the accuracy and timeliness of the services rendered herein under.

2.2 Contractor's Obligation

The general obligation of the successful bidder (hereinafter variously referred to as Contractor or successful bidder) shall be to transfer and deliver the goods and services specified in complete accordance with the terms, conditions and specifications of this Invitation-for-Bid.

2.3 Buyer's Obligation

The general obligation of Laketrans shall be to accept conforming delivery and conforming goods and services and to pay in accordance with the terms, conditions and specifications as bid upon.

2.4 Contract Period

At all times during the contract period, the Contractor agrees to the following:

- A. Contractor agrees to commence work upon written receipt of its bid acceptance and approval along with the notice to proceed from Laketrans.
- B. Contractor agrees to commence performance of this contract as stated in the bid specifications and the bid award.

2.5 Performance Guarantee

2.5.1 For Construction Projects

- A. For construction projects, Contractor shall supply the payment and performance bond required by §153.57 of the Ohio Revised Code if he did not supply the combined bid, payment and performance bond required by §153.571 of the Ohio Revised Code with his bid.

2.5.2 For Non-Construction Projects of \$25,000 or more

- A. Only when specifically requested, a performance guarantee in the form of a certified check, performance bond, cashier's check or an irrevocable letter-of-credit, in an amount equal to 5% of the value of this contract shall be posted by Contractor with Laketrans within twenty-one (21) days of notice that it is required.
- B. The guarantee is required to ensure the goods and/or services purchased via this

procurement are built and/or delivered in accordance with Laketran's specifications. It does not cover maintenance or warranty of the goods or any subcomponent thereof. It will be forfeited by Contractor as partial or complete settlement of damages, as determined by Laketran, should Contractor fail to perform as contracted for.

- C. Any performance bond must be written by a company authorized to write bonds in the State of Ohio and must be listed in the latest edition of U.S. Treasury Circular 570, or having a rating by A.M. Best of B+ or better, and must show sufficient bonding capacity to bond the performance required under this contract. The bond must meet the approval of Laketran's Legal Counsel. Performance bond will be returned to manufacturer within thirty (30) days of contract completion.

2.6 Notice to Proceed

Laketran will furnish Contractor written direction to commence delivery hereunder entitled "Notice to Proceed" within ten (10) days after receipt by Laketran of the required performance bond, insurance certificates or such other documentation which Contractor is required to submit for Laketran approval prior to performance under this Contract. Laketran shall not be responsible for any costs of any type whatsoever incurred by Contractor prior to the issuance of the Notice to Proceed. The date of the Notice to Proceed shall be the official date from which all scheduled activities and requirements are computed.

2.7 Contract Modification

No change or modification of the terms and conditions of this agreement may be made unless:

- A. Any proposed change in this contract shall be submitted to Laketran for its prior written approval. The CEO, or designee, may at any time, by written order only, make changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or completion schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the CEO, or designee, if they decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the contract.
- B. Any modification made must be in writing and attached to the contract in the form of an amendment, and signed by both parties signifying agreement to the modification.
- C. Any contract modifications, if granted by Laketran, will not operate as a release to the Contractor from the covenants and conditions of this contract outside of the nature of the expressed modification nor shall same be considered as a waiver for any breach of contract damage claim which may be made by Laketran.
- D. Any modification agreed to by and between Laketran and the Contractor must be in compliance with Section 306.43 of the Ohio Revised Code and is subject to Federal

Transit Administration concurrence if needed.

2.8 Subcontracts

Any subcontract the bidder may wish to enter into must be approved by Laketran prior to the execution of the subcontract, and all the requirements of these terms and conditions must be included within said subcontracts to gain approval of Laketran.

Any substitution of a subcontractor or independent Contractor must be furnished in writing to Laketran for the purpose of determining and maintaining the intent of Laketran's disadvantaged business enterprise goals.

2.9 Civil Rights

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

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Action of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act, “49 C.F. R. Part 21 and any implementing requirement FTA may issue.

2.9.1 Americans with Disabilities Act (ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

2.9.2 Disadvantaged Business Enterprise

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts.

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

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

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

2.9.3 Federal Equal Employment Opportunity (EEO) Requirements

Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of

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

2.9.4 Civil Rights and Equal Opportunity

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

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

- A. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- B. **Non-Compliance.** In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law

2.10 Special DOL EEO Clause For Construction Projects

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be

limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order

11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- H. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2.11 Bus Testing

This section applies only to contracts for the purchase of vehicles.

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

2.12 Delivery

Throughout this project and in this contract, the terms delivery and completion are used interchangeably. Contractor shall tender performance and/or completion of this project in the manner and at the place and time specified in the IFB. All deliveries are to be F.O.B. destination at Laketran, 555 Lake Shore Blvd, Painesville Township, Ohio 44077 or as otherwise designated on the bid form by Laketran. It is agreed that the bid prices include freight.

2.13 Payment

Payment will be made against approved invoices within thirty (30) working days of acceptance. Payment will only be made for goods and services accepted. For goods and services accepted which acceptance is later revoked prior to payment, the payment will be withheld until defects in the nonconforming goods or services are cured and accepted. In the case of serial deliveries and serial invoicing, Laketran reserves the right to deduct overpayments from current invoice amounts.

- Payment does not waive the later revocation of acceptance. Payment terms and warranty coverage begin at time of acceptance.
- All invoices shall be mailed to: Accounts Payable, Laketran, 555 Lakeshore Blvd. Painesville Twp., OH 44077.
- Late payments will accrue no interest.

2.13.1 Prompt Payment (Prime Contractors)

- A. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
- B. The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

2.14 Liquidated Damages

Laketrans reserves the right to assess liquidated damages.. The Contractor will pay Laketrans the sum of \$100.00 per each calendar day, excluding weekends and statutory holidays, that the products solicited by this RFP are delayed beyond the delivery stipulated under Section 5 and as bid upon subject to extensions granted thereto in writing. The Contractor agrees to pay such liquidated damages herein provided commencing with any late delivery after the last date of delivery specified in Contractor's bid and continuing until the total order is complete and, in case the same are not paid, agrees that Laketrans shall deduct the amount thereof from any money due or to become due the Contractor under the contract.

The Contractor may be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in these specifications caused by acts of God, or of the public enemy, fire, floods, epidemics, strikes, labor disputes, and freight embargoes, or other causes beyond his/her reasonable control, provided that the Contractor shall notify Laketrans in writing of the causes of delay within 7 days from the beginning of any such delay. Laketrans shall ascertain the facts and extent of the delay, and its findings thereon shall be final and conclusive. Contractor has the burden of proof that the delay was beyond his/her control.

2.15 Taxes

The contract price or prices for the commodities contained in the contract are subject to increase or decrease by the amount of any additional tax or taxes or reduction of such tax or taxes, as the case may be, affecting such commodity imposed by or under authority of the Federal government or the State of Ohio which may be enacted after receipt of bids for this contract and such changes shall continue in effect during the existence of such change in the tax or taxes; provided, however, that in the event of any increase in cost, a claim shall be presented by the Contractor within thirty (30) days of the imposition of such tax and such claims shall be supported by evidence of such additional tax, satisfactory to Laketrans. Reductions in taxes will be deducted from the contract price.

As a political subdivision of the State of Ohio, Laketrans is exempt from all sales, excise, federal gasoline, and transportation taxes, except State of Ohio gasoline and federal Superfund taxes. The price or prices bid, whether a unit price, lump sum price, lot price, or a trade discount from catalog list prices, shall be exclusive of all such taxes. Our tax exempt number is available upon request.

2.16 Inspection

Laketrans reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing process and shall have the right to reject all materials and workmanship which do not conform with the specifications; provided, however, Laketrans is under no duty to make such inspection and, if no such inspection is made, the Contractor shall not be relieved of any obligation to furnish materials and workmanship strictly in accordance

with the specifications. FTA and ODOT shall be accorded the same inspection rights reserved by Laketran in this clause. Laketran will receive conforming deliveries for purposes of inspection. Acceptance of goods and services will not occur until after inspection or until a reasonable time for inspection has elapsed.

Except as otherwise provided in this contract, the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to Laketran at the designated point and prior to acceptance by Laketran or rejection and giving notice thereof by Laketran, Laketran shall be responsible for the loss, destruction of, or damage to the supplies. The Contractor shall bear all risks as to rejected supplies after Contractor retakes possession and/or control of such supplies.

Laketran may test deliveries before or after acceptance for conformance with the specifications. Such tests may be performed by independent laboratories. Where test results indicate nonconforming goods, the delivery and the goods will be rejected and the cost of the test charged to Contractor. Where acceptance has preceded testing, acceptance is deemed conditional and subject to revocation. Laketran may reject goods and services and may revoke its acceptance without testing.

2.17 Audit and Inspection of Records

Upon reasonable request, the bidder shall permit the authorized representative of Laketran, the Auditor of the State of Ohio, their agents, plus the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all work, material, payroll and other data and records relating to its performance under this contract. Results of such Audit or Inspection - plus information gained from same - will not be released by Laketran except to the U.S. Department of Transportation or Controller General, or the Auditor of the State of Ohio.

2.18 Right to Adjust Cost

If Laketran determines during the life of the contract that data submitted by the Contractor/bidder is not correct, incomplete, or inaccurate, Laketran shall negotiate a downward adjustment in cost.

2.19 Failure to Meet Specifications

The delivery of any services, supplies or equipment hereunder which do not in all respects conform to specifications will be rejected and the Contractor (successful bidder) notified at once of such rejection and the reason therefore, which notice shall be confirmed in writing. If the said Contractor fails to effect immediate replacement of such rejected services, supplies or equipment meeting the requirements of the order and of these specifications, Laketran will purchase in the open market supplies of the character required under the order up to the amount rejected, and the said Contractor and his surety shall be liable to the Laketran for any excess cost and expense occasioned Laketran thereby.

2.20 Warranties

Contractor warrants that for a period of one (1) year (or for such longer period as prescribed by the specifications) following acceptance of the goods and services delivered hereunder, the goods and services are free of defects in materials and workmanship and further warrants that such goods and service are suited for the purposes intended and are of merchantable quality. Contractor further warrants that it holds good and marketable title in the goods delivered, and that such goods are free of all liens, security interests or other encumbrances. Contractor agrees that in the event the goods or services are not as specified herein and as warranted in these specifications, it will promptly cure the defect at its sole cost and expense. Contractor further agrees to indemnify Laketran for all costs and damages, both incidental and consequential, resulting from the delivery of goods and services which fail to meet the aforesaid warranties. It is agreed that the goods and services provided hereunder are regarded as consumer goods and services.

2.21 Indemnification

- A. To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, satisfy all judgements, and hold harmless the Laketran and its agents, representatives, and employees from and against all claims, actions, judgements, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits arising out of or resulting from the performance of this contract, provided that any such claims, action, judgement, cost, penalty, liability, damage, loss or expense is:
 - a. Attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the goods) including the loss of use resulting therefrom, and
 - b. Caused in whole or in part by a negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone to whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
 - c. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

- B. In any and all claims against the Laketran or any of its agents, representatives or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under worker's compensation acts, disability acts or other employee benefits acts. As between Contractor and Laketran, Contractor waives its immunities under O.R.C. Chapter 4123.
 - A. Laketran will notify Contractor within five working days of it making a claim against that Contractor or within five working days of Laketran learning that a third-party has made a claim against the Contractor.

- C. No provision of this paragraph shall give rise to any duties on the part of the Laketran

or its agents, representatives or employees.

2.22 Hold Harmless

The Contractor agrees to hold Laketran harmless from liability resulting from the Contractor's acts or omissions within the terms of this agreement; provided, however, the Contractor shall not hold Laketran harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of incident to, or resulting directly or indirectly from the negligence of Laketran, its officers, agents, representatives, or employees.

2.23 Disputes

- A. Except as otherwise provided in this solicitation, any dispute concerning a question of fact arising hereunder which is not disposed of by agreement shall be decided by Laketran, who shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the bidder or Contractor. The decision of Laketran shall be final and conclusive. In the event of a dispute after award of a contract, the Contractor shall proceed diligently with the performance of the contract in accordance with Laketran's decision.
- B. The laws of the State of Ohio will prevail and remedy - if any - will be pursued in Lake County, Ohio.

2.24 Notification of Proceedings

Laketran will give the Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor to defend same and will give all needed information, assistance, and authority to enable the Contractor to do so. The Contractor will similarly give Laketran immediate notice of any suit or action filed or prompt notice of any claims made against the Contractor arising out of the performance of this contract. The Contractor shall furnish immediately to Laketran copies of all pertinent papers received by the Contractor.

The sending or giving of any notice, invoice, or statement by U.S. Mail, postage prepaid by either party hereto, addressed to the other at the respective addresses shown in the preamble to this contract.

2.25 Termination/Breach of Contract

2.25.1 Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

In addition to any rights reserved to Laketran hereunder, the rights of the parties hereto shall be governed by the law of the State of Ohio as set forth at Chapters 1301 and 1302 O.R.C. It is agreed that the rules therein shall have equal application to the delivery of services required by this agreement.

2.25.3 Opportunity to Cure (General Provision)

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

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

2.25.4 Waiver of Remedies for any Breach

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

2.25.5 Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for

payment under the payment provisions of this contract for services rendered before the effective date of termination.

2.25.6 Termination for Default (Supplies and Service)

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

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

2.25.7 Termination for Default (Transportation Services)

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

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

2.25.8 Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and

plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

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

- A. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
- B. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
- C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

2.25.9 Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials. If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

2.25.9 Termination for Convenience or Default (Cost-Type Contracts)

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

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

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

2.25.10 Disputes

- A. Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.
- B. Performance during Dispute:
Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.
- C. Claims for Damages:
Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- D. Remedies:

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

E. Rights and Remedies:

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2.26 Assignment

Laketrans reserves the right to assign all or any portion of the award under this contract including option quantities. Laketrans's right of assignment will remain in force over proposed contract period or until completion of the contract to include options, whichever occurs first.

If this contract includes an option to purchase additional quantities of the same equipment at the prices tenders by the proposer, the options shall be executed by Laketrans at its sole discretion taking available funding, proposer's price, need for the vehicles and Laketrans's experience with the contractor. Any part of this tender including options that is not executed by Laketrans shall be assignable by Laketrans with vendor's consent to another transit agency.

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title, or interest in or to the same or any part thereof without prior written consent of Laketrans endorsed thereon or attached thereto. Should said assignment be made by Court order, all rights and obligations of the Contractor under this contract shall fall to and be incumbent upon Contractor's successors and assigns.

2.27 Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this covenant, Laketrans shall have the right to annul this contract without liability or at its discretion, to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

2.28 Patent Rights & Intellectual Property Rights (where applicable)

If this project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data

first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

- Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.
 - For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- A. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- B. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- C. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the

Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- D. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- E. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- F. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

2.29 Release of Information

Contractor agrees not to release data or information about the results of the agreed upon project to any person outside of Laketran without first obtaining written authorization to release such information from Laketran.

2.30 Ownership of Documents

Laketran and FTA will become the sole and exclusive owners of all documents prepared by the bidder upon payment for same by Laketran, except any documents which may be protected by patent, lease or other written documents which provide proof of ownership plus production drawings, bills of material, purchase orders, etc.

No reports, maps or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor.

The Contractor shall, at its own expense, defend all suits or proceedings instituted against Laketran and pay any award of damages assessed against Laketran in such suits or proceedings, insofar as the same are based on any claim that materials furnished or work performed under the contract constitutes an infringement of any patent, trade secret, copyright, or any other proprietary right to which Laketran claims ownership.

2.31 Retention of Records

- A. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and make readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

- B. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
- D. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

2.32 Workmens' Compensation Act

The Contractor shall comply with the State law known as the Workmens' Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act.

Any and all of the employees of Contractor while engaged in the performance of any work required by Contractor under this agreement shall be considered to be employees of Contractor only and not of Laketran, and any and all claims that may arise from the Workers Compensation Act on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Contractor's employees while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Contractor.

The Contractor may provide certifications in lieu of the above if said is a qualified self-insurer of Workers Compensation.

2.33 Social Securities Act/Unemployment Compensation, Etc.

The Contractor shall be and remain an independent Contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance and old age retirement benefits or annuities now or hereafter imposed under any State and Federal law which are measured by the wages, salaries or other remunerations paid to persons by the Contractor on work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and said Contractor also agrees to indemnify and save harmless Laketran from any such contributions or liability therefor.

2.34 Federal Assistance

The procurements under this contract are supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, and the Ohio Department of Transportation, pursuant to the Federal Transit Act. When so funded, this contract shall be subject to all rules and regulations promulgated pursuant thereto.

2.35 Work Hours Act

- A. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- B. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- C. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- D. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- E. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

2.35.1 Compliance with the Contract Work Hours and Safety Standards Act.

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty

hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

C. Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

2.36 Davis Bacon Act & Copeland Anti-Kickback Act *For Construction Contracts Only*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.

The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

2.37 Conflict of Interest

No officer, agent or trustee of Contractor shall participate in the selection or administration of this contract if a conflict of interest, real or apparent, would be involved or appear to be at issue.

2.38 Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

2.39 Program Fraud & False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil

Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

2.40 No Federal Government Obligations to Third Parties

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

2.41 Privacy

Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

2.42 Procurement

The Contractor and its Subcontractors will not make any procurements using exclusionary or discriminatory specifications, state or local geographic preferences, and shall comply with Buy America regulations at 49 U.S.C. 5323(j), 49 C.F.R. Part 661, and Section 70901 of the Infrastructure Investment and Jobs Act and shall make contract awards to other than the lowest,

responsive and responsible bidder only when such award meets the requirements of 49 CFR 53 and C4220.1F.

2.43 Special Requirements for Transit Service Contracts

Applies to Transit Service Operations Contracts Only

- A. Contractor will not operate any charter service unless such service complies with 49 CFR 604.
- B. Contractor will not operate any school bus service unless such service complies with 49 CFR 605.
- C. Contractor shall maintain a Drug Free Workplace per 49 CFR 29 Subpart F; shall comply with random drug testing requirements at 49 CFR 653 (and section 48 of this contract).
- D. Contractor shall comply with alcohol abuse regulations at 49 CFR 654.

2.43.1 Employee Protective Arrangements

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

A. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

B. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

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

2.43.2 School Bus Operations

- A. The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
 - b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
 - c. Any other Federal School Bus regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.

B. If Contractor violates this School Bus Agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. Require the contractor to take such remedial measures as FTA considers appropriate.
- C. When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.
- D. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

2.43.3 Charter Service

- A. The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - b. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
 - c. Any other federal Charter Service regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.
- B. The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:
 - a. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
 - b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
 - c. Any other appropriate remedy that may apply.
- C. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

2.43.4 Substance Abuse Requirements

- A. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

2.44 Seismic Safety *Construction Projects Only*

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

2.45 Hatch Act/Work Day and Work Week Standards *Construction Projects Only*

Bidders are hereby notified that under the terms of this specification, the standard work day is eight (8) hours and the standard work week is forty (40) hours. Any work in excess of these standards must be compensated at time and one-half (1.5). Also no laborer or mechanic shall be required to work in any unsanitary, hazardous, or any area which may be dangerous to their health or safety.

2.46 Cargo Preference

The contractor agrees:

- A. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381.
- B. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2.47 Fly America (Where Applicable)

- A. Definitions. As used in this clause—
 - 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both

- of which are outside the United States.
- 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
 - 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:
Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:
- E. Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

2.48 Clean Air Act & Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

2.48.1 Clean Air Act

- A. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the

- appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

2.48.2 Federal Water Pollution Control Act

- A. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

2.49 Energy Conservation

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

2.50 Debarment and Suspension

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

- Debarred from participation in any federally assisted Award;
- Suspended from participation in any federally assisted Award;
- Proposed for debarment from participation in any federally assisted Award;
- Declared ineligible to participate in any federally assisted Award;
- Voluntarily excluded from participation in any federally assisted Award; or
- Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an

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

2.51 Compliance with Laws and Regulations

All materials and supplies furnished pursuant to the specifications shall be in compliance with the laws and regulations of the U.S. Department of Transportation/Federal Department of Transportation and the State of Ohio. Contractor acknowledges Federal and/or State laws and regulations may change during the life of this contract and that the changed laws and regulations will apply to this contract unless otherwise determined by Federal and/or State governments. Contractor shall, if requested by Laketran, supply certification and evidence of such compliance. The contract shall be construed pursuant to the laws of the State of Ohio.

2.52 Applicable Law and Jurisdiction

This agreement has been executed in Lake County, Ohio and shall be governed according to the laws of the State of Ohio. The parties agree that the Lake County Court of Common Pleas shall have exclusive jurisdiction to hear any dispute related to this contract.

2.53 Integrated Agreement

The Solicitation, Addendum(s) (if any), Laketran Resolution Awarding a Contract, Contract and Contract Amendment(s) (if any), shall constitute the entire agreement between the parties. No oral modifications or representations are enforceable unless reduced to written form, signed by both parties, and annexed hereto prior to performance of the modified work. Additional terms and conditions submitted by the Contractor with its bid are disregarded unless specifically accepted in writing.

Neither party to this agreement has been induced to make or enter into the agreement by reason of any promise, agreement, representation, statement or warranty other than is contained herein or in Contractor's proposal.

Should any part of this agreement be held unenforceable by any competent judicial body, such determination shall not affect the remainder thereof and the balance of this agreement shall remain in full force and effect.

2.54 Laketran's Understanding

Laketran will enter into a contract under the assumption of truth regarding all facts presented by Contractor, its bid proposal and the bid specifications. In the event that any information contained in that Contractor's bid proposal is found to be inaccurate, Laketran may exercise its rights to void this contract as discussed under the section of this contract labeled Termination.

2.55 Incorporation of FTA Terms

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

2.56 Non-Smoking Policy

Laketrans entire facility - including offices, maintenance areas, bus storage, vehicle servicing lanes, parking lots and roadways - is a non-smoking facility. Smoking is prohibited everywhere. Contractor, its employees and sub-contractors shall adhere to this policy at all times. Any contractor or his/her employees found violating this policy will be removed from the property for the day and Laketrans will withhold payment for the subject time period.

2.57 Funding Agencies

The Federal Transit Administration is the federal agency through which funds may have been granted to Laketrans in support of this project. It is abbreviated "FTA" in this document and is located at:

Suite 320
200 West Adams Street
Chicago, Illinois 60606
(312) 353-2789

The Ohio Department of Transportation is the state agency through which funds are granted to Laketrans in support of this project. It is abbreviated "ODOT" in this document and is located at:

1980 West Broad Street
Columbus, Ohio 43223
(614) 466-8955

2.58 Prohibition on certain telecommunications and video surveillance services or equipment.

Laketrans is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any

system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained

- See Public Law 115-232, section 889 for additional information & § 200.471.

2.59 Solid Wastes

Laketrans and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2.60 Safe Operation of Motor Vehicles

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

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

2.61 Human Trafficking

Third party contactors agree that it and its employees that participate in the project, may not: engage in severe forms of trafficking in persons, procure a commercial sex, or use forced labor in the performance of the project during the period of time that the Laketran’s project is in effect.

2.62 Restrictions on Lobbying

- A. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- C. Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- D. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- E. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

2.62.1 Certification and disclosure

- A. Each person shall file a certification, and a disclosure form, if required, with each

- submission that initiates agency consideration of such person for:
- a. Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - b. An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- B. Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
- a. A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - b. A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,
 - c. Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.
- C. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
- a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- D. Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
- a. A subcontract exceeding \$100,000 at any tier under a Federal contract;
 - b. A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
 - c. A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
 - d. A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,
 - e. shall file a certification, and a disclosure form, if required, to the next tier above.
- E. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.
- F. Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.
- G. For awards and commitments in process prior to December 23, 1989, but not made

before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days. No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

2.63 Veteran's Hiring Preference

Applies to Construction Contracts Only

Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

2.64 Conformance with ITS National Architecture

Only applies to Intelligent Transportation Systems (ITS) projects

Contractor shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

2.65 Federal Tax Liability & Recent Felony Convictions

The contractor certifies that it:

- A. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
- C. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.
- D. Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

2.66 Severability

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.