

**Service Agreement  
Town of Dundee and  
Lakeland Area Mass Transit District**

This Service Agreement (hereinafter the "Agreement") is entered into as of the 1<sup>st</sup> day of October, 2024 (hereinafter the "Effective Date"), by and between the Town of Dundee, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "Dundee"), and the Lakeland Area Mass Transit District, an independent special district (hereinafter referred to as the "District").

WHEREAS, Dundee is a Florida municipal corporation vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and

WHEREAS, Dundee is vested with governmental, corporate and proprietary powers to enable it to conduct and perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes; and

WHEREAS, provision of adequate and effective public transit services is a continuing need in Polk County; and

WHEREAS, the District is the legal entity responsible for the operation and management of the public transportation system; and

WHEREAS, the parties acknowledge, represent and agree that Dundee and the District are not partners or joint venturers; and

WHEREAS, Dundee has agreed to participate in funding a portion of the fixed route services currently being operated through the municipal boundaries of Dundee; and

WHEREAS, Dundee and the District acknowledge and agree that the District will provide to Dundee transit services which include routes 17x, 27x, and 30; and

WHEREAS, Dundee and the District represent and agree that good and valuable consideration has been received by the parties for entering into this Agreement, and Dundee and the District acknowledge the sufficiency of the consideration received; and

WHEREAS, the Town Commission of the Town of Dundee finds this Agreement between Dundee and the District to be in the best interests of the public health, safety, and general welfare of the citizens and residents of the Town of Dundee,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The foregoing recitals are incorporated herein by the parties as true and correct statements which form a factual and material basis for entry into this Agreement between Dundee and the District.
2. The term of this Agreement shall be for a period of two (2) years commencing on October 1, 2024, through and including September 30, 2026.

3. In the event funds from governmental sources relied upon to finance this Agreement become unavailable, the District or Dundee may terminate this Agreement with no less than thirty (30) calendar days written notice to the other party. Notice shall be delivered as set forth in paragraph ten (10) of this Agreement. Either party may terminate this Agreement based on the other party's breach, by giving the breaching party written notice of the breach in accordance with paragraph ten (10) of this Agreement. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement immediately. Waiver by either party of breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach, shall not be construed to be a modification of the terms of this Agreement, and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement.

4. No later than six (6) months before the end of the term of this Agreement, the District and Dundee shall meet in good faith to discuss each party's intentions to negotiate an agreement for the continuation of the service.

5. Hours of operation of bus service are defined as the number of hours each bus operates plus reasonable travel time each way to and from the District Operations Center located at 1212 George Jenkins Boulevard, Lakeland, Florida, or the County Operations Center located in Bartow or Winter Haven, Florida. Bus service will not be provided on holidays on which the District does not operate and on any other days on which the District does not operate.

6. The fee to be charged by the District for the transit service for the term of the Agreement will be \$27,948.42 per year. Dundee shall remit payment within thirty (30) business days from receipt of invoice.

7. Revenue derived from the operation of the transit system, including, but not limited to the proceeds from advertising and transit fares paid by passengers, will be the absolute property of the District; and the treatment of such revenue, including the banking and accounting thereof, will be as directed by the District.

8. This Agreement is subject to the terms and conditions contained in any interlocal or other agreement between the District and any other governmental authority, including, without limitation, the City of Lakeland, the Polk Transit Authority, and the County of Polk; provided, however, that by entering into this Agreement, Dundee is not agreeing to be bound by or in any manner obligated by any of the District's rights, duties and obligations under such interlocal or other agreements referred to herein to which the District may be a party. Nothing in such agreements prohibits or limits the ability of any of the parties to this Agreement to deliver the various benefits specifically described herein.

9. This Agreement is subject to all federal, state, and local laws, rules, and regulations with which the District is obligated to comply. Nothing in such laws, rules or regulations prohibits or limits the ability of any of the parties to this Agreement to deliver the various benefits specifically described herein.

10. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly

given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method; the day after it is sent, if sent by recognized expedited delivery service; and five (5) days after it is sent, if mailed, first class mail, postage prepaid. In each case, notice shall be sent to:

DUNDEE: Town of Dundee  
ATTN: Lita O'Neill  
P.O. Box 1000  
Dundee, FL 33838  
E-mail: [loneill@townofdundee.com](mailto:loneill@townofdundee.com)

with a copy to, which shall not constitute notice, to:

Frederick J. Murphy, Jr.  
General Counsel, Bartow  
Boswell & Dunlap LLP  
Post Office Drawer 30  
Bartow, Florida 33831-0030  
E-mail: [fm@bosdun.com](mailto:fm@bosdun.com)

DISTRICT: Lakeland Area Mass Transit District  
ATTN: General Manager  
1212 George Jenkins Boulevard  
Lakeland, Florida 33815

with a copy to, which shall not constitute notice, to:

Ben H. Darby, Jr.  
Counsel for the District  
Darby Law Group, P.A.  
Post Office Drawer 2971  
Lakeland, Florida 33806-2971

11. If any covenant or provision of this Agreement is determined to be invalid, illegal or incapable of being enforced, all other covenants and provisions of this Agreement shall, nevertheless, remain in full force and effect, and no covenant or provision shall be dependent upon any other covenant or provision unless so expressed herein.

12. This Agreement contains all the terms and conditions agreed upon by the parties and is a complete and exclusive statement of the Agreement between the parties regarding the subject matter of this Agreement. Any renewals, alterations, variations, modifications, amendments or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, and duly signed and approved by all entities to this Agreement, including but not limited to the governing bodies of both the District and Dundee. This Agreement supersedes all other agreements and proposals, oral or written,

regarding the subject matter herein, and all such other agreements and proposals are hereby deemed void.

13. In the performance of this Agreement, the District will be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venturer, or associate of Dundee. The District shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by the District in the full performance of this Agreement. Neither the District nor any of its employees, officers, agents or any other individual directed to act on behalf of the District for any act related to this Agreement, shall represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of Dundee.

14. This Agreement shall be construed in accordance with the laws of the State of Florida and venue of any legal proceedings shall be in Polk County, Florida, if the action is commenced in state court. If any action is commenced in federal court, then venue shall be in the United States District Court for the Middle District of Florida, Tampa Division. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own attorney's fees, court costs and expenses.

15. This Agreement is subject to Chapter 119 of the Florida Statutes. To the extent that the District is deemed a "contractor" of Dundee under general Florida law, the District, pursuant to Section 119.0701 (1)(a) of the Florida Statutes, agrees to:

- (a) Keep and maintain Public Records required by Dundee to perform the Services specified herein.
- (b) Upon request from Dundee's custodian of Public Records, provide Dundee with a copy of the requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
- (c) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term and following completion of the contracted work or service if District does not transfer the Public Records to Dundee.
- (d) Upon completion of the contracted work or service, transfer, at no cost, to Dundee all Public Records in possession of District or keep and maintain Public Records required by Dundee to perform the service. If District transfers all Public Records to Dundee upon completion of the contracted work or service, District shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If District keeps and maintains Public Records upon completion of the contracted work or service, District shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Dundee upon request from Dundee's custodian of Public Records, in a format that is compatible with Dundee's information technology systems.

IF DISTRICT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DISTRICT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, LITA O'NEILL, AT (863) 438-8330, LONEILL@TOWNOFDUNDEE.COM.

If District does not comply with a public records request, Dundee shall enforce this contract provision, which may include immediate termination.

16. Nothing contained herein shall operate or be construed as a waiver of the District's or Dundee's limits of liability as set forth in Section 768.28 of the Florida Statutes regardless of whether such claims are based in tort, contract, statute, strict liability, negligence, product liability or otherwise. No waiver of sovereign immunity is deemed to be made by either the District or Dundee by entering into this Agreement nor shall any terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any party to this Agreement.

17. Each party signing this Agreement represents and warrants that he/she/it has read, understands and acknowledges any and all of the terms, covenants, conditions and requirements set forth herein. The parties represent and warrant to one another that all the necessary action(s) to execute this Agreement have occurred and that the parties possess the legal authority to enter into this Agreement and undertake all the obligations imposed herein.

18. The calculation of the number of days that have passed during any time period prescribed shall be based on calendar days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such time period is not contingent on an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall commence on the day immediately following the Effective Date. For purposes of this Agreement, unless otherwise specified herein, the tolling of any such time period(s) shall be in calendar days. In the event any time period or deadline identified in this Agreement expires or falls on a Saturday, Sunday or recognized holiday, said expiration or deadline shall be automatically tolled until 5:00 p.m. on the next available business day on which the District and Dundee are open for business to the public.

19. The parties acknowledge and agree that it is in their best interests and the best interests of the public that this Agreement be performed in strict accordance with the terms, covenants and conditions contained herein; and the parties shall, in all instances, cooperate and act in good faith in complying with all of the terms, covenants and conditions contained herein.

LIMITATION OF LIABILITY

IN NO EVENT, SHALL THE DISTRICT BE LIABLE TO DUNDEE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY THE DISTRICT WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

IN NO EVENT, SHALL DUNDEE BE LIABLE TO DISTRICT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY DUNDEE WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed for the uses and purposes therein expressed as of the day and year set forth above.

TOWN OF DUNDEE

ATTEST: \_\_\_\_\_  
Lita O'Neill, Town Clerk

BY: \_\_\_\_\_  
Mayor Samuel Pennant

LAKELAND AREA MASS TRANSIT  
DISTRICT

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_