

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
FEBRUARY 5, 2013 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
2013 Agreement with Pace for the Purchase of Commuter Bus Service	✓ Resolution Ordinance Motion Discussion Only	Nan Newlon, P.E. Public Works Director

SYNOPSIS

A resolution has been prepared authorizing execution of an agreement between the Village of Downers Grove and Pace. Under the terms of this agreement the Village would continue to provide commuter bus service and Pace would pay the Village for this service up to an amount of \$286,971 in twelve monthly installments. There are no changes from the 2012 agreement.

STRATEGIC PLAN ALIGNMENT

The goals for 2011 to 2018 include *Steward of Financial and Environmental Sustainability* and *Exceptional Municipal Services*.

FISCAL IMPACT

The payments from Pace along with the fare box revenue would cover all costs of operating the Grove Commuter Shuttle up to \$286,971. The Village would be responsible for the costs in excess of that amount. The FY13 Transportation Fund budget was prepared in a manner consistent with this agreement.

RECOMMENDATION

Approval on the February 5, 2013 consent agenda.

BACKGROUND

This agreement is the annual agreement under which Pace pays all operating and maintenance expenses for the Village's commuter bus system. There are no changes from the 2012 agreement.

Under the terms of this agreement the Village will continue to:

- Operate as an independent contractor for commuter bus service for Pace
- Continue to operate the four, fixed routes within the established schedules
- Provide bus maintenance services
- Maintain garage facilities necessary for bus maintenance
- Provide secure storage for the buses
- Provide monthly reports to Pace

Under the terms of the agreement Pace will continue to:

- Provide the buses and equipment necessary to operate commuter bus service
- Provide insurance coverage for the Pace-owned buses (this will reduce the Village's liability).

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION
OF AN AGREEMENT FOR THE
PURCHASE OF SERVICES FOR THE PROVISION OF BUS SERVICE**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain 2013 Agreement for the Purchase of Services for the Provision of Bus Service (the “Agreement”), between the Village of Downers Grove (the “Transportation Agency”) and the Suburban Bus Division of the Regional Transportation Authority (“PACE”) for public transportation services, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts or resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That the resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**AGREEMENT
FOR THE PURCHASE OF SERVICES
FOR THE PROVISION OF BUS SERVICE**

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, to be effective as of January 1, 2013, by and between the **SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY**, an Illinois municipal corporation, operating under the name and hereinafter referred to as "Pace" and the **Village of Downers Grove**, an Illinois municipal corporation, hereinafter referred to as "Transportation Agency."

W I T N E S S E T H:

WHEREAS, Pace was created as the Suburban Bus Division of the Regional Transportation Authority to be responsible for providing public transportation by bus pursuant to Section 3A.01 of the Regional Transportation Authority Act (70 ILCS 3615/3A.01);

WHEREAS, Pace may enter into purchase of service agreements with governmental and private sector entities to obtain public bus service and to provide for payment of operating and other expenses upon such terms and conditions as Pace shall provide in any such agreements; and

WHEREAS, Pace desires to have Transportation Agency provide the Transportation Services and Other Services as described in this Agreement and Transportation Agency desires to provide such services.

NOW, THEREFORE, in consideration of the promises and agreements herein set forth, Pace and the Transportation Agency HEREBY AGREE as follows:

ARTICLE I
DEFINITIONS

Agreement Term. The term specified in Section 12.1 of this Agreement, as such term may be reduced or extended pursuant to the provisions of this Agreement.

Approved Budget. The budget of approved expenses attached to this Agreement as Exhibit A and A-1 as the same may be revised from time-to-time pursuant to Section 11.8 of this Agreement.

Approved Budget Maximum. The amount shown on the budget summary-Exhibit A designated "Approved Budget Maximum" as such amount may be increased or decreased during the Agreement Term pursuant to the provisions of this Agreement.

Approved Capital Expenditure. A capital expenditure approved by Pace pursuant to the provisions of Section 11.9 of this Agreement.

Budget Call. A written direction issued by Pace directing the submission of a proposed budget for the calendar year following the Agreement Term.

Capital Asset. Land; a fixture attached to land; or an item of personal property that meets all of the following criteria: (1) the cost of acquisition or the cost of improvement of such property exceeds \$500; (2) the expected useful life of the property when acquired is more than one year or the extension of the useful life of the property as a result of the improvement is more than one year; (3) the property retains its original shape and appearance with use; and (4) the property is nonexpendable (meaning that if the property is damaged or some of its constituent parts are lost or worn out, it is usually more economical to repair the property than to replace it with an entirely new unit).

Capital Expenditure. An expenditure made to acquire or improve one or more Capital Assets.

Contract Price. The total amount payable pursuant to Section 11.1 of this Agreement.

Equipment. Pace Equipment, Transportation Agency Vehicles and Other Transportation Agency Equipment.

Financial Assistance Grant Agreement. References to the "Financial Assistance Grant Agreement" and any similar references contained in the Operating Manual or any other document referred to or incorporated into this Agreement shall be deemed to be references to this Agreement.

Line Item. A specific, separately identified category of expense listed on the Approved Budget.

Line Item Budget. The amount of the Approved Budget allocated to a specific Line Item.

Line Item Budget Maximum. The amount shown on the Approved Budget for each Line Item, as such amount may be increased or decreased during the Agreement Term pursuant to the provisions of this Agreement.

Monthly Report. The monthly report of revenue and expenses.

Non-Revenue Vehicle. Any Vehicle other than a Revenue Vehicle.

Operating Expense. Any and all reasonable expenses, costs and disbursements of every kind and nature, other than Capital Expenditures, paid or properly accrued in accordance with uniformly and consistently applied generally accepted governmental accounting principles by Transportation Agency during the Agreement Term in connection with providing Transportation Services and Other Services pursuant to this Agreement.

Operating Manual. The manual (which bears the title "Municipal Operating Manual") of Pace policies, practices and procedures prepared and regularly amended, revised and supplemented by Pace, as it may be from time to time amended, revised or supplemented by Pace during the Agreement Term. All references to the Operating Manual shall be deemed to be references to the most current version of the Operating Manual and to include a reference to any and all current applicable Operations Bulletins and Pace directives. All references to any specific section, exhibit or provision of the Operating Manual are for convenience only and shall be deemed to be references to any and all relevant provisions of the Operating Manual.

Operations Bulletin. Any written directive issued by Pace, whether before or during the Agreement Term, to advise Transportation Agency of additional, supplemental, new or revised Pace policies, practices and procedures regarding the provision of Transportation Services and Other Services and other matters relating to the performance of this Agreement.

Other Pace Equipment. Any Pace Equipment other than a Pace Vehicle.

Other Services. The services specified in Section 2.2 of this Agreement.

Other Transportation Agency Equipment. All assets of every kind used in the performance of this Agreement other than Pace Equipment and other than Transportation Agency Vehicles.

Pace Equipment. All assets of every kind, including Pace Vehicles, (1) provided by Pace to the Transportation Agency, at any time, whether before or after the execution of this Agreement or (2) purchased by Transportation Agency (a) with capital grant funds provided by or through

Pace, at any time, whether before or after the execution of this Agreement or (b) with Transportation and Other Services Revenue or payments made by Pace to Transportation Agency pursuant to this Agreement.

Pace Vehicle. All Vehicles of every kind provided by Pace to the Transportation Agency at any time, whether before or after the execution of this Agreement and whether in connection with this Agreement or in connection with any prior agreement or relation between Pace and Transportation Agency or in connection with the provision of services pursuant to this Agreement or any prior agreement or relation, including, without limitation, all Revenue Vehicles listed in Paragraph A of Exhibit B hereto, all Non-Revenue Vehicles listed in Paragraph B of Exhibit B hereto and all other Vehicles provided by Pace to Transportation Agency, whether or not listed on Exhibit B hereto.

Real Property & Facilities. All property and facilities identified in Section 4.1 of this Agreement.

Reimbursable Expenditure. Either (1) an Approved Capital Expenditure or (2) an Operating Expense other than the following Operating Expenses:

- (a) any amount required to be paid by Transportation Agency to Pace pursuant to this Agreement or pursuant to any other agreement between Pace and Transportation Agency;
- (b) any expense not incidental to, or necessary for, the provision of the Transportation Services and Other Services;
- (c) any excessive or unreasonable expense;
- (d) any expense for local government taxes, fees, licenses or other charges unless specifically included in the Approved Budget or its supporting documents or unless approved in writing by Pace;
- (e) any expense resulting from any increase in wage rates in excess of Pace established ceilings shown in Exhibit C;
- (f) any expense for wages or benefits resulting from any change in employment practices, Transportation Services or Other Services not made in conformance with the Approved Budget or at the direction or with the approval of Pace or pursuant to a requirement of federal or state law determined by Pace to be applicable;
- (g) any expense for inadequate managerial services (as provided in Subsection 5.2A) of this Agreement;

- (h) any expense resulting from the amortization or payment of any debt incurred prior to the Agreement Term or incurred without the approval of Pace;
- (i) any interest expense unless approved in writing by Pace;
- (j) any sinking fund expense;
- (k) any expense resulting from the amortization of any intangible cost to the extent it does not meet the evaluative criteria for allowable amortization established by Pace from time to time;
- (l) any depreciation expense; and
- (m) any non-cash expense incurred or accrued without Pace's prior written approval.

Revenue Vehicle. Any Vehicle designed or used as a means for the transportation or conveyance of the general public as passengers.

Risk Financing Program. The claims management program established by Pace to consolidate into a single comprehensive system the administration of all bodily injury and property damage claims asserted against Pace and all transportation agencies providing transportation services with Pace vehicles, on behalf of Pace, as the same may be from time to time amended or revised.

Transportation Agency Vehicle. Any Vehicle listed in Paragraph C of Exhibit B attached hereto.

Transportation and Other Services Revenue. All amounts properly classified as revenue or income generated by, derived from, attributable to or related to the Transportation Services and Other Services during the Agreement Term, regardless of the date of collection, except only payments made by Pace to the Transportation Agency pursuant to this Agreement.

Transportation Services. The services specified in Subsection 2.1A of this Agreement, as the same may be modified from time to time pursuant to the provisions of Subsection 2.1B of this Agreement.

Vehicle. Any means of transportation or conveyance such as, but not limited to, a bus, a truck, a van, an automobile or a trailer and any self-propelled maintenance equipment such as, but not limited to, a sweeper or tractor.

ARTICLE II
SCOPE AND DESCRIPTION OF SERVICES

Section 2.1. Transportation Services.

A. Transportation Services. Throughout the Agreement Term, Transportation Agency, acting as an independent contractor for the benefit of Pace and not as an agent for Pace, agrees to provide safe, efficient and economical bus service along each of the routes listed in Exhibit D according to the route map and schedule published or approved by Pace and in effect for each such route on the first day of the Agreement Term, copies of which schedules and related materials are on file with Pace, and along such additional or modified routes as are established pursuant to the procedures in Subsection 2.1B below according to the route map and schedule published or approved by Pace and placed on file by Pace for each such additional or modified route. As an integral part of providing such service, Transportation Agency shall at all times:

- (1) comply with all Pace service standards as set forth in the Operating Manual;
- (2) comply with all of the other provisions of this Agreement;
- (3) take all steps necessary to assure the safety and reasonable comfort and convenience of the public utilizing such service;
- (4) charge only such fares as may be directed by Pace;
- (5) comply with all policies, practices, procedures, terms and conditions as may be directed by Pace with regard to collection, security for and disposition of fares and other Transportation and Other Services Revenue;
- (6) comply with all policies, practices, procedures, terms and conditions as may be directed by Pace with regard to matters such as passes, tickets, coupons, tokens, transfers, transfer systems, interconnections between different modes of transportation and interconnections between different transportation agencies;
- (7) comply with all of the policies, practices, procedures, terms and conditions required by use of federal, State of Illinois and RTA funds, including, without limitation, conditions pertaining to rates charged to students, elderly and disabled persons, the prohibition of

charter bus operations, the prohibition of school bus operations, employment, and reporting;

- (8) comply with all policies, practices, procedures, terms and conditions as may be directed by Pace with regard to the availability and distribution of schedules and other printed material related to such service and related transportation services;
- (9) conduct such services, and its business and operations as they relate to such services, in a safe, sound, economical and efficient manner;
- (10) comply with all Pace efforts to improve efficiency, including, without limitation, the implementation of the HASTUS scheduling system and the Transit Information System (TIS); and
- (11) comply with all applicable provisions of federal, state and local law.

B. Changes in Transportation Services.

(1) **Transportation Agency Initiated Changes.** Transportation Agency shall not, without the prior written approval of Pace, initiate or permit any change to the Transportation Services specified in Subsection 2.1A above. Transportation Agency may propose changes in the Transportation Services by presenting a proposal therefor in writing to Pace at least forty-five (45) days in advance of the date on which the change is proposed to take effect. Pace shall either approve or disapprove the request in writing within thirty (30) days after it receives the request. Notwithstanding the foregoing, Transportation Agency may implement minor operational changes that will neither:

- (a) increase any Reimbursable Expenditure;
- (b) affect any fare or system for passes, transfers, interconnections or similar programs; nor
- (c) substantially change any route or schedule if Transportation Agency first gives Pace at least thirty (30) days' notice of its intent to make such minor change and if Pace has not disapproved such proposed minor change in writing within fifteen (15) days following receipt of such notice.

Transportation Agency may, in addition, make minor operational changes of an emergency nature without Pace approval; provided, however, that no such change shall be made that would increase any Reimbursable Expenditure and provided, further, that Transportation Agency shall give Pace notice of each such minor change as soon as possible, and in no event later than twelve (12) hours after it is made.

(2) **Pace Initiated Route and Schedule Changes.** Pace may require changes in routes and schedules specified in Subsection 2.1A above, but only on the following conditions:

- (a) Unless some other notice is permitted or required pursuant to Paragraph 2.1B(2)(b) below or unless Transportation Agency shall agree to some lesser notice, Pace shall provide Transportation Agency at least forty-five (45) days written notice, which shall not be given prior to the conclusion of any required public hearing, of the required change if the change involves neither the addition nor reduction of personnel nor any requirement that drivers be allowed to pick routes, or sixty (60) days written notice, which shall not be given prior to the conclusion of any required public hearing, of the required change in any other case;
- (b) Pace shall have first complied with any special procedures or standards made applicable to the required change by any applicable law or regulation or by any other agreement between Pace and the Transportation Agency; and
- (c) Pace shall have first approved an amendment to the Approved Budget set forth in Article XI of this Agreement, or shall otherwise have provided sufficient additional funding, to fairly reflect any increase in the Reimbursable Expenditures caused by the required change.

In the event Transportation Agency disputes Pace's compliance with either Paragraph 2.1B(2)(b) or 2.1B(2)(c) above, Transportation Agency may request a review of the matter by the Pace Board of Directors. If the Board of Directors determines that there is no failure by Pace to

comply with either Paragraph 2.1B(2)(b) or 2.1B(2)(c) above, Transportation Agency shall then implement the required change not later than the expiration of the notice period required pursuant to Paragraph 2.1B(2)(a) above, subject, however, to Transportation Agency's remedies as set forth in Article XV of this Agreement.

(3) **Other Pace Initiated Changes.** Except for changes in routes and schedules, Pace may require any change in the Transportation Services specified in Subsection 2.1A above upon reasonable written notice to Transportation Agency.

(4) **Pace Discretion.** Nothing in this Subsection 2.1B shall be construed to require Pace to approve any change to the Transportation Services specified in Subsection 2.1A, and Pace may withhold its approval of any such change in its sole discretion.

Section 2.2. Other Services. Throughout the Agreement Term, Transportation Agency shall provide all ancillary and supporting services necessary or appropriate to providing the Transportation Services and to complying with the requirements of this Agreement, including, without limitation, the following services:

- (1) Transportation Agency shall maintain all garages, yards, facilities, equipment, materials and supplies used in providing, or supporting, the Transportation Services in first class condition and shall, specifically, comply with the Equipment maintenance responsibilities set forth in Article III of this Agreement;
- (2) Transportation Agency shall provide all professional, supervisory, administrative, skilled and unskilled personnel necessary or appropriate to provide the Transportation Services and to carry out its other obligations under this Agreement and, in so doing, shall comply with all the terms of this Agreement and, specifically, Articles V and VI of this Agreement;
- (3) Transportation Agency shall comply with the reporting and recordkeeping requirements set forth in Article VII of this Agreement;

- (4) Transportation Agency shall comply with its obligations with respect to accounting and budgeting as set forth in Article XI of this Agreement.

Section 2.3. Equipment. Unless otherwise expressly provided in Article III of this Agreement, Transportation Agency shall, in providing the Transportation Services and Other Services, employ only the Equipment specified in said Article III.

Section 2.4. Real Property and Facilities. Unless otherwise expressly provided in Article IV of this Agreement, Transportation Agency shall, in providing the Transportation Services and Other Services, utilize only the garages, yards and related facilities specified in said Article IV.

Section 2.5. Force Majeure. Transportation Agency shall not be in default in its obligation to provide Transportation Services and Other Services as herein required to the extent that it is unable to provide such services as a result of abnormally severe weather or road conditions, strikes or other labor stoppages, unavailability of sufficient Revenue Vehicles through no fault of the Transportation Agency and other events and conditions that are beyond the reasonable ability of Transportation Agency to control or remedy and that render provision of such service impossible or not reasonably feasible. In any such case, Transportation Agency shall provide such modified or reduced services as are practicable under the circumstances and shall use all reasonable efforts to restore full services in accordance with this Agreement at the earliest possible time. Immediately upon the occurrence of, or the imminent threat of the occurrence of, any such event or condition, and prior to implementing any reduced or modified service, Transportation Agency shall notify Pace by telephone, with written confirmation as soon as possible thereafter, of:

- (1) The nature of the event or condition;
- (2) The actual or expected time of the occurrence of the event or condition and its expected duration;

- (3) The impact of the event or condition on Transportation Services and Other Services;
- (4) The modified or reduced service Transportation Agency proposes to provide during the continuation of the event or condition; and
- (5) The steps Transportation Agency proposes to take to restore full service.

ARTICLE III
EQUIPMENT

Section 3.1. Provision of Equipment By Pace.

A. Pace Rights With Respect to Pace Vehicles and Other Pace Equipment. This Agreement applies to all Pace Equipment provided by Pace to Transportation Agency at any time. Pace reserves the absolute right, in its sole discretion, (1) to determine the number and type of Pace Vehicles and Other Pace Equipment to provide to Transportation Agency, (2) to substitute or replace any Pace Vehicles or Other Pace Equipment provided to Transportation Agency, and (3) to direct the return to Pace or its designee of any or all Pace Vehicles or Other Pace Equipment, at any time; provided, however, that in the absence of fault by Transportation Agency or other good cause, Pace shall not take action under this Paragraph 3.1A(3) that would have the effect of preventing or materially and adversely affecting the ability of Transportation Agency to provide the Transportation Services and Other Services. In exercising its powers under this Subsection 3.1A, Pace shall not discriminate against Transportation Agency in violation of Section 2.02(e) of the Regional Transportation Authority Act.

B. Pace Equipment Provided; Inventory and Documentation. Pace will provide or has already provided Transportation Agency with the Pace Revenue Vehicles listed in Paragraph A of Exhibit B and the Pace Non-Revenue Vehicles listed in Paragraph B of Exhibit B. Transportation Agency acknowledges that the Pace Revenue Vehicles listed in Paragraph A of Exhibit B, together with the Transportation Agency Revenue Vehicles listed in Paragraph C of Exhibit B, if any, are adequate and sufficient to provide the Transportation Services. In the event

Transportation Agency has received other Pace Equipment from Pace, Transportation Agency agrees to comply with all Pace procedures for handling such Other Pace Equipment in accordance with the Operating Manual. Transportation Agency agrees to cooperate fully with Pace in developing and maintaining an accurate inventory of all Pace Equipment from time to time in the possession of Transportation Agency. Transportation Agency shall complete and process all documentation necessary to evidence and record the receipt, possession, return or transfer of any Pace Equipment coming into, being in or leaving its possession, all as required by the Operating Manual. Copies of all such documentation with respect to Pace Vehicles shall be attached to and become part of Exhibit B.

C. **No Consideration.** Transportation Agency shall not be required to pay any separate consideration for the use of the Pace Equipment during the Agreement Term.

D. **Transportation Agency Acceptance of Pace Equipment.** Transportation Agency shall accept delivery of Pace Equipment at such times and places within the six county region as Pace shall designate upon notice to Transportation Agency that such Equipment is available for delivery. In case of any unreasonable delay, neglect, refusal, or failure to accept any Pace Equipment at the time and place designated, all costs and expenses incurred by Pace arising from such delay, neglect, refusal or failure shall be reimbursed by Transportation Agency immediately upon written demand by Pace. Such costs and expenses shall not be a Reimbursable Expense for purposes of this Agreement.

E. **Pace Equipment Returns and Substitutions.** Any Pace Equipment that Pace designates to be returned or transferred shall, upon reasonable notice, be delivered by Transportation Agency at the time and to the place designated by Pace within the six county region. Transportation Agency also shall accept delivery of any substitute Pace Equipment at the time and place designated by Pace within the six county region. All terms and conditions of this Agreement shall apply to such substitute Pace Equipment.

F. **Surplus Pace Equipment.** Any Pace Vehicle not scheduled for use in providing or supporting the Transportation Services and not required as a spare, as determined by Pace, for a

period of ten (10) days or more shall be considered surplus Pace equipment. Any other Pace Equipment not required, as determined by Pace, for providing Transportation Services or other services pursuant to this Agreement shall be considered surplus Pace equipment. Surplus Pace equipment shall be returned to Pace within thirty (30) days after determination by Pace and notice to the Transportation Agency.

G. Pace Right to Repossess Pace Equipment. Upon the failure of Transportation Agency to return or deliver any Pace Equipment as directed by Pace, or if Transportation Agency fails to use, repair or maintain any Pace Equipment as required by this Agreement, Transportation Agency shall permit Pace, without demand, legal process, or a breach of the peace, to enter any premises under the control of Transportation Agency where the Pace Equipment is or may be located and to take possession of and remove the Pace Equipment. Transportation Agency shall not prosecute or assist in the prosecution of any claim, suit, action, or other proceeding arising out of any such repossession by Pace. Transportation Agency shall reimburse Pace for any and all costs incurred by Pace in connection with actions taken by Pace pursuant to this Subsection. Such costs shall not be Reimbursable Expenditures under this Agreement.

H. Pace Equipment Inspection. Pace shall have the right to inspect any and all Pace Equipment or cause any or all Pace Equipment to be inspected at any time, with or without prior notice to Transportation Agency; provided, however, that unless Pace determines in its sole discretion that emergency conditions or factors affecting safety or security require otherwise, Pace shall give at least twenty-four (24) hours notice of any such inspection. Pace shall also have the right to demand from time to time a written statement from Transportation Agency setting forth the condition of the Pace Equipment or any part of it. Transportation Agency shall furnish such a statement to Pace within ten (10) days after receipt of Pace's demand therefor. Should Pace or its designee determine, in its sole discretion, that any Pace Equipment has not been maintained in accordance with this Agreement or the Operating Manual, Pace or its designee shall report all deficiencies to Transportation Agency in writing. Except for safety related deficiencies, which shall be corrected as soon as reasonably possible and prior to placing the vehicle in service, Transportation Agency shall have thirty (30) days to correct the reported deficiencies.

I. Return of Pace Equipment and Related Records Upon Termination. Immediately following the Agreement Term, Transportation Agency shall surrender and deliver to Pace all Pace Equipment and related records as required by Section 12.4 of this Agreement.

J. Title to Pace Equipment, Licensing and Registration. Transportation Agency acknowledges and agrees that Pace owns all the Pace Equipment. All Pace Vehicles shall be licensed and registered by Pace in the name of Pace and at the expense of Pace. Nothing contained herein shall affect Pace's absolute ownership of and title to the Pace Equipment, such ownership and title being hereby expressly reserved to and retained by Pace. Transportation Agency shall not obtain, acquire or otherwise be construed to own any property or other interest in the Pace Equipment except the right to use it for the purposes and on the conditions stated in this Agreement during the Agreement Term. Transportation Agency agrees not to grant any party any right to use or possess the Pace Equipment or any part of it, nor to permit the Pace Equipment, or any part of it, to pass from the possession and control of Transportation Agency, unless directed to do so in writing by Pace. Transportation Agency further agrees that it will not, in any manner, allow or permit the Pace Equipment, or any part of it, to be pledged, seized, or held for any tax, debt, lien or other obligation. Should the Pace Equipment, or any part of it, become subject to or encumbered by any tax, debt, lien or other obligation during the Agreement Term, or before the actual delivery of the Pace Equipment to Pace after the Agreement Term, Transportation Agency shall, subject to its right to in good faith protest any such tax, debt, lien or other obligation, promptly pay or discharge such tax, debt, lien or other obligation and relieve such Pace Equipment from the encumbrance thereof.

K. Warranty. NEITHER PACE NOR TRANSPORTATION AGENCY IS THE MANUFACTURER OF THE PACE EQUIPMENT NOR THE MANUFACTURERS' AGENT, AND NEITHER MAKES ANY EXPRESS OR IMPLIED WARRANTY OF ANY NATURE REGARDING THE PACE EQUIPMENT, INCLUDING BUT NOT LIMITED TO: ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE; ITS DESIGN OR CONDITION; ITS WORKMANSHIP; ITS FREEDOM FROM LATENT DEFECTS; ITS COMPLIANCE WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR

CONTRACT; OR ITS NONINFRINGEMENT OF ANY PATENT, TRADEMARK OR

LICENSE. Provided that Pace or the manufacturer has supplied required warranty documents to Transportation Agency, Transportation Agency shall take all actions it is authorized to take under this Agreement to preserve any and all manufacturers' warranties regarding the Pace Equipment. This Agreement shall not operate to release or waive any rights of Pace or Transportation Agency against any person not a party hereto, including the manufacturer of the Pace Equipment.

Section 3.2. Maintenance of Pace Equipment by Transportation Agency.

A. Maintenance Requirements. Transportation Agency shall at all times maintain all Pace Equipment in good mechanical condition in conformity with all applicable safety practices, laws and regulations. In addition, Transportation Agency shall at all times maintain all Pace Equipment in accordance with the terms and provisions of this Agreement, all maintenance policies, practices, procedures, conditions and requirements contained in the Operating Manual and all manufacturers' maintenance schedules and warranty requirements. Transportation Agency shall perform all preventive maintenance required pursuant to the Operating Manual. Transportation Agency shall keep both the exterior and interior of all Pace Vehicles neat, clean and in first class condition at all times. Transportation Agency shall be responsible to assure that all Pace Revenue Vehicles are maintained at all times so as to meet the requirements of the Illinois Department of Transportation and to assure that all Pace Vehicles have valid Illinois Department of Transportation stickers affixed to them at all times.

B. Maintenance Records. Transportation Agency shall prepare and maintain accurate records relating to all maintenance work performed by or for Transportation Agency on all Pace Equipment and in that regard shall comply with the provisions of Article VII of this Agreement and with all applicable Pace policies, practices, procedures, conditions and requirements as set forth in the Operating Manual. Transportation Agency shall maintain a separate maintenance file for each Pace Vehicle containing all maintenance records pertaining thereto. Transportation Agency shall also complete, maintain and transmit to Pace all maintenance forms required in the Operating Manual, and any other records requested by Pace including, without limitation,

Vehicle maintenance records, fuel consumption records and all records required under Pace's Preventive Maintenance Program.

Section 3.3. Operation of Pace Equipment By Transportation Agency.

A. General Operating Standard. Transportation Agency shall use and operate all Pace Equipment in accordance with the terms and provisions of this Agreement, the operating procedures set forth in the Operating Manual and all applicable federal, state and local laws and regulations and solely for the purpose of providing the Transportation Services and Other Services on behalf of Pace.

B. Pace Vehicle Identification. Transportation Agency shall not change or obstruct in any way, and shall maintain, all identification markings and decals on all Pace Vehicles as supplied and affixed by Pace. Unless otherwise approved in writing by Pace, Transportation Agency shall not affix to or display on any Pace Vehicle any identification marking or decal other than those supplied and affixed by Pace.

C. Bus Advertising. Transportation Agency shall allow Pace to sell advertisers the opportunity to advertise on the interiors and exteriors of Pace owned vehicles operated by the Transportation Agency under this Agreement. Pace advertising contractor shall be responsible for installing and maintaining aluminum frames on the bus exteriors to hold advertisement. Transportation Agency shall allow access to the vehicles for the purpose of installing and updating the advertisements between the hours of 7:00 a.m. – 8:30 p.m. Monday through Friday, or at any other time agreeable to both parties.

D. Storage of Pace Equipment. Transportation Agency shall store all Pace Equipment as directed by Pace at the locations identified in Article IV of this Agreement or in such other suitable locations as may be approved in writing by Pace. Transportation Agency shall provide commercial property insurance coverage for any and all such locations and facilities located thereon, unless Pace notifies Transportation Agency in writing that Pace shall provide such insurance. Adequate fire protection shall be provided by Transportation Agency for any and all

such locations and facilities located thereon. All fire protection systems shall comply with all applicable federal, state and local laws and regulations and shall have the approval of the Fire Underwriters' Laboratory and Pace. Pace Vehicles shall not be stored outdoors without the express prior written approval of Pace and then only in accordance with such conditions as Pace may require.

E. Pick-Up and Discharge of Passengers. Unless Pace shall otherwise direct in writing, passengers shall be picked-up and discharged at any safe point along the Pace designated route.

F. Fareboxes and Radios. Transportation Agency shall utilize only fareboxes, radios and related equipment approved by Pace. Transportation Agency shall install and maintain such fareboxes and radios in good condition in all Revenue Vehicles.

Section 3.4. Transportation Agency Vehicles.

A. Applicability of Section. Vehicles, if any, to be supplied by Transportation Agency for use in connection with providing the Transportation Services are listed in Paragraph C of Exhibit B. If Paragraph C of Exhibit B contains the word "NONE," this Section 3.4 shall be of no force or effect; otherwise, it shall apply to any Vehicles listed in Paragraph C of Exhibit B.

B. Duty to Provide Transportation Agency Vehicles. Unless otherwise authorized by Pace in writing, Transportation Agency shall provide all Vehicles listed in Paragraph C of Exhibit B for use in providing the Transportation Services and Other Services at all times during the Agreement Term. Transportation Agency shall not, without the prior written approval of Pace, dispose of any Transportation Agency Vehicle or otherwise withdraw any Transportation Agency Vehicle from service under this Agreement or substitute any other Vehicle for any Transportation Agency Vehicle in providing the Transportation Services and Other Services. Transportation Agency agrees it will not engage in charter service operations with Pace equipment except as authorized by 49 U.S.C. Section 5323(d) and 49 C.F.R., Part 604.

C. **Duty to Maintain and Operate Transportation Agency Vehicles.** Transportation Agency shall comply with all the provisions of Sections 3.2 and 3.3 of this Agreement with respect to the maintenance and operation of the Transportation Agency Vehicles the same as if the Transportation Agency Vehicles were Pace Vehicles.

Section 3.5. Other Transportation Agency Equipment. Transportation Agency agrees to devote such equipment in its possession as may be useful in the provision of the Transportation Services and Other Services and as may be reasonably available for such purposes to the performance of such Services.

ARTICLE IV

REAL PROPERTY AND FACILITIES

Section 4.1. Use of Real Property and Facilities. Transportation Agency agrees to, and shall, use the real property and facilities, or the portions thereof, listed on Exhibit E for, and solely for, the purpose of providing the Transportation Services and Other Services.

Section 4.2. Maintenance of Real Property and Facilities. Transportation Agency agrees to maintain the Real Property and Facilities in first class condition for their intended purposes throughout the Agreement Term.

ARTICLE V

EMPLOYEES

Section 5.1. Compliance with Federal, State and Local Laws. Transportation Agency agrees that with respect to persons employed by it to provide the Transportation Services and Other Services, it will comply with all applicable federal, state, and local labor laws including, but not limited to, any and all laws relating to the minimum wages to be paid to its employees, limitations upon the employment of minors, minimum fair wage standards for minors, the payment of wages due employees, and all applicable regulations established to protect the health and safety of employees, passengers, and the public-at-large. Transportation Agency also agrees

to provide the employee protection required under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1609(c), and Section 2.16 of the Regional Transportation Authority Act (70 ILCS 3615/2.16) for persons employed by it to provide the Transportation Services and Other Services.

Section 5.2. Employment of Personnel.

A. Management. Transportation Agency shall provide competent and professional management in accordance with Pace policies, practices, procedures and standards. If such managerial services are not being provided, Pace may send Transportation Agency a written notice requesting Transportation Agency to take corrective action within twenty-one (21) days. If Transportation Agency fails to comply with such a request or if the action taken is unsatisfactory, Pace shall no longer be obligated to pay salaries, fringe benefits or travel and related expenses incurred in connection with such managerial services provided, however, that in the event such failure to provide managerial services cannot be cured within said twenty-one (21) day period notwithstanding diligent and continuous effort by Transportation Agency and Transportation Agency shall have promptly commenced to cure the failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such failure shall be extended for such period as may be necessary for curing such failure with diligence and continuity.

B. Employees. Transportation Agency shall employ only such persons as are competent and qualified to provide the Transportation Services and Other Services in accordance with the requirements of this Agreement and Pace policies, practices, procedures and standards. All employees shall meet all applicable qualifications established by federal, state and local laws and regulations. Drivers shall display proper courtesy toward passengers and maintain a neat and clean appearance. Transportation Agency shall comply with all federal requirements relating to drug and alcohol testing including, but not limited to, those imposed under **49 C.F.R. Parts 40, and 655**. Transportation Agency shall participate in driver training programs, if any, established by Pace during the Agreement Term and shall comply with driver and safety standards set forth in the Operating Manual.

Section 5.3. Employment Contracts and Labor Agreements. Transportation Agency may deal with, and enter into written agreements with, its employees. Transportation Agency shall notify Pace of any labor negotiations being conducted with its bus operators, shall keep Pace fully informed of the status and progress of such negotiations, shall permit Pace to observe such negotiations if Pace so requests, shall confer and consult with Pace about the negotiating positions taken by Transportation Agency in such negotiations if Pace so requests, and shall not enter into, or agree to modify or amend, any labor agreement without Pace's prior written approval. Pace shall not directly negotiate with collective bargaining agents recognized by Transportation Agency without Transportation Agency's consent; provided, however, that this provision shall not be construed to prohibit communications or negotiations relating to Pace's obligations and rights under Sections 2.15, 2.16, 2.18 and 2.19 of the Regional Transportation Authority Act. Every such labor agreement shall provide that the agreement may be reopened if Transportation Agency's budget is not approved by Pace, either under this Agreement or any subsequent, similar agreement between Pace and the Transportation Agency; provided, however, that in any case where Pace expressly approves a wage rate or fringe benefit guaranteed by any such labor agreement, Pace shall also, if necessary, approve an amendment to the Approved Budget to accommodate such wage rate or fringe benefit.

ARTICLE VI

NON-DISCRIMINATION, EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

Section 6.1. Compliance with Federal, State and Local Laws. Transportation Agency shall comply with all applicable federal, state and local anti-discrimination and equal employment and business opportunity laws and regulations, including, but not limited to, the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621, *et seq.*, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, The Civil Rights Acts of 1866 and 1871, 42 U.S.C. §§ 1981 and 1983; the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*

Section 6.2. Equal Employment Opportunity. Transportation Agency shall comply with all of the affirmative action, equal employment opportunity and disadvantaged business enterprise requirements in Exhibit F.

Section 6.3. Failure to Comply. In the event Transportation Agency's noncompliance with any provision of the Equal Employment Opportunity Clause set forth in Exhibit F or with any federal, state, or local anti-discrimination or equal employment or business opportunity law, including, but not limited to, those identified in Section 6.1 hereof, results in Transportation Agency being declared non-responsible and, therefore, ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, this Agreement may be canceled or voided by Pace in whole or in part, and such other sanctions, penalties or remedies as may be provided by law or regulation may be imposed or invoked.

ARTICLE VII

REPORTS AND RECORDS

Section 7.1. Reports, Forms and Statements Required. Transportation Agency shall furnish Pace with all reports required by the Operating Manual, in accordance with the due dates specified therein. In addition, Transportation Agency shall furnish Pace, on a timely basis, with the following documents:

- (1) A monthly listing of any reports and documents in any way related to the Transportation Services and Other Services filed by Transportation Agency with any government or government agency. Upon request, Transportation Agency shall provide Pace with a copy of any such reports and documents.
- (2) All written forms and documentation required for the administration of Pace's programs concerning students, the elderly and the disabled. Said forms and documentation shall be furnished by Transportation Agency to the United States and Illinois Departments of Transportation upon Pace's request.

- (3) All applications, including all amendments or modifications to previously-filed applications, for federal or state grants, loans or other funding relating to the Transportation Services and Other Services prior to making any such application. Transportation Agency shall notify Pace and obtain Pace's written approval of any such application.
- (4) A mileage log for each Pace Vehicle and each Transportation Agency Vehicle, if any. Mileage shall be read and recorded from the Vehicle hub odometer and shall be reported to Pace on a monthly basis.
- (5) All correspondence, papers, notices, accident reports or documents of any nature received by Transportation Agency in connection with any claim or demand involving or related to Transportation Services, the Other Services or the Equipment.
- (6) All records required pursuant to Section 12.4 of this Agreement.
- (7) Such other reports, forms and statements as may be required by this Agreement or by federal, state or local laws or regulations or by order of any duly constituted authority.

Section 7.2. Records. Transportation Agency shall create and maintain at the location specified in Section 4.1 of this Agreement or at such other location as Pace may approve full, accurate and complete records of all Transportation Services and Other Services performed, all time spent, all materials, equipment and supplies purchased, and costs incurred in the performance of the Transportation Services and Other Services pursuant to this Agreement, including all records required by this Agreement, the Operating Manual or any applicable law or regulation. Unless Pace shall consent in writing to the destruction of any such records, and except for records required to be delivered to Pace at the end of the Agreement Term, Transportation Agency shall make said records available for review, inspection and audit in accordance with Section 7.3 below during the entire Agreement Term and for three (3) years thereafter, or such longer period as may be required by law or any applicable grant; provided,

however, that prior to the disposal or destruction of any such record by Transportation Agency following said period, Transportation Agency shall give notice to Pace of any record or records to be disposed of or destroyed and the intended date, which shall be at least ninety (90) days after the effective date of such notice, of disposal or destruction. Pace shall have ninety (90) days after receipt of any such notice to give notice to Transportation Agency not to dispose of or destroy said record or records and to require Transportation Agency to deliver such record or records to Pace or its designee, at Pace's expense, on a confidential basis if appropriate.

Section 7.3. Inspections and Audits. Pace shall have the right, with prior notice to Transportation Agency, to review, inspect and audit all Transportation Services and Other Services performed pursuant to this Agreement, and all information and records related thereto, at all reasonable times during and following the performance of the Transportation Services and Other Services. The phrase "all information and records related thereto" as used in this Section shall mean all information and records under the control or supervision of, or reasonably available to, Transportation Agency relating to this Agreement or the Transportation Services and Other Services that are reasonably necessary for Pace to verify or audit Transportation Agency's performance under this Agreement, or the accuracy or appropriateness of any Reimbursable Expenditure or portion thereof, or Transportation Agency's compliance with this Agreement or any portion thereof, including, but not limited to, all data, samples, records, reports, documents, memoranda, maps, estimates, specifications, notes, studies, tapes, photographs, film, computer programs or drawings, whether in preliminary, draft, final or other form. Pace shall perform such review, inspection or audit in a manner that will not unduly delay or interfere with Transportation Agency's performance under this Agreement. Transportation Agency shall cooperate with Pace, and provide reasonable facilities to Pace to assist Pace in any such review, inspection or audit. Pace may perform any such review, inspection or audit through an officer, employee, or other designated agent.

ARTICLE VIII
CENTRAL MATERIAL PURCHASING

Section 8.1. Participation Required. Transportation Agency agrees to participate in Pace's Centralized Purchasing Program. The Approved Budget shall be amended as necessary to reflect any cost savings realized by Transportation Agency by reason of Pace's purchase of any equipment, materials, supplies or services on behalf of, or for the benefit of, Transportation Agency. Transportation Agency shall not independently purchase equipment, materials or supplies available through Pace's Centralized Purchasing Program without the prior written approval of Pace.

Section 8.2. Other Arrangements Prohibited. Transportation Agency shall not enter into or renew any purchase agreements in excess of \$5,000 for equipment, materials or supplies to be used in connection with its performance of this Agreement without the prior written approval of Pace.

ARTICLE IX
RISK FINANCING PROGRAM AND INSURANCE REQUIREMENTS

Section 9.1. General Requirements. Transportation Agency shall be required to comply with the Pace Operating Manual for all Vehicles used to provide the Transportation Services, whether those Vehicles are owned by Pace or Transportation Agency. Transportation Agency shall immediately notify Pace of any accidents or incidents.

Section 9.2. Risk Financing Program. All Pace owned vehicles used in the provision of Transportation Services pursuant to this Agreement shall be included in Pace's Risk Financing Program. The Pace Risk Financing Program shall provide commercial auto liability coverage to Transportation Agency and its employees for any claims of bodily injury, death, or property damage arising directly out of the provision of Transportation Services provided with vehicles owned by Pace as described in this Agreement, within the scope of Pace's Self-Insured Retention and up to the liability limits of such excess insurance that Pace may purchase, subject to the following terms, conditions, and exclusions:

- (a) Pace specifically excludes from insurance coverage afforded to Transportation Agency herein any claims, actions, and damages arising as the result of willful and wanton, reckless, or intentional conduct of Transportation Agency, its officers, agents, employees, contractors, sub-contractors, agents or volunteers in providing transportation services hereunder.
- (b) Pace specifically excludes from insurance coverage afforded to Transportation Agency herein claims of injury or death brought directly or indirectly against Pace or Transportation Agency by any employee of Transportation Agency, or any contractors or sub-contractors of Transportation Agency arising out of or in connection with the Transportation Services described in this Agreement.
- (c) The policies of excess insurance purchased by Pace and Pace's Self-Insured Retention shall be primary to insurance carried by Transportation Agency for claims within the scope of Pace's Risk Financing Program. Any insurance or self insurance maintained by Transportation Agency shall be in excess of Pace's Self Insured Retention and the policies of excess insurance purchased by Pace, without right of contribution, for claims within the scope of Pace's Risk Financing Program.
- (d) Transportation Agency shall be named as additional insured in all policies of excess insurance for auto liability coverage purchased by Pace above its self-insured retention.
- (e) Transportation Agency shall provide immediate written notice of any and all accidents, incidents, claims, and lawsuits to Pace, in the form provided in accordance with the provisions of the Pace Operating Manual, including promptly updating Pace in writing when a previously reported incident or accident results in a claim or lawsuit, or a previously reported claim results in a lawsuit.
- (f) With respect to any lawsuit that is within the scope of coverage afforded by this Section 9.2, Pace shall have the right and duty to defend Transportation Agency, including the right to select defense counsel and control the defense of such lawsuit. In the event of any conflict of interest that would prevent Pace from controlling such defense or that

would require Pace to allow Transportation Agency to select independent defense counsel, Pace will reimburse the reasonable attorneys' fees and expenses incurred in such defense by Transportation Agency; provided, however, that the hourly rates of such counsel shall not exceed the hourly rates ordinarily paid by Pace to its outside counsel for defense of similar types of lawsuits. Pace shall not have any duty to defend the Transportation Agency for any claims that are excluded from the coverage of this section, including any claims within the scope of subparagraphs (a) or (b). If a lawsuit includes claims that are both covered and not covered by this Section 9.2, Pace's duty to defend only extends to those portions of the suit that are within the scope of coverage of Section 9.2, and not to any excluded claims. Pace's duty to defend under this paragraph shall cease if and when the limits of auto liability coverage are exhausted of any excess insurance policies purchased by Pace.

- (g) Transportation Agency shall, and shall require its employees to cooperate with and assist Pace and any claims service agencies, investigators and attorneys employed by or on behalf of Pace in the administration, investigation and defense of any and all claims for bodily injury or property damage, or physical damage to any Pace vehicle asserted against Pace or Transportation Agency arising out of the provision of Transportation Services pursuant to this Agreement.
- (h) Transportation Agency or its employees' failure to comply with the requirements of this Section shall relieve Pace of any and all obligations that Pace may have under this Article IX.

Section 9.3. Loss Prevention. Transportation Agency shall, upon written notice from Pace specifying and documenting claims or other evidence of incompetence, inattention, carelessness or other fault on the part of Transportation Agency or any of Transportation Agency's employees, promptly take all lawful and reasonable steps to prevent claims or losses as a result of such incompetence, inattention, carelessness or other fault. This Section shall not, however, be construed to require Transportation Agency to take any action in violation of its obligations under any labor agreement or other employment contract.

Section 9.4. Requirements for Non-Pace Vehicles. Claims arising from non-Pace owned Vehicles are not within the scope of the Pace Risk Financing Program. Transportation Agency shall provide the following liability insurance coverage for all claims arising out of non-Pace owned Vehicles used in providing the Transportation Services:

- (1) for all taxicabs; the minimum Automobile Liability coverage, including Uninsured and Underinsured Motorists coverage, required by law, and
- (2) for all other vehicles; commercial Automobile Liability Insurance Coverage with a minimum Combined Single Limit (CSL) of \$5,000,000 Each Occurrence and \$5,000,000 Aggregate and Commercial General Liability Coverage with at least the following limits:

\$5,000,000 General Aggregate
\$5,000,000 Each Occurrence Limit
\$5,000,000 Products/Completed Operations Hazard Aggregate Limit
\$5,000,000 Personal & Advertising Injury Liability Limit
\$10,000 Medical Expense Limit (Per Person)

Each Insurance Company providing all Pace required coverage must have a minimum A.M. Best rating of A - VII using the most current data available from A.M. Best Property/Casualty Rating Company.

Transportation Agency, Third Party Provider or any subcontractor shall name Pace Suburban Bus Service as additional insured in its liability policies, as set forth below, and agree to waive and will require its insurers to waive all rights against the other party, as relates to this Agreement on all of the insurance coverage required under this Agreement.

The insurance policies shall be endorsed to provide that the Suburban Bus Division of the Regional Transportation Authority d/b/a Pace, and the Regional Transportation Authority and their employees are named as additional insured for "liability for 'bodily injury', 'property damage', and 'personal injury' caused in whole or in part, by our acts or omissions or the acts or omissions of those acting on our behalf: (a) in the performance

of our ongoing operations; or (b) for claims brought on behalf of our employees, agents, or subcontractors and their employees,” in a form providing no less coverage than that provided by the Insurance Service Office's Owners, Lessees or Contractors - Form B [ISO 20 10], on a primary basis, without right of contribution from Pace, for any liability arising from the operation of non-Pace owned vehicles. The coverage shall contain no special limitations on the scope of its protection to the above listed insureds.

Transportation Agency's insurance must contain the standard Separation of Insureds provision or an endorsement providing that, except with respect to limits, the insurance applies separately to each insured.

Transportation Agency and any subcontractors shall provide that there will be no recourse against Pace Suburban Bus Service as additional insured for the payment of premiums, additional premiums or assessments, it being understood that these are obligations of the party providing such insurance pursuant to this Agreement.

Transportation Agency's insurance shall be primary over any other insurance carried by Pace, including self-insurance. In the event the policies should be changed or canceled, said change or cancellation shall not be effective until thirty (30) days after Pace has received notice of such change or cancellation from the Insurance company.

Section 9.5. Other Insurance Requirements. Transportation Agency shall provide the following insurance coverage:

Workers Compensation and Employer's Liability Insurance affording the following limits: **Coverage A-Statutory Benefits** and **Coverage B-Employer's Liability-\$500,000** Each Accident, \$500,000 Disease-Each Employee, \$500,000 Disease-Policy Limit.

Contractors not required by statute to obtain workers compensation insurance must demonstrate to Pace's satisfaction the financial capacity to indemnify Pace against claims from Transportation Agency employees.

Workers Compensation Waiver of Subrogation

The Transportation Agency and its insurer shall agree to waive their rights to subrogate against Pace or the Regional Transportation Authority for an action/incident that may have caused or contributed to an employee injury. Evidence to Pace shall be provided with the issuance of a WC 00 03 13 endorsement.

Commercial General Liability Insurance (Broad Form) with coverage and limits that

meet or exceed the following parameters: coverage is written on an ISO CG 00 01

Coverage Form with the following limits:

Each Occurrence-\$1,000,000
General Aggregate-\$2,000,000
Products/Completed Operations Aggregate-\$2,000,000
Personal & Advertising Injury-\$1,000,000
Medical Expense (Any one person)-\$5,000

ARTICLE X

INDEMNIFICATION

Section 10.1 General. To the fullest extent permitted by law and within the limits of Pace's self insured retention and the excess/umbrella auto liability insurance policies purchased by Pace, Pace shall indemnify and hold harmless Transportation Agency, its officers, agents, and employees from and against any and all auto liability claims, suits, losses, damages and expenses, which may arise out of the operation of transportation services provided with Pace owned vehicles pursuant to the 2013 Purchase of Services Agreement, provided that Transportation Agency, its officers, agents and employees, comply with the notice and cooperation requirements stated in Section 9.2 above, regardless of whether or not it is caused in whole or in part by any negligent act or omission of Transportation Agency, its officers, agents or employees. This indemnification does not extend to willful and wanton, reckless or intentional conduct of Transportation Agency, its officers, agents or employees and is specifically excluded from this indemnification and insurance coverage, including self-insurance.

Transportation Agency shall indemnify, hold harmless, and defend Pace and the Regional Transportation Authority, their board members, officers, employees, agents and attorneys from and against (a) all auto liability claims, suits, losses, damages and expenses, which may arise out of Transportation Agency's, its agents or servants, operation of transportation services provided with non-Pace owned vehicles in providing services pursuant to the 2013 Purchase of Services Agreement; (b) any claims, suits, actions, damages which arise out of the willful and wanton, reckless or intentional acts of the Transportation Agency, its officers, agents or employees in the performance of this Agreement; and (c) claims brought directly or indirectly against Pace by an employee, agent or officer of Transportation Agency or an employee of Transportation Agency's contractors or sub-contractors, or arising out of any injury or death of Transportation Agency's employee, or an employee of Transportation Agency's contractors or subcontractors, in connection with the Transportation Services described in this Agreement.

The indemnities contained in this Section shall survive termination of this Agreement.

Section 10.2. Transportation Agency's Damages. Except as expressly provided in Article IX or Article X of this Agreement, Pace shall not be responsible to Transportation Agency or to any of its officers, employees, agents or attorneys for any loss of business or other damage caused by an interruption of the Transportation Services, or for the time lost in repairing or replacing any Pace Equipment, or for any loss, injury, or damage arising out of or relating to Pace's failure to deliver Pace Equipment, or for any other losses or damages sustained by Transportation Agency hereunder. Except as expressly provided in Article IX or Article X of this Agreement, Pace assumes no liability or responsibility for any acts or omissions of Transportation Agency or its officers, employees, agents or attorneys, or for any property of Transportation Agency or any other person that is damaged, lost, or stolen in the performance, or as a result of the performance, of this Agreement.

ARTICLE XI
PAYMENT, BUDGET AND ACCOUNTING

Section 11.1. Payment for Services. In consideration of the Transportation Services and Other Services to be provided by Transportation Agency pursuant to this Agreement and subject to the provisions of this Article XI, Pace agrees to pay Transportation Agency a total Contract Price not to exceed the Approved Budget Maximum or the portion thereof due for payment pursuant to Sections 11.2 and 11.3 below, whichever is less.

Section 11.2. Monthly Installments and Final Payment.

A. Timing and Amount of Payments. Subject to the provisions of this Article XI, the Contract Price shall be paid in: (1) twelve (12) monthly installments beginning on or about January 15, 2013, or upon execution of the Agreement, whichever is later, and continuing on or about the 15th day of each month of the Agreement Term, and (2) one (1) final payment or credit, as the case may be, due on or about February 15, 2014. Each of the first two monthly installments shall be in an amount equal to one-twelfth (1/12th) of the Approved Budget Maximum. Each of the remaining monthly installments shall be in an amount equal to the amount of the "Total Expenses" shown on the Monthly Report, as hereinafter required, for the month that is two months prior to the month during which the payment is due, subject to a set off for operating revenues (Section 11.5) and local share contributions as provided in Section 11.6. The final payment or credit shall be computed by subtracting the total amount of the 12 monthly installment payments from the total amount of the "Total Expenses" shown on the 12 Monthly Reports covering the 12 months of the Agreement Term, subject to any final adjustment for operating revenue and/or local share contribution as provided in Sections 11.5 and 11.6, respectively. If a credit or local share contribution is due to Pace, Transportation Agency shall pay the amount of such credit or local share contribution to Pace within thirty (30) days following demand therefor by Pace.

B. Pace Credits. Notwithstanding the provisions of Subsection 11.2A above, if by audit conducted pursuant to Section 7.3 above or otherwise, it is determined that Transportation

Agency has received any payment not authorized by this Agreement, the amount of such payment shall be deducted from the next payment due or, if no such payment is due, said amount shall be repaid to Pace within thirty (30) days following written demand therefor by Pace.

Section 11.3. Limitations on Payments. In addition to any other remedy provided herein, if Transportation Agency materially fails to comply with any term of this Agreement, or fails to take corrective action as directed by Pace, Pace may withhold payments pending Transportation Agency's actions to achieve compliance or take corrective action. Notwithstanding any other provision of this Article, no payment of the Contract Price, or any installment thereof, shall be due, owing or made in violation of any of the following limitations:

- (1) Except for the first two monthly installments, no monthly installment due in any month shall be paid unless the Monthly Reports required pursuant to the Operating Manual due for all months prior to and including the month that is two months prior to the month in question have been filed with Pace in accordance with said Section.
- (2) No final payment shall be made unless Monthly Reports for all months during the Agreement Term have been filed with Pace in accordance with the Operating Manual.
- (3) No payment shall be made except with respect to a Reimbursable Expenditure.
- (4) No payment shall be made in excess of the Approved Budget Maximum.
- (5) No payment shall be made with respect to any Reimbursable Expenditure properly allocable to a Line Item if such Expenditure is in excess of the Line Item Budget Maximum for that Line Item; provided, however, that Pace shall not unreasonably refuse to approve a Transportation Agency request to receive payments with respect to Reimbursable Expenditures properly allocable to a Line Item that are in excess of the Line Item Budget Maximum for that Line Item if (a) the request is in writing, and properly documented and supported, (b) such Reimbursable Expenditures were or will be reasonably and properly incurred in accordance with Pace policies, guidelines and

practices, (c) Transportation Agency agrees to reduce the Line Item Budget Maximum for one or more other Line Items by the amount of such requested excess payment or payments, and (d) Pace reasonably determines that Transportation Agency will not exceed such reduced Line Item Budget Maximum or Maxima.

- (6) No payment shall be made with respect to any Reimbursable Expenditure that is not properly allocated to the appropriate Line Item Budget.
- (7) No payment shall be made with respect to any Reimbursable Expenditure that was not approved by Pace for inclusion in the Approved Budget or the Line Item Budget from which payment is requested.
- (8) No payment shall be made with respect to any Reimbursable Expenditure incurred or accrued in violation of this Agreement or any provision of the Operating Manual.

Section 11.4. Excess Expenses. Any expenditure made by, and any cost, expense or liability incurred by, Transportation Agency that is not a Reimbursable Expense or that is in excess of the Approved Budget Maximum or the applicable Line Item Budget Maximum or that is otherwise barred from payment pursuant to Section 11.3 above shall be the responsibility of, and shall be promptly paid or discharged by, Transportation Agency. Transportation Agency shall indemnify, defend and hold harmless Pace from any claims, demands or liabilities arising out of or relating to Transportation Agency's failure to promptly pay or discharge any such cost, expense or liability.

Section 11.5. Transportation and Other Services Revenue. All Transportation and Other Services Revenue shall be the property of Pace. In the absence of any other specific policy, practice or procedure, all Transportation and Other Services Revenue collected during any month shall be remitted to Pace not later than the fifteenth (15th) day of the following month and shall be accounted for in the Monthly Report for the month during which it was collected. Transportation Agency shall comply with Pace policies, practices and procedures relating to the

collection, security, accounting and remittance of all Transportation and Other Services Revenues as set forth in the Operating Manual.

In the event that the Transportation Agency is permitted to retain all fares and Other Services Revenue, then Transportation Agency shall be responsible for reporting all said revenue as part of the Monthly Report to Pace no later than the fifteenth (15th) day of the following month during which it was collected. This amount shall be considered the operating revenue referred to in Exhibit A attached hereto. This amount shall be a set off on payments made by Pace to the Transportation Agency pursuant to Section 11.2 herein. Revenue reporting will adhere to all revenue accounting requirements maintained by Pace, and will be subject to review as part of Pace's annual audit of said Transportation Agency.

In the event that Transportation Agency elects to forego the collection of fares from its riders, then Transportation Agency shall be responsible for remitting to Pace on a monthly basis an amount equal to the current Pace fare multiplied by its reported monthly ridership. This amount shall be considered operating revenues when computing the minimum required revenue pursuant to Exhibit A attached hereto. This amount shall be a set off on payments made by Pace to Transportation Agency pursuant to Section 11.2 herein.

Section 11.6. Local Share Contribution. In the event that transportation and other operating revenue (as described in 11.5 above) are insufficient to meet the minimum required level of a thirty-six percent (36%) recovery ratio as set forth in Exhibit A attached hereto, Transportation Agency shall make a local share contribution in such amount to produce a thirty-six percent (36%) recovery ratio. If operating revenues exceed minimum required levels, then excess revenues will continue to be used in calculating the Transportation Agency's recovery ratio. The local share contribution shall be calculated monthly on a year-to-date basis and, shall be reconciled at the year's end so that if the recovery ratio at the year's end is below thirty-six percent (36%), then an adjustment shall be made by computing the local share contribution and that amount shall be set off against the monthly payment provided by Pace beginning the following year, 2014. In the event that Transportation Agency does not enter into an Agreement

with Pace for the following year, then said local share contribution shall be invoiced to Transportation Agency and shall be due and payable within thirty (30) days of receipt of same.

Section 11.7. Accounting and Reporting Standards. Transportation Agency shall maintain its books and records, and shall prepare, maintain and file reports, relating to this Agreement and the Transportation Services and Other Services in accordance with generally accepted governmental accounting principles, Section 15 of the United States Federal Transit Act (49 U.S.C. App. 1611), the Approved Budget and any documentation submitted by Transportation Agency, and approved by Pace, in support of the Approved Budget. In case of any conflict in the aforesaid standards, Transportation Agency shall seek specific direction from Pace and, pending receipt of such direction, shall comply with that standard that most fairly, accurately and completely records and reports the results of operations.

Section 11.8. Deviations From Approved Budget. Should Pace determine that Transportation Agency has paid any expense or incurred any liability in excess of the Approved Budget Maximum, in excess of any applicable Line Item Budget Maximum or in violation of any provision of this Agreement, or that Transportation Agency is paying expenses or incurring liabilities at such a rate or in such amounts as to indicate that Transportation Agency will or may exceed the Approved Budget Maximum or any Line Item Budget Maximum prior to the end of the Agreement Term, and should Pace notify Transportation Agency of such determination in writing, Transportation Agency shall, within ten (10) days following such written notice, submit to Pace:

- (1) A written analysis and explanation of the circumstances giving rise to the matter addressed in the notice; and
- (2) A detailed plan of corrective action to bring all expenses within the Approved Budget Maximum and applicable Line Item Budget Maximum or, in the alternative, Transportation Agency's Statement of Intent to fund any excess expense pursuant to its obligation under Section 11.4 of this Agreement together with a statement of the source and availability of funds to be used for such purpose; and

- (3) Where relevant, a detailed plan of corrective action to remedy any past or existing violation of this Agreement and to prevent the reoccurrence of any similar violation in the future.

Within fifteen (15) days following receipt of the aforesaid information and plan or plans, Pace shall advise Transportation Agency of its approval or non-approval of such plan or plans. In the event of Pace approval, Transportation Agency shall promptly and effectively implement the approved plan or plans. In the event of Pace non-approval, Pace shall either direct Transportation Agency to submit a new or revised plan of corrective action for Pace's approval within a stated time or direct Transportation Agency to implement a plan of corrective action developed by Pace, and Transportation Agency shall comply with such directive.

The failure or refusal of Transportation Agency to submit any information required pursuant to this Section or to develop and submit an acceptable plan or plans of corrective action when required pursuant to this Section or to promptly and effectively implement any Pace approved or Pace developed plan of corrective action shall, in addition to the remedies provided in Articles XII and XV of this Agreement, entitle Pace to withhold all or any portion of any monthly installment or final payment that would otherwise be due to Transportation Agency pursuant to Section 11.2 of this Agreement until such plan is developed, submitted, approved and implemented.

Section 11.9. Budget Amendments.

A. General Standard. Except as provided in Paragraph 2.1B and Section 5.1 of this Agreement, Pace shall have no obligation to revise the Approved Budget or to increase the Approved Budget Maximum or any Line Item Budget Maximum.

B. Budget Amendments Requested by Transportation Agency. Transportation Agency may make a written request for an amendment to the Approved Budget when circumstances beyond the control of Transportation Agency or circumstances not known or reasonably

ascertainable prior to the beginning of the Agreement Term render it essential, in the opinion of Transportation Agency, that the Approved Budget be amended. Pace shall consider such requests in good faith; however, even in such circumstances, Pace shall be under no obligation whatever to approve any such request. Transportation Agency acknowledges that limitations on Pace's own funding and other obligations of Pace will make it difficult or impossible for Pace to approve any amendment to the Approved Budget that results in an increase of the Approved Budget Maximum and that any Approved Budget amendment is, therefore, likely to be limited to transfers between Line Items. Notwithstanding the foregoing, but subject to the availability of Pace funds, Pace shall not unreasonably refuse to approve any Transportation Agency request for an amendment to the Approved Budget when such amendment is limited to the reimbursement of materially additional costs incurred by Transportation Agency as a direct result of significant changes in operating practices directed by Pace after approval of the Approved Budget.

C. Budget Amendments Initiated by Pace. Except when any other agreement between Pace and Transportation Agency provides otherwise, Pace may unilaterally require an amendment to the Approved Budget in any of the following circumstances:

- (1) When the funds available to Pace for payments under this Agreement are insufficient to fully fund the Approved Budget Maximum;
- (2) When circumstances beyond the reasonable control of Pace require a reduction in the Approved Budget Maximum; or
- (3) When a change in routes or schedules authorized pursuant to Section 2.1B, or any other change in the Transportation Services and Other Services to be provided pursuant to this Agreement result in a savings of Reimbursable Expenditures, but only in the amount of such savings.

Section 11.10. Capital Assets

Any Capital Asset paid for with the proceeds of any payment made by Pace shall be the property of Pace and shall be added to Exhibit B or to the inventory of Pace Equipment required pursuant to Subsection 3.1B and shall be returned to Pace at the end of the Agreement Term.

Section 11.11. Subsequent Budget. In order to permit Pace to evaluate the merits of entering into a new agreement for the Transportation Services and Other Services with Transportation Agency following the end of the Agreement Term, Transportation Agency shall, during the Agreement Term and pursuant to this Section, cooperate with Pace to develop a proposed budget for the calendar year following the Agreement Term. On or before July 1 of the Agreement Term, or such other date as Pace may specify in a Budget Call, Transportation Agency shall submit its formal budget estimate to Pace in the format specified in the Operating Manual or such other format as Pace may specify in a Budget Call. The budget estimate submitted by Transportation Agency shall be consistent with assumptions established by Pace, shall be reasonable and prudent, and shall be prepared in accordance with sound financial practices. Transportation Agency shall provide all supporting budget documentation as requested by Pace. Pace shall fully review the budget estimate and supporting documentation. Pace and Transportation Agency shall confer and cooperate with each other to arrive at a mutually acceptable budget estimate. In the event that Pace and Transportation Agency agree upon a mutually acceptable budget estimate and further agree to enter into a new agreement for Transportation Services and Other Services, the mutually acceptable budget estimate shall be incorporated into such agreement as the approved budget. Nothing in this Section shall, however, obligate either Pace or Transportation Agency to agree to any budget estimate or to enter into any new agreement.

ARTICLE XII

TERM

Section 12.1. Term. The term of this Agreement shall be one (1) year commencing on the 1st day of January, 2013, and terminating after the last scheduled run on the 31st day of December, 2013.

Section 12.2. Termination for Impossibility of Performance. This Agreement may be terminated, in whole or in part, upon seven (7) days written notice given by Pace to Transportation Agency in the event that the Illinois General Assembly, the Regional Transportation Authority or any federal funding source fails in any fiscal year to appropriate or otherwise make available sufficient funds, as determined in the sole discretion of Pace, to cover payments to be made to Transportation Agency pursuant to Article XI hereof, or if Equipment necessary to perform the Transportation Services and Other Services hereunder is unavailable for any reason, as determined in the sole discretion of Pace.

The termination of this Agreement shall not be in any manner prevented or affected by the fact that Transportation Agency may have already partially or fully performed its obligations under this Agreement in respect to any unpaid part or parts of this Agreement by the time it is determined by Pace that it will be unable to pay the remaining unpaid part or parts of this Agreement.

Section 12.3. Termination for Transportation Agency Default.

A. Immediate Termination. This Agreement shall be terminated, and the Agreement Term shall end, twenty-four (24) hours after written notice of such termination given by Pace to Transportation Agency in the event that Transportation Agency shall, for any reason, other than as specified in Section 2.5 of this Agreement:

- (1) cancel, eliminate or reduce any route or diminish service or scheduling along any route (except changes approved by Pace, minor operational changes made pursuant to

Subsection 2.1B of this Agreement and changes due to normal seasonal route rescheduling identical to such rescheduling in the calendar year prior to the Agreement Term);

- (2) fail to comply with any of the requirements of Paragraphs 2.1A(4) through 2.1A(7) of this Agreement; or
- (3) fail to file or implement a plan of corrective action when required to do so pursuant to Section 11.7 of this Agreement.

B. Termination Following Failure To Cure. This Agreement shall be terminated, and the Agreement Term shall end, if Transportation Agency violates any other material obligation under this Agreement or fails to timely perform any other material obligation under this Agreement and such violation or failure shall continue for a period of twenty-one (21) days after Transportation Agency receives written notice from Pace describing in reasonable detail the nature of the violation or failure; provided, however, that in the event such violation or failure cannot be cured within said twenty-one (21) day period, notwithstanding diligent and continuous effort by Transportation Agency and Transportation Agency shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

C. Obligations Following Termination. Pace's obligations upon termination of this Agreement in any manner and for any purpose authorized by this Article XII shall be limited to payment for services rendered by Transportation Agency up to the date of said termination. Immediately upon termination of this Agreement in any manner and for any purpose, Transportation Agency shall comply with the provisions of Section 12.4 below. In addition, Transportation Agency shall be liable to Pace for all damages incurred as a result of any violation or failure that leads to termination of this Agreement. Said damages shall include, but shall not be limited to, all court costs and attorneys' fees and disbursements incurred in connection with enforcing or defending Pace's rights hereunder.

Section 12.4. Return of Pace Equipment and Records Upon Termination. Immediately following the Agreement Term, Transportation Agency shall surrender and deliver to Pace at such time or times and at such location or locations within the six-county region as Pace may designate:

- (1) All Pace Vehicles and Other Pace Equipment in good operating order, repair and condition, reasonable wear and tear and normal depreciation excluded;
- (2) All records pertaining to all Pace Vehicles and Other Pace Equipment, including, without limitation, all preventative maintenance reports and vehicle repair reports; and
- (3) All records that pertain to the Transportation Services and Other Services, including, without limitation, personnel and payroll records of the employees engaged in the provision of Transportation Services and Other Services, all labor contracts and agreements relating to such employees and any other records that are deemed by Pace to be necessary to the continuation of services similar to the Transportation Services and Other Services. This Paragraph 12.4(3) shall not be construed to preclude Transportation Agency from keeping personnel, payroll or other records that it is required to maintain by state or federal law or generally accepted accounting practices. However, Pace and its designated agents shall have the right, except as restricted by law, to examine any records so maintained and to receive photocopies thereof.

Pace shall have the right to inspect the premises of Transportation Agency and to remove in the manner provided in Subsection 3.1G of this Agreement any Pace Equipment that remains in the possession of Transportation Agency. Pace, in its sole discretion, shall determine the condition of surrendered and returned Pace Equipment and the extent of any wear and tear, depreciation or damage. Transportation Agency shall make, or cause to be made, any and all repairs deemed necessary by Pace to place the surrendered and returned Pace Equipment in the condition required by Sections 3.1 and 3.2 of this Agreement. Such repairs shall be completed within twenty-one (21) days following Pace's written demand that they be undertaken. If any such

repairs are the result of Transportation Agency's failure to comply with the provisions of this Agreement, the cost thereof shall not be a Reimbursable Expenditure under this Agreement.

Section 12.5. Termination by Transportation Agency. The Transportation Agency reserves the right to terminate this Agreement, upon thirty (30) days written notice to Pace, for any reason. The Transportation Agency further reserves the right to terminate the Agreement, upon written request to Pace, in the event of default by Pace. Default is defined as failure of Pace to make available sufficient funds, as outlined in Article XI of the Agreement, or if equipment necessary to perform the transportation services and other services hereunder is unavailable for any reason. In the event that Pace fails to cure the default within twenty-one (21) days after the notice, this Agreement may terminate at that time without further notice. Immediately upon termination of this Agreement in any manner and for any purpose, Transportation Agency shall comply with the provisions of Section 12.4.

ARTICLE XIII

COVENANTS AND REPRESENTATIONS

Section 13.1. General. Transportation Agency hereby makes the covenants and representations with and to Pace as described in this Article and hereby agrees to abide by each and every one of them.

Section 13.2. Corporate Existence and Power. Transportation Agency is duly organized, validly existing and in good standing under the laws of the State of Illinois, and has the legal power and authority to provide, engage in and carry out the Transportation Services and Other Services. Transportation Agency shall maintain its corporate identity and shall make no attempt to cause its corporate existence to be abolished during the Agreement Term.

Section 13.3. Authorization. Transportation Agency has been duly authorized to execute this Agreement by its corporate authorities by ordinance duly adopted, and the execution and delivery of this Agreement by all of the parties signatory hereto shall constitute a valid and binding obligation of Transportation Agency, enforceable in accordance with its terms, and the

making of and compliance by Transportation Agency with the terms and conditions of this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture or other instrument applicable to Transportation Agency.

Section 13.4. Approvals Received. All such approvals, consents, permits, licenses, authorizations, or modifications as may be required to permit the performance by Transportation Agency of its obligations under this Agreement have been obtained from the appropriate governmental authorities or other persons or entities.

Section 13.5. No Material Litigation. No litigation, investigation or proceeding of or before any court, governmental authority or arbitrator is pending or, to the knowledge of Transportation Agency, threatened by or against Transportation Agency, or against any of its properties or revenues (1) with respect to this Agreement, or (2) which is reasonably likely to have a material adverse effect on the operations, property or financial condition of Transportation Agency.

Section 13.6. No Default. Transportation Agency is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property or financial condition of Transportation Agency or that is reasonably likely to materially adversely affect the ability of Transportation Agency to perform its obligations under this Agreement.

Section 13.7. No Burdensome Restrictions. No obligation of Transportation Agency and no requirement of law materially adversely affect, or insofar as Transportation Agency may reasonably foresee may so affect, the business, operations, property or financial condition of Transportation Agency or the ability of Transportation Agency to perform its obligations under this Agreement.

Section 13.8. No Sale, Lease or Encumbrance. Transportation Agency will not sell, lease, loan, mortgage, or in any manner dispose of the Pace Equipment or the Real Property, or any improvements or additions thereto, during the Agreement Term.

Section 13.9. No Free Service. Transportation Agency will not furnish Transportation Services on the Equipment free of charge without the prior written approval of Pace.

Section 13.10. Payment of Obligations. Transportation Agency shall pay and discharge all of its obligations and indebtedness with respect to the Transportation Services and Other Services and with respect to the Transportation Agency Vehicles and Other Transportation Agency Equipment, if any; provided, however, that any such obligation or indebtedness need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if Transportation Agency shall have set aside on its books adequate reserves with respect thereto, except that all such obligations and indebtedness shall be paid forthwith upon an adverse decision in such proceedings and the exhaustion of available appellate relief with respect thereto.

Section 13.11. Compliance With Applicable Laws. Transportation Agency shall comply with all federal, state and local statutes, laws, rules, regulations and orders applicable to the Transportation Services and Other Services, including the Operating Manual.

Section 13.12. Compliance With Grant Conditions. Transportation Agency shall comply with all conditions of, and all laws and regulations and all Pace policies, practices and procedures applicable to, any federal, state or local grant received by Pace or by Transportation Agency at any time with respect to the Transportation Services, the Other Services, the Equipment or the Real Property and Facilities.

Section 13.13. No Bar From Public Contracts. Transportation Agency warrants and represents that the statements contained in the Transportation Agency's Certification in Exhibit G hereto are true and correct.

Section 13.14. Opinion of Counsel. Transportation Agency shall provide to Pace, at or before the time Transportation Agency executes this Agreement, an opinion of an attorney licensed to practice law in the State of Illinois in the form provided in Exhibit H.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.1. Complete Agreement. This Agreement, including the Exhibits hereto and the Operating Manual, constitutes the entire Agreement between the parties hereto, except as it may be amended as provided by this Article and except for those agreements, if any, listed on Exhibit I hereto.

Section 14.2. Exhibits; Operating Manual; Conflicts. Exhibits A through I attached to this Agreement and the Operating Manual (as such Manual may be amended from time to time and as supplemented with Pace directives) are incorporated herein and made a part hereof by this reference. In case of any conflict among the provisions of this Agreement, including the Exhibits hereto and the Operating Manual, that provision which, in the opinion of Pace, best promotes safe, efficient and economical bus transportation service and best protects the Equipment shall control.

Section 14.3. Amendments. No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed and delivered by the authorized representatives of the parties hereto.

Section 14.4. Notices. All notices and other communications in connection with this Agreement shall be in writing, and any notice or other communication hereunder shall be deemed received by the addressee thereof when delivered in person at the address set forth below, or three (3) business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to Pace:

Pace
550 West Algonquin Road
Arlington Heights, Illinois 60005
Attention: Executive Director

For notices and communications to Transportation Agency:

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Attention: Director of Public Works

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

Section 14.5. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving or receiving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or federal or State of Illinois holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal or State of Illinois holiday. Any reference herein to time of day shall refer to local time for Arlington Heights, Illinois.

Section 14.6. Singular and Plural. The use of the singular or the plural herein shall be construed to be the plural or singular as the context requires.

Section 14.7. Governing Laws. This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Illinois.

Section 14.8. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules or regulations shall include such laws, ordinances, rules or regulations as they may be amended or modified from time to time.

Section 14.9. No Assignment. Transportation Agency shall not assign either its rights or its obligations under this Agreement without the prior written consent of Pace, which consent may be granted or withheld at the sole discretion of Pace. Any attempted or purported assignment of such rights or obligations without the prior written consent of Pace shall be void and of no effect. Any successor to Transportation Agency's rights under this Agreement shall be bound by, and shall comply with, all of the provisions, conditions and requirements of this Agreement.

Section 14.10. Headings. The section headings of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the scope or intent of this Agreement or the intent of any provision hereof.

Section 14.11. Prohibited Interests. No member of the Illinois General Assembly, no member of the Congress of the United States and no director or employee of Pace or of Transportation Agency shall, during his or her tenure or for one (1) year thereafter, have any interest, direct or indirect, in this Agreement or be admitted to any share or part of this Agreement or to any benefit arising therefrom or any proceeds thereof.

Section 14.12. Independent Contractor. In the performance of the Transportation Services and Other Services pursuant to this Agreement, Transportation Agency is an independent contractor with the authority to control and direct the performance of the details of the Transportation Services and Other Services to be performed pursuant to this Agreement. All personnel necessary for Transportation Agency's performance pursuant to this Agreement shall be employees of Transportation Agency or of Transportation Agency's subcontractors. None of the said personnel shall be deemed for any purpose to be employees, agents or representatives of Pace.

Section 14.13. Litigation Against Transportation Agency. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against Transportation Agency or any subcontractor of Transportation Agency, before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of Transportation Agency to perform its obligations under,

or otherwise to comply with, this Agreement, Transportation Agency shall promptly deliver a copy of the complaint or charge related thereto to Pace and shall thereafter keep Pace fully informed concerning all aspects of such lawsuit or proceeding.

Section 14.14. Non-Waiver. Pace shall not be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by an authorized officer or director of Pace. No delay or omission by Pace in exercising any right under this Agreement shall operate as a waiver of such right or any other right by Pace. All the rights and remedies of Pace under this Agreement shall be cumulative and not exclusive and may be exercised singly or concurrently by Pace. The waiver or exercise of any remedy by Pace shall not be construed as a waiver of any other remedy available under this Agreement or under general principles of law or equity.

Section 14.15. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

Section 14.16. Survival Clause. If any provision of this Agreement is construed or held to be void, invalid or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

Section 14.17. No Third Party Beneficiaries. Nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person or entity not a signatory to this Agreement.

Section 14.18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

Section 14.19. Other Agreements Not Prohibited. Nothing in this Agreement shall be deemed to prohibit Pace from entering into additional or alternative agreements or arrangements to provide replacement, additional, supplementary or duplicative service in the area served by Transportation Agency.

Section 14.20. No Future Obligations. Nothing in this Agreement or the parties' performance thereof shall be construed to create any obligation to renew this Agreement after the Agreement Term or to enter into any other agreement of any kind or nature.

ARTICLE XV

REMEDIES

Section 15.1. Remedies. In addition to Pace's right to terminate this Agreement pursuant to Article XII and any other rights otherwise provided in this Agreement, in the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement. Any cost or expense associated with pursuing any such remedy shall not be a Reimbursable Expenditure under this Agreement.

Section 15.2. Notice and Cure. Neither party may exercise the right to bring any suit, action, mandamus or any other proceeding pursuant to Section 15.1 of this Agreement without first providing written notice to the other party of the breach or alleged breach and allowing a period of twenty-one (21) days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said twenty-one (21) day period, notwithstanding diligent and continuous effort by the party receiving notice and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF DOWNERS GROVE

PACE

By: _____

By: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Title: _____

Title: _____

Date: _____

Date: _____

PACE/VILLAGE OF DOWNERS GROVE
Effective January 1, 2013

LIST OF EXHIBITS

- A. Budget
- B. Vehicles
- C. Wage Rate Ceilings
- D. Routes
- E. Real Property and Facilities
- F. Affirmative Action, Equal Employment Opportunity and Disadvantaged Business Enterprises
- G. Transportation Agency's Certification
- H. Form of Opinion of Transportation Agency's Counsel
- I. Additional Agreements

EXHIBIT A

Village of Downers Grove

2013 Budget Summary

Authorized Total Expenses*	\$ 286,971
Minimum Required Recovery Ratio	36%
Planned Operating Revenue	\$ 116,652
Required Local Share	\$ 0
Approved Maximum Budget Funding	\$ 170,319

* Detailed line-item expenses included in Exhibit A-1

EXHIBIT A-1

VILLAGE OF DOWNERS GROVE
2013 LINE-ITEM EXPENSE BUDGET2013
BUDGET

OPERATIONS EXPENSES:		
501101	Operators Wages	\$130,332
501102	Other Salaries	\$0
502011	FICA Tax	\$9,970
502021	Pension	\$11,139
502031	Health Insurance Expense	\$0
502032	Dental Insurance	\$0
502071	Unemployment	\$0
502081	Workers Compensation	\$7,468
502091	Sick Pay	\$0
502101	Holiday Pay	\$0
502111	Vacation	\$0
502131	Uniforms	\$0
502142	Other Fringe Benefits	\$0
503362	Professional and Technical Services	\$600
503991	Other Services	\$250
504112	Gasoline	\$43,285
504989	Other Materials & Supplies	\$250
507401	Vehicle License and Registration	\$400
509914	Other Miscellaneous	\$250
		<u>\$203,945</u>
MAINTENANCE EXPENSES:		
501102	Other Salaries	\$12,191
502011	FICA Tax	\$1,015
502021	Pension	\$2,110
502031	Health Insurance Expense	\$3,431
502032	Dental Insurance	\$334
502142	Life Insurance	\$40
502071	Unemployment	\$0
502081	Workers Compensation	\$114
502091	Sick Pay	\$30
502101	Holiday Pay	\$339
502111	Vacation	\$739
502131	Uniforms	\$0
503662	Contract Maintenance	\$0
503701	Custodial Services	\$0
504112	Gasoline	\$0
503991	Other Services	\$100
504201	Tires/Tubes	\$0
504989	Other Materials & Supplies	\$18,900
512123	Other Rental	\$650
	TOTAL MAINTENANCE	<u>\$39,993</u>
ADMINISTRATION EXPENSES:		
501102	Other Salaries	\$23,959
502011	FICA Tax	\$2,020
502021	Pension	\$3,745
502031	Health Insurance Expense	\$6,861
502032	Dental Insurance	\$667
502142	Life Insurance	\$47
502071	Unemployment	\$0
502081	Workers Compensation	\$278
502091	Sick Pay	\$109
502101	Holiday Pay	\$640
502111	Vacation	\$1,807
502123	Accrued Wages - Paid Time Off	\$0
503362	Professional and Technical Services	\$200
503991	Other Services	\$1,500
505111	Telephone/Cell Phones	\$1,200
		<u>\$0</u>
	TOTAL ADMINISTRATION	<u>\$43,033</u>
	TOTAL EXPENSES	<u>\$286,971</u>

EXHIBIT B

VEHICLES

A. Pace Revenue Vehicles

<u>Vehicle #</u>	<u>Manufacturer</u>	<u>Year Manufactured</u>
2602	Eldorado	2007
2603	Eldorado	2007
2650	Eldorado	2007
2699	Eldorado	2007
2700	Eldorado	2007
2701	Eldorado	2007

B. Pace Non-Revenue Vehicles

NONE

C. Transportation Agency Vehicles

0006-Champion 2008

EXHIBIT C
Village of Downers Grove

WAGE RATE CEILINGS

Unless otherwise approved by Pace, wage increases for calendar year 2013 in excess of either: (1) 2.9% for operators and 3.2% for all other personnel, or (2) the Village's standard wage increase percentage, will not be considered a Reimbursable Expenditure. Furthermore, the wage growth ceiling rates provided in this exhibit are not intended to supersede or jeopardize adherence to the total funding levels authorized in Exhibit A, the Total Expense line.

EXHIBIT D

**2013 PURCHASE OF SERVICES AGREEMENT
VILLAGE OF DOWNERS GROVE**

TRANSPORTATION SERVICES FUNDED BY PACE

TYPE OF SERVICE: Commuter Shuttle

SERVICE OPERATED BY: Village of Downers Grove

SERVICE: Four fixed routes to Main Street; Belmont Street Metra Stations & other shuttle service as operated by Downers Grove

ROUTES: 461-464

SERVICE HOURS: Weekdays

Service will *not* operate on the following holidays:

- New Year's Day
- Memorial Day
- Independence Day (observed Holiday)
- Labor Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

ONE-WAY FARE: \$2.00 per trip or by passes or tickets as determined by Village of Downers Grove

EXHIBIT E

REAL PROPERTY AND FACILITIES

NONE

EXHIBIT F

2013 PURCHASE OF SERVICES AGREEMENT VILLAGE OF DOWNERS GROVE

AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISES

A. Affirmative Action. Transportation Agency shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. Such action shall include, but not be limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. If Transportation Agency is required by the Illinois Department of Human Rights to file an affirmative action program, then prior to the execution of this Agreement, Transportation Agency shall furnish Pace with evidence that it has filed such program with the Illinois Department of Human Rights (the "Department") and furnish Pace with a copy of any and all documents filed by it with the Department.

B. Equal Employment Opportunity Clause. Transportation Agency shall comply with the following provisions, collectively referred to as the "Equal Employment Opportunity Clause:"

- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- (2) That, if it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Department's Rules and Regulations for Public Contracts) of minorities and women in the area(s) from which it may reasonably recruit and it will hire persons in such a way that minorities and women are not underutilized.
- (3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
- (4) That it will send a notice to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or

understanding advising such labor organization or representative of its obligation under the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts. If any such labor organization or representative fails or refuses to cooperate with Transportation Agency in its efforts to comply with such Act and Rules and Regulations, Transportation Agency shall promptly so notify the Department, and Transportation Agency shall recruit employees from other sources when necessary to fulfill its obligations thereunder.

- (5) That it will submit reports as required by the Department's Rules and Regulations for public Contracts, furnish all relevant information as may from time to time be requested by the Department or Pace, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.
- (6) That it will permit access by Pace and the Department to all relevant books, records, accounts, and work sites for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.

C. Subcontracts. Transportation Agency shall insert the following provision in all subcontracts relating to the provision of Transportation Services and Other Services except subcontracts for standard commercial supplies or raw materials:

“No discrimination shall be made in any term or aspect of employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, or political reasons or factors.”

In addition, Transportation Agency shall insert verbatim or by reference the provisions of the Equal Employment Opportunity Clause in every performance subcontract as defined in Section 1.1(17)(b) of the Department's Rules and Regulations so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Agreement, Transportation Agency will be liable for compliance by all its subcontractors with applicable provisions of this Section; and further, it will promptly notify Pace and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, Transportation Agency will not utilize any subcontractor declared by the Department to be non-responsible and, therefore, ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

D. Disadvantaged Business Enterprises. Transportation Agency shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Transportation Agency shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Transportation Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Pace deems appropriate.

EXHIBIT H

FORM OF OPINION OF TRANSPORTATION AGENCY'S COUNSEL

Pace

550 W. Algonquin Rd.

Arlington Heights, IL 60005

Attn: Executive Director

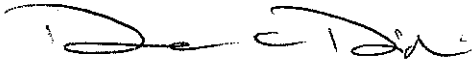
Please be advised that I represent the Village of Downers Grove. Pursuant to Article XIII of the Agreement for the Purchase of Services for the Provision of Bus Service ("Agreement"), this Opinion of Counsel is being provided:

1. The Village of Downers Grove is duly organized, validly existing and in good standing under the laws of the State of Illinois, and has the legal authority to engage in and carry on the public transportation services as described in said Agreement.
2. Said Agreement has been duly authorized by the Council of the Village of Downers Grove pursuant to Resolution No. 2013-_____, and the execution and delivery of said Agreement by all of the parties hereto will constitute a valid and binding obligation of the Village of Downers Grove, enforceable in accordance with its terms, and the making of and compliance with the terms and conditions of said Agreement by the Village of Downers Grove will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture or other instrument applicable to the Village of Downers Grove known to this counsel.
3. All such approvals, consents, permits, licenses, authorizations or modifications as may be required to permit the performance by the Village of Downers Grove of its obligations under said Agreement have been obtained, whether from the appropriate governmental authorities or other persons or entities known to this counsel.
4. No litigation, investigation or proceeding of or before any court, governmental authority or arbitrator is pending or, to the knowledge of this counsel, threatened by or against the Village of Downers Grove, or against any of its properties or revenues (a) with respect to said Agreement, or (b) which is reasonably likely to have a material adverse effect on the operations, property or financial condition of the Village of Downers Grove.
5. The Village of Downers Grove is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property or financial condition of the Village of Downers Grove, or

that is reasonably likely to materially adversely affect the ability of the Village of Downers Grove to perform its obligations under said Agreement.

6. No obligation of the Village of Downers Grove and no requirement of law materially adversely affect, or insofar as Counsel may reasonably foresee based on facts known to her may so affect, the business, operation, property or financial condition of the Village of Downers Grove or the ability of the Village of Downers Grove to perform its obligations under said Agreement.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dawn C. Didier".

Dawn C. Didier
Staff Attorney

EXHIBIT G
2013 PURCHASE OF SERVICES AGREEMENT
VILLAGE OF DOWNERS GROVE

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

TRANSPORTATION AGENCY'S CERTIFICATION

_____, being first duly sworn on oath, deposes and states that all statements herein made are made on behalf of the Transportation Agency, that this deponent is authorized to make them, and that the statements contained herein are true and correct.

The Transportation Agency deposes, states, and certifies that the Transportation Agency is not barred from contracting with Pace on the Purchase of Services Agreement as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 33E-4).

DATED: _____

TRANSPORTATION AGENCY

By: _____

Title: _____

Attest:

By: _____

For: _____

SUBSCRIBED and SWORN to

before me this _____ day

of _____, _____.

NOTARY PUBLIC

Village of Downers Grove
Purchase of Services Agreement

EXHIBIT I

ADDITIONAL AGREEMENTS

NONE