

AGREEMENT

between

BROWARD COUNTY

and

DIRECT MEDIA, INC.

for

TRANSIT ADVERTISING PROGRAM

RFP# V2112712P1

AGREEMENT

between

BROWARD COUNTY

and

DIRECT MEDIA, INC.

for

TRANSIT ADVERTISING PROGRAM

RFP# V2112712P1

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

and

DIRECT MEDIA, INC., a Massachusetts corporation, authorized to do business in the state of Florida hereinafter referred to as "DIRECT MEDIA," collectively referred to as the "Parties."

WHEREAS, COUNTY provides fixed-route bus transportation services to residents and visitors of Broward County and adjacent portions of Miami-Dade and Palm Beach Counties; and

WHEREAS, the goal of COUNTY's transit system and its advertising program is to provide safe, efficient, rapid, convenient, pleasant and affordable service while earning revenue from long-term commercial advertising; and

WHEREAS, the COUNTY issued an RFP seeking proposals from qualified firms to provide advertising services for the transit system; and

WHEREAS, DIRECT MEDIA represents that it has the experience necessary to adequately and competently perform the services to the COUNTY's satisfaction; and

WHEREAS, the COUNTY desires to engage DIRECT MEDIA to provide advertising services under an agreement containing mutually satisfactory terms and conditions; and

WHEREAS, negotiations pertaining to the services to be performed and the compensation therefor were undertaken between the Parties and this Agreement incorporates the results of such negotiations; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** - This document, Articles 1 through 14, inclusive, the exhibits, RFP# V2112712P1, and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **Contract Administrator** - The Broward County Administrator, the Director of the Broward County Transportation Department or the Director of the Transit Division.
- 1.4 **County Administrator** – The administrative head of COUNTY appointed by the Board.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY appointed by the Board.
- 1.6 **Eligible Vehicle Bus Fleet** – The COUNTY transit buses which COUNTY has made available to DIRECT MEDIA for the purpose of advertising. Eligible Vehicle Bus Fleet shall not include vehicles that are utilized by third parties pursuant an agreement for service, such as, but not limited to Community Bus Service.
- 1.7 **Late Payment** - Any payment due and owing, to COUNTY by DIRECT MEDIA, which is received by COUNTY subsequent to the 20th day of any month during the term of this Agreement.
- 1.8 **Media Bank** – Advertising credit provided by DIRECT MEDIA to COUNTY to permit COUNTY to advertise in various forms of media, such as, but not limited to, radio, television, print or electronic, to promote transit and transit- related services.
- 1.9 **Minimum Annual Guarantee** - The minimum annual compensation due to COUNTY from DIRECT MEDIA during each annual period, with such period defined as May 1 to April 30.
- 1.10 **Monthly Minimum Guarantee** - The amount due and owing to COUNTY from DIRECT MEDIA each month during the term of this Agreement, which amount is calculated by dividing the Minimum Annual Guarantee by a factor of twelve (12).

- 1.11 **Net Collections** - Gross bus advertising revenues less cost of sales (cost of sales shall be limited to include customary commissions paid to advertising agencies and brokerage sales organizations in an amount not to exceed 15%, production charges, public, charitable and educational installation fees).
- 1.12 **Notice to Proceed** – A written authorization to proceed with the Program, issued by the Contract Administrator.
- 1.13 **Program** - The Transit Bus Advertising Program, as outlined in this Agreement.
- 1.14 **Rate Card** - The current listed advertising rates as marketed to potential customers.
- 1.15 **Services** – All advertising services required by DIRECT MEDIA under this Agreement, including without limitation all deliverables specified in Exhibit “A.”
- 1.16 **Subcontractor** – A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing services to COUNTY through DIRECT MEDIA for all or any portion of the services provided under this Agreement.
- 1.17 **Transit Facility** – Any building, shelter, kiosk or terminal that is owned or utilized by COUNTY to provide public transportation service or access to public transportation service.

## ARTICLE 2

### SCOPE OF SERVICES AND OBLIGATIONS OF PARTIES

- 2.1 DIRECT MEDIA shall perform all Services identified in this Agreement and Exhibit "A." The Scope of Services is a description of DIRECT MEDIA's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the Services described that exclusion would render performance by DIRECT MEDIA impractical, illogical, or unconscionable.
- 2.2 DIRECT MEDIA acknowledges that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.
- 2.3 DIRECT MEDIA shall pay its Subcontractors and suppliers, within thirty (30) days following completion of the contracted services or upon receipt of the supplies.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on May 1, 2017 and shall end on April 30, 2020 (“Initial Term”). COUNTY, in its sole discretion, may extend the term of this Agreement for up to two (2) additional one year periods (“Renewal Periods”); provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes. If COUNTY elects to exercise its option to renew, COUNTY shall notify DIRECT MEDIA in writing, on or before 180 days prior to the expiration of the then current term.
- 3.2 If the option to renew this Agreement is exercised by COUNTY five (5) months prior to the expiration, the Parties shall enter into negotiations to determine the Monthly Minimum Guarantee, Media Bank and any other issues relating to compensation, for the Renewal Periods. Such negotiations shall be formalized by the Parties in an amendment to this Agreement.
- 3.3 All duties, obligations, and responsibilities of DIRECT MEDIA required by this Agreement shall be completed no later than time periods required by the Contract Administrator. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

ARTICLE 4

COMPENSATION

- 4.1 In consideration of the right to display advertising upon the Eligible Vehicle Bus Fleet, DIRECT MEDIA shall pay to COUNTY throughout the term of this Agreement a Minimum Annual Guarantee, as set forth on the table below. Payments shall be made by DIRECT MEDIA to COUNTY each month in accordance with the Monthly Minimum Guarantee payment schedule shown herein below, which represent a rate of one-twelfth (1/12) of the Minimum Annual Guarantee, per annual period, subject to an annual adjustment.

<i>Annual Period</i>	<i>Monthly Minimum Guarantee</i>	<i>Minimum Annual Guarantee</i>	<i>Media Trade</i>	<i>TOTAL</i>
<b>5/1/17 through 4/30/18</b>	\$120,833.33	\$1,450,000	\$350,000	\$1,800,000
<b>5/1/18 through 4/30/19</b>	\$125,000	\$1,500,000	\$350,000	\$1,850,000
<b>5/1/19 through 4/30/20</b>	\$129,166.67	\$1,550,000	\$350,000	\$1,900,000

4.2 DIRECT MEDIA is required to remit the Minimum Monthly Guarantee payment, as indicated in the table set forth in paragraph 4.1 above, to COUNTY each month within 20 calendar days after the end of the month in which they were earned. The revenue must be accompanied by a report that includes details of:

- i. All contracts in effect
- ii. All advertising elements sold and unsold in the month
- iii. Gross Billings for the month
- iv. Gross Revenues Earned for the Month
- v. Net Revenue Earned for the Month
- vi. Collections for the month, including bus and graphics
- vii. Past due amounts
- viii. Total remaining balances on accounts
- ix. Contract expiration dates
- x. Total % and Number of Advertising Space sold vs. total inventory by Advertising space, space type, positioning on COUNTY's fleet (i.e. bus operator side vs. curb-side), or what is applicable to that particular advertising medium
- xi. A rolling total of 60% of Net Revenue Earned compared to the rolling total of guaranteed monthly minimum revenue

4.3 All payments to COUNTY are to be made in bank draft, cashier's check, or company check only. No in-kind payments or trade agreements will be acceptable as payment of compensation owed to COUNTY. All Funds shall be remitted to COUNTY at the following address:

Broward County Transportation Department  
Attention: Cashier  
One North University Drive, Suite 3100A  
Plantation, Florida 33324

4.4 In addition to the Minimum Annual Guarantee, DIRECT MEDIA shall pay to the COUNTY additional funds based on a tiered percentage split based on Net Collections. If Net Collections received by DIRECT MEDIA in any annual period are of such amount which at the rate of sixty percent (60%) of all Net Collections from \$0 - \$999,999.99; sixty-five percent (65%) of all Net Collections from \$1,000,000 - \$1,249,999.99; seventy percent (70%) of all Net Collections equal to or in excess of \$1,250,000 ("Percentage Split"), would amount to a payment to COUNTY in excess of the Minimum Annual Guarantee for that annual period, DIRECT MEDIA shall remit to the COUNTY the difference between the Percentage Split and the Minimum Annual Guarantee. This payment shall be in addition to the Minimum Annual Guarantee.

DIRECT MEDIA shall submit an annual reconciliation with financial statements, in a form satisfactory to COUNTY within 90 days of the end of each contract year.

The DIRECT MEDIA shall report the annual income at the end of each contract year. In the event that COUNTY's contractual share of this revenue exceeds the annual minimum guarantee for the contract year, the extra income shall be paid to COUNTY within 30 days of the end of contract year.

If the Percentage Split is less than the Minimum Annual Guarantee, the Minimum Annual Guarantee shall still apply. There shall be no reduction in the Minimum Annual Guarantee for any annual period prescribed.

- 4.5 DIRECT MEDIA shall be responsible for the collection of all money and compensation paid, or agreed to be paid, by any advertiser for any and all advertisements and advertising space sold pursuant to this Agreement. DIRECT MEDIA shall demonstrate to COUNTY's satisfaction that DIRECT MEDIA has made good faith efforts to collect all unpaid accounts, including but not limited to, legal collection activities against any non-paying parties. No bad debts shall reduce the Minimum Annual Guarantee owed to COUNTY.
- 4.6 The Minimum Annual Guarantee is based on the Eligible Vehicle Bus Fleet, at bus transfer stations, and on future light rail vehicles, and other possible locations. A proportionate adjustment in the Minimum Annual Guarantee shall be made in the event the available advertising space increases or decreases by more than ten percent (10%).

## ARTICLE 5

### INDEMNIFICATION

DIRECT MEDIA shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of DIRECT MEDIA, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, DIRECT MEDIA shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

## ARTICLE 6

### INSURANCE

- 6.1 DIRECT MEDIA shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "B" in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. DIRECT MEDIA shall name Broward COUNTY as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is "Broward County." This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, DIRECT MEDIA shall provide to COUNTY proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. DIRECT MEDIA shall provide certified copy of any policies required by the Article upon request by COUNTY. Coverage is not to cease and is to remain in force until COUNTY determines all performance required of DIRECT MEDIA is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of all Services unless a different time period is stated in Exhibit "B". COUNTY shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to COUNTY upon expiration.
- 6.4 If DIRECT MEDIA uses a Subcontractor, DIRECT MEDIA shall ensure that each Subcontractor names "Broward County" as an additional insured under the Subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

## ARTICLE 7

### PERFORMANCE GUARANTEE

DIRECT MEDIA is required to provide to COUNTY, prior to the beginning of the term of this Agreement, and prior to the start of each subsequent contract year, an annual performance bond or an irrevocable letter of credit, in a form, and from a bank or surety, satisfactory to COUNTY in the amount of fifty percent (50%) of the Annual Minimum Guarantee. The performance bond or irrevocable letter of credit



at the onset of this Agreement shall be in the amount equal to fifty percent (50%) of the Minimum Annual Guarantee included in the successful proposal. A performance bond or an irrevocable letter of credit must be provided thirty days prior to the commencement of each successive contract year and the performance bond or an irrevocable letter of credit shall be for fifty percent (50%) of the Minimum Annual Guarantee for each successive contract year; however, neither non-renewal of an annually issued bond by the Surety, nor failure or inability of DIRECT MEDIA to file a replacement bond in the event the Surety exercises its right to not renew the bond, shall itself constitute a loss to COUNTY recoverable under the bond or any extension thereof. The foregoing notwithstanding, DIRECT MEDIA shall remain obligated to provide the annual performance bond or an irrevocable letter of credit, in a form, and from a bank or surety satisfactory to COUNTY in the amount of fifty percent (50%) of the Annual Minimum Guarantee.

## ARTICLE 8

### TERMINATION

- 8.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by the COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, and welfare. If COUNTY erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at COUNTY's sole election, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 8.2 This Agreement may be terminated for cause for reasons including, but not limited to, DIRECT MEDIA's failure (whether negligent or intentional) to timely submit to COUNTY proper payments as required in Article 4, the failure to properly provide the accounting as required in Article 4, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if DIRECT MEDIA is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if DIRECT MEDIA provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 8.4 Upon termination of this Agreement by expiration of same in its normal course, or termination for cause or convenience, DIRECT MEDIA shall assign and transfer to COUNTY or a third party, as directed by COUNTY, all contracts for advertising, and such contracts shall thereupon become the property of COUNTY or such third party. In the event of termination of this Agreement in its normal course, or termination for convenience, for a period not to exceed twelve (12) months following such assignment, COUNTY or selected third party shall pay to DIRECT MEDIA twenty percent (20%) of the gross income plus all unamortized production charges from such contracts that extend beyond the expiration date of this Agreement; provided, however, that COUNTY's or selected third party's obligation to pay DIRECT MEDIA shall not include any extensions or renewals of the terms of any assigned contract. COUNTY will include the assignment requirement and terms set forth above in the selection process for the succeeding third party for Transit Advertising. DIRECT MEDIA acknowledges that COUNTY shall NOT be a party to disputes of any kind or nature arising from the contracts assigned pursuant to this paragraph which shall specifically include, but not be limited to, disputes regarding payments which may be due on the contracts assigned pursuant to this paragraph.

## ARTICLE 9

### EEO COMPLIANCE

No Party to this Agreement may unlawfully discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure to comply with the foregoing requirements shall constitute a material breach of this Agreement, which shall permit COUNTY to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

By execution of this Agreement, DIRECT MEDIA represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and may result in debarment from COUNTY's competitive procurement activities.

## ARTICLE 10

### REPORTS

- 10.1 DIRECT MEDIA shall provide COUNTY with monthly reports reflecting gross collections for each preceding calendar month, as well as the month and year, the account name, the billing period, the gross billings, the net billings, the amount collected, the amount owed, and advertising expiration dates. Advertising contracts for reduced fee and free Services to nonprofit, tax-exempt organizations shall be detailed in each month report.
- 10.2 On an annual basis, DIRECT MEDIA, at its sole cost and expense, shall provide to COUNTY a special audit report that covers all net collections from DIRECT MEDIA's operations and the operations of any Subcontractors or management companies of DIRECT MEDIA, if applicable. The special audit report shall be prepared by a Certified Public Accountant in accordance with the provisions of the Codifications of Statements on Auditing Standards. The special report shall be delivered of the Contract Administrator within one hundred twenty (120) calendar days after the end of the contract year and within one hundred twenty (120) calendar days following the expiration or any termination of this Agreement. The Special report shall include the following:
- a. A schedule of all revenue by category, by month;
  - b. A schedule of revenues by category upon which the monthly payment to COUNTY are computed and a list of the payments to COUNTY for the year;
  - c. A calculation and statement indicating whether the payments made to COUNTY are in accordance with the Agreement; and
  - d. A summary of the procedure agreed upon between DIRECT MEDIA and the Certified Public Accountant for the preparation of the annual special audit report.

## ARTICLE 11

### TRADE ADVERTISING

DIRECT MEDIA may, provided that the advertising space has not been sold to a paying advertiser or is not being used by COUNTY pursuant to Exhibit "A," Section B herein, place advertising on COUNTY-operated transit buses on a "trade" basis, limited to ten percent (10%) of the total inventory of advertising space available per year. The costs and value of these displays will NOT be included in the calculations of Net Collections under this Agreement. DIRECT MEDIA shall obtain the prior written approval of Contract

Administrator prior to each placement date of its trade advertising. Such consent shall not be unreasonably withheld.

## ARTICLE 12

### MEDIA TRADE

- 12.1 During each year of this Agreement, DIRECT MEDIA shall create a media bank in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), which amount may be used by COUNTY annually to advertise in various forms of media, such as but not limited to, radio, television, print or electronic, to promote transit and transit related services. No unused portion of the media bank may be carried over from one contract year to the next. DIRECT MEDIA shall obtain advertising related goods and services from public, nonprofit, and civic organizations and various media outlets such as but not limited to, radio, television, print or electronic, in exchange for unsold advertising space on Eligible Vehicle Bus Fleet, at bus transfer stations, at future light rail stations and on future light rail vehicles, and other possible locations for those exchanging entities. All media bank transactions, including production charges, shall be calculated at DIRECT MEDIA's published rates and DIRECT MEDIA shall post and remove such media bank displays at no cost to COUNTY.
- 12.2 DIRECT MEDIA shall continually deduct the calculated amount of each media bank transaction from the media bank balance and provide the Contract Administrator with a statement of account on a quarterly basis. DIRECT MEDIA shall provide the Contract Administrator with prior notice of its intention to use media bank funds. The notice shall specify the exchanging entity, the type of media to be used, and the COUNTY promotional advertisement to be used. In the event COUNTY desires to promote a special event through the use of the media bank, COUNTY shall provide DIRECT MEDIA, no less than sixty (60) days in advance notice of the special event, indicating the promotional advertisement to be used.

## ARTICLE 13

### COUNTY USE OF UNSOLD ADVERTISING SPACE

- 13.1 DIRECT MEDIA shall notify the Broward County Transit Division ("BCT") two (2) to four (4) weeks in advance of any remaining unsold advertising space. BCT will provide DIRECT MEDIA with artwork to be produced and placed on vehicles. BCT will pay the production cost for advertising materials. Installation and removal will be done at no cost to BCT. DIRECT MEDIA shall reserve 12 interior bus card spaces per bus for use by BCT. In addition, BCT may use any unsold interior space. COUNTY will be billed for unused advertising space used by BCT at the rates included in the Advertising Price Sheet attached as Exhibit "D."

- 13.2 Other COUNTY departments shall have the option to use unsold advertising if space is available. This will be determined by BCT, working with DIRECT MEDIA. DIRECT MEDIA may charge other COUNTY departments for production, installation, and removal of advertisements at the rates included in the Advertising Price Sheet attached Exhibit "D."

## ARTICLE 14

### MISCELLANEOUS

#### 14.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY; and, if a copyright is claimed, DIRECT MEDIA grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by DIRECT MEDIA, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by DIRECT MEDIA to the Contract Administrator within seven (7) days of termination of this Agreement. DIRECT MEDIA shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

- 14.2 PUBLIC RECORDS: To the extent DIRECT MEDIA is acting on behalf of COUNTY as stated in Section 119.0701, Florida Statutes, DIRECT MEDIA shall:

14.2.1 Keep and maintain public records required by COUNTY to perform the services under this Agreement; and

14.2.2 Upon request from COUNTY, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law; and

14.2.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to COUNTY; and

14.2.4 Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of DIRECT MEDIA or keep and maintain public records required by COUNTY to perform the services. If DIRECT MEDIA transfers the records to COUNTY, DIRECT MEDIA shall

destroy any duplicate public records that are exempt or confidential and exempt. If DIRECT MEDIA keeps and maintains public records, DIRECT MEDIA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY upon request in a format that is compatible with the information technology systems of COUNTY.

The failure of DIRECT MEDIA to comply with the provisions of this Section shall constitute a material breach of this Agreement entitling COUNTY to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to COUNTY, who will be responsible for responding to any such public records requests. DIRECT MEDIA will provide any requested records to COUNTY to enable COUNTY to respond to the public records request.

**IF DIRECT MEDIA HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO DIRECT MEDIA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, TIM GARLING, DEPUTY DIRECTOR OF THE TRANSPORTATION DEPARTMENT AT (954) 357-8300, TGARLING@broward.org, 1 N UNIVERSITY DRIVE, SUITE 3100A, PLANTATION, FLORIDA 33324.**

The failure of DIRECT MEDIA to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement and COUNTY shall enforce the default in accordance with the provisions set forth in Section 8.1. DIRECT MEDIA shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

#### 14.3 AUDIT RIGHTS AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of DIRECT MEDIA and its Subcontractors that are related to this Agreement. DIRECT MEDIA and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of DIRECT MEDIA and its Subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, DIRECT MEDIA or its Subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

DIRECT MEDIA and its Subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. COUNTY audits and inspections pursuant to this Section may be performed by any COUNTY representative (including any outside representative engaged by COUNTY). COUNTY reserves the right to conduct such audit or review at DIRECT MEDIA's place of business, if deemed appropriate by COUNTY, with seventy-two (72) hours' advance notice.

DIRECT MEDIA shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

#### 14.4 PUBLIC ENTITY CRIME ACT

DIRECT MEDIA represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, DIRECT MEDIA further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether DIRECT MEDIA has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, COUNTY shall have the right to immediately terminate this Agreement.

#### 14.5 INDEPENDENT CONTRACTOR

DIRECT MEDIA is an independent contractor under this Agreement. In providing Services under this Agreement, neither nor its agents shall act as officers, employees, or agents of COUNTY. DIRECT MEDIA shall not have the right to bind COUNTY to any obligation not expressly undertaken by COUNTY under this Agreement.

#### 14.6 THIRD PARTY BENEFICIARIES

Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 14.7 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

##### FOR COUNTY:

Director  
Broward County Transportation Department  
One North University Drive, Suite 3100A  
Plantation, Florida 33324

##### FOR: DIRECT MEDIA

Michael A. Geden  
72 Sharp Street, Unit A-9  
Hingham, MA 02043  
michaelgeded@directmediausa.net

#### 14.8 ASSIGNMENT AND PERFORMANCE

Except for subcontracting approved in writing by COUNTY at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by DIRECT MEDIA without the prior written consent of COUNTY. If DIRECT MEDIA violates this provision, COUNTY shall have the right to immediately terminate this Agreement.

DIRECT MEDIA represents that each person who will render Services pursuant to this Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her Services.

DIRECT MEDIA shall perform its duties, obligations, and Services under this Agreement in a skillful and respectable manner and that the quality of such Services shall equal or exceed prevailing industry standards for the provision of such Services.



#### 14.9 CONFLICTS

Neither DIRECT MEDIA nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTO's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of DIRECT MEDIA's officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or DIRECT MEDIA is not a party, unless compelled by court process. Further, DIRECT MEDIA acknowledges that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude DIRECT MEDIA or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event DIRECT MEDIA is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, DIRECT MEDIA shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as DIRECT MEDIA.

#### 14.10 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arms'-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 14.11 COMPLIANCE WITH LAWS

DIRECT MEDIA shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 14.12 SEVERABILITY

In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect..

#### 14.13 JOINT PREPARATION

This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

#### 14.14 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 14.15 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 14 of this Agreement, the provisions contained in Articles 1 through 14 shall prevail and be given effect.

#### 14.16 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, DIRECT MEDIA AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A**

**JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

14.17 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and DIRECT MEDIA or others delegated authority to or otherwise authorized to execute same on their behalf.

14.18 PRIOR AGREEMENTS

This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

14.19 INCORPORATION BY REFERENCE

Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits and RFP# V2112712P1 are incorporated into and made a part of this Agreement.

14.20 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

14.21 COUNTERPARTS AND MULTIPLE ORIGINALS

This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and DIRECT MEDIA, signing by and through its President, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By: Tim Crowley  
Name: Tim Crowley  
Title: Property Specialist

By: Angela J. Wallace 3/14/17  
Angela J. Wallace,  
Deputy County Attorney

AJW:  
Direct Media - Transit Advertising Agreement  
03/10/17  
17-114

AGREEMENT BETWEEN BROWARD COUNTY AND DIRECT MEDIA FOR  
TRANSIT ADVERTISING PROGRAM

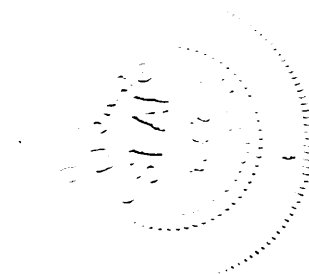
DIRECT MEDIA:

WITNESSES:

Mark Geden  
Sibrah Gardino

By Michael A. Geden  
Michael A. Geden, President  
14 day of MARCH, 2017

(SEAL)



## EXHIBIT "A"

### SCOPE OF SERVICES

#### A. OBLIGATIONS OF DIRECT MEDIA

1. DIRECT MEDIA shall develop COUNTY as an advertising franchise that returns an increasing amount of revenue based upon the value that advertiser receives. DIRECT MEDIA shall achieve this in part through aggressive sale of the available space by selling that space at market rates that significantly add to the revenue returned to both the DIRECT MEDIA and COUNTY.
2. DIRECT MEDIA shall advertise in and upon interior and exterior commercial advertising spaces on buses, a future light rail system, transit schedules and maps and advertising at Broward County transit facilities and other possible locations, subject to the terms and conditions herein. It shall be DIRECT MEDIA's responsibility to obtain any and all required permits and governmental approvals to ensure the advertisements conform to any and all applicable laws and regulations prior to the placement of any advertisements.
3. Sales Plan:
  - a. DIRECT MEDIA shall submit a detailed Sales Plan for COUNTY's review and approval within 60 days of Notice to Proceed. The Sales Plan shall be, at the least, similar to and of the quality provided in the DIRECT MEDIA's Technical Proposal. The Sales Plan must describe the DIRECT MEDIA's business sales strategies. The Sales Plan shall be focused to maximize revenues from DIRECT MEDIA's advertising franchises through achievement of a reasonable mix of national, regional and local sales that is customary and usual for the industry. International based sales may also be considered. The plan shall include sales strategies that DIRECT MEDIA will employ to sell advertising with the goal of achieving the maximum utilization of all space available for sale.
  - b. Throughout the duration of this Agreement, DIRECT MEDIA shall recognize the importance COUNTY places on national, regional and local sales activities for building a more robust BCT advertising franchise. DIRECT MEDIA must address the unique features of the Broward County market and take actions to ensure that sales will be maximized throughout BCT's service area. The Sales Plan shall respond to the different demographic, psychographic, and socioeconomic profiles of markets within BCT's service area and the Broward County Geographic Market footprint, and the special opportunities that these markets present. The Sales Plan shall detail efforts DIRECT MEDIA will make to win national, regional and local advertising buys. DIRECT MEDIA shall utilize creative sales strategies, but not at the expense of revenue. DIRECT MEDIA's Sales Plan shall demonstrate that it employs the best strategies to maximize revenues.

- c. The Sales Plan shall discuss the potential for opportunities such as cross promotions or merchandising with advertisers. The Sales Plan shall include information regarding how national sales will be handled. In particular, the Sales Plan shall provide information on who will bear primary responsibility for national sales. The Sales Plan shall identify staff responsible for national, regional, and local sales and the offices where these individuals will be located.
  - d. At no time will COUNTY allow for its advertising space to be subdivided or resold by any parties other than DIRECT MEDIA and its designated sales agents without the express written consent of COUNTY.
  - e. The Sales Plan shall explain the types of marketing/sales materials that will be developed to support the sales activity and any advertising or other forms of marketing, current internal research, primary, secondary or third party research, trade publications, and other vehicles employed to maximize revenue that will be used to influence media buyers, or other persons of decision-making capacity, to consider COUNTY advertising. DIRECT MEDIA's Sales Plan shall also include sales staff inside sales quotas, outside sales quotas, cold call solicitation quotas, revenue quotas, on both an individual and collective sales basis, as well as rationalization as to the quotas imposed and timing of review of said goals (i.e., weekly, monthly, quarterly).
  - f. The Sales Plan shall list all current proprietary, primary, secondary, or related third party research it currently subscribes and how it will be used to procure BCT advertising business. Any primary, secondary, or third party research, or otherwise that is to be obtained by DIRECT MEDIA should be listed separately.
  - g. DIRECT MEDIA shall disclose the cost of any current or procurement of any additional research it deems necessary only if it is being included in any BCT advertising rate plans.
4. Advertisements displayed under the terms of this Agreement shall comply with COUNTY advertising guidelines and regulations. COUNTY shall approve all advertising, exhibit material, announcements, or any other communications displayed or exhibited on its fleet, or it's owned, leased or managed property. No defamatory, libelous, slanderous, obscene, religious or political advertising is allowed, and final determination about such shall be at the sole discretion of COUNTY. Any communication that fails to meet COUNTY's standards as set forth in the Broward County Advantage Marketing Program, will not be accepted by DIRECT MEDIA for display on BCT fleet, or other inventory.
  5. All of the Services required hereunder shall be performed by DIRECT MEDIA or under DIRECT MEDIA's supervision, and all personnel engaged in the work shall be fully qualified to perform such Services. All work performed by DIRECT MEDIA shall be at DIRECT MEDIA's sole cost and at no cost to COUNTY.

6. Available Space on Fleet and locations for ads

a. Availability of exterior advertising space on dedicated buses, or any other advertising space may change during the period of this agreement for reasons including, but not limited to, the procurement of new buses, or other vehicles and the retiring of old buses, or other vehicles and the implementation of any new advertising opportunities as implemented and approved by BCT. In the event BCT increases or decrease the size of its transit advertising inventory through a reduction or increase in fleet size of more than twenty (20%), the DIRECT MEDIA and COUNTY will renegotiate the compensation terms of the agreement for all affected advertising elements.

b. **Types of BCT Buses Available for Advertising**

Bus Size	Number of Buses	Type of Advertising	Other notes
40 Foot	243	All	
42 Foot Breeze	17	Only tails	
60 Foot Articulated	43	Queen, king or tail only	
60 Foot Articulated	5	No external	Specific bus numbers will be determined at a later date. Internal placards
42 Foot	24	All	
New buses	TBD	TBD	

c. All Express Buses and 5 Selected articulated buses are not available for external advertising. All buses that have space for internal advertising are eligible (express buses have no space)

d. New vehicles added to the fleet, if deemed available for advertising, will be available 60 days after being put into service on BCT routes.

e. No guarantees shall be made about route specific advertising.

f. DIRECT MEDIA shall not self-promote on any BCT vehicle without express written consent from BCT.

g. Potential trade agreements for space initiated by DIRECT MEDIA must be presented to BCT in writing review and approval on a case by case basis.

h. DIRECT MEDIA cannot replace trade agreements with sold space.



7. DIRECT MEDIA shall use all reasonable efforts to sell available advertising space in and upon the interior and exterior commercial advertising spaces on buses, a future light rail system, transit schedules and maps and advertising at Broward County transit facilities and other possible locations. It is the intent of the Parties that there shall be no unfilled advertising spaces; however, it is recognized by the Parties, that DIRECT MEDIA may not at all times during the period of the Agreement be able to sell all available advertising space to commercial or retail concerns. In the event that there is unsold advertising space, DIRECT MEDIA is permitted to display, in any unsold space, not being used by COUNTY, advertisements, permitted by COUNTY's Advertising Policies, for events or promotions associated or affiliated with any Broward County organization or national nonprofit tax exempt organization on a reduced fee or free basis, as outlined below:
  - a. Available advertising space may be offered on a reduced fee basis (not greater than fifty [50%] of the retail cost as shown on the Rate Card in place at the time for the advertising space).
  - b. If a non-profit organization or sponsoring entity approaches DIRECT MEDIA or COUNTY for free space and COUNTY desires to support the promotion, DIRECT MEDIA and COUNTY shall jointly review the request. Guidelines on non-trading or free arrangements shall be provided by Contract Administrator. The guidelines shall not alter the ability of DIRECT MEDIA or COUNTY to develop partnerships in which there is a trade agreement. If space is available and COUNTY elects to support the promotion, the request shall be approved by COUNTY and a Broward County logo shall appear in the advertisement as a supporting partner. Donation of free space for COUNTY- approved promotions shall be limited solely to Public Service Advertisements. Political advertising initiatives shall not be permitted. Donation of free space does not include the cost of furnishing the display materials, installing, repairing or replacing the advertisement, which costs shall be paid by the non-profit organization or sponsoring entity requesting the free space.
8. DIRECT MEDIA's representatives and employees shall inspect, install, remove and service advertising at such times that do not interfere with COUNTY's transit operations, and shall perform all such activities on COUNTY maintenance facilities between the hours of 10:00 p.m. and 5:00 a.m., Monday through Friday. Other times may be coordinated by DIRECT MEDIA in the sole discretion of COUNTY. Access to transit facilities and buses or scheduled availability of specific vehicles shall be coordinated with the respective Superintendent of Maintenance:

COPANS MAINTENANCE FACILITY:  
3201 West Copans Road  
Pompano Beach, Florida  
Telephone: (954) 357-8444

RAVENSWOOD MAINTENANCE FACILITY:  
5440 Ravenswood Road  
Fort Lauderdale, Florida  
Telephone: (954) 357-7718

DIRECT MEDIA shall be responsible for all clean up following the installation or removal of advertising frame racks and/or advertising material. Debris and trash resulting from the installation or removal of advertising frame racks and/or advertising materials may be disposed of in designated disposal/dumpster located on the COUNTY maintenance facilities; provided, however if DIRECT MEDIA's installation or removal activities result in an overflow of debris and trash at the disposal location or dumpster, the DIRECT MEDIA shall remove the debris from the COUNTY maintenance facilities at its sole cost and expense.

9. COUNTY reserves the right to approve all proposed advertising to ensure that the advertisements placed pursuant to this Agreement are in compliance with COUNTY's Advertising Policies and are displayed in a safe, satisfactory, and professional manner, and do not detract from or impair the public image and reputation of COUNTY. Advertisements objectionable to COUNTY shall, at the request of COUNTY, be immediately removed at DIRECT MEDIA's sole cost and expense. For the purposes of this paragraph, "immediately" shall mean within 24 hours of verbal notice to DIRECT MEDIA by the Contract Administrator. In the event DIRECT MEDIA fails to remove the objectionable advertisement immediately, COUNTY may remove it or cause it to be removed, and store or dispose of the advertisement in the manner it deems appropriate in its sole discretion. DIRECT MEDIA shall reimburse COUNTY for all costs of removal, storage and/or disposal of the advertisement. COUNTY shall not be liable or responsible for any damages of whatsoever kind or nature to the advertisement resulting from the removal, storage, or disposal of the advertisement.
10. No advertisement shall suggest endorsement by, or association with, COUNTY, unless specifically authorized by COUNTY in writing. COUNTY may require the addition or inclusion of the words "This is a paid advertisement," or "A paid advertisement," to be added to any to any advertising message or advertisements that, in the sole opinion of COUNTY, might be considered an endorsement or an association.
11. DIRECT MEDIA shall not place any advertising racks or advertising materials that create a situation that violates any laws or is hazardous to the health or safety of bus operators, patrons, or the general public. DIRECT MEDIA shall not place any advertising racks or advertising materials that restricts or impedes visibility from within or otherwise interfere with the safe and efficient operation of the transit service. Exterior advertising shall not obfuscate the view or conflict with COUNTY or Broward County Transit logos or identifying labels, bus or route numbering, safety warnings, or any sign or label required under the Americans with Disabilities

Act of 1990. COUNTY shall at all times retain the right to review and approve the advertisement installed hereunder. The right to review and approve shall include, but not be limited to, type, number and placement.

12. DIRECT MEDIA shall be solely responsible for, and shall reimburse COUNTY, any and all costs /or expense relating to the correction of any damage to the paint or finish of any COUNTY bus or other COUNTY property resulting from the installation, production or removal of advertising displays by DIRECT MEDIA. DIRECT MEDIA shall reimburse COUNTY at the industry standard rate of Ninety Five Dollars (\$95.00) per hour. In the event paint damage is covered by current advertising, the repair of the paint damage may be deferred, at COUNTY's sole option, until either advertising material is not available or is not applied.
13. DIRECT MEDIA acknowledges that COUNTY shall not be responsible for damage to any of DIRECT MEDIA's advertising frame racks or advertising material in the event of damage from any cause of whatever kind or nature. In the event that DIRECT MEDIA's advertising frame racks or advertising material shall become damaged, it shall be DIRECT MEDIA's responsibility at its sole cost and expense to restore or replace advertising frame racks and/or advertising material within two (2) weeks of receiving notice from COUNTY.
14. In the event that the COUNTY determines it is necessary to remove advertising frame racks or advertising material in order to perform repairs or routine maintenance on any bus, CONTRATOR shall restore or replace, at its sole cost and expense, as quickly as possible, but no later than fourteen (14) days from receiving notice from the COUNTY.
15. This provision is not applicable because DIRECT MEDIA will retain the contract with the COUNTY.
16. At the end of the Agreement, DIRECT MEDIA shall immediately transfer all existing advertising contracts to COUNTY or its designee. DIRECT MEDIA will be entitled to the payment of a twenty percent (20%) commission of the gross amount collected from such contracts for a period of six (6) months. For this purpose the DIRECT MEDIA shall not enter into any contract with advertisers, which extends for more than a 12 month period without the express written permission of COUNTY. No payment shall be made to DIRECT MEDIA if the advertising contract is terminated early.

B. COUNTY's RIGHTS AND OBLIGATIONS

1. COUNTY shall provide DIRECT MEDIA bus and other applicable vehicle route assignment and schedule information which identifies buses by unit number or vehicle assignments. This data shall include buses or other vehicles available for the program, and buses or other vehicles under current contract with advertisers. Sole discretion of bus, or vehicle assignments shall remain with BCT.

2. COUNTY shall allow duly authorized and properly identified representatives or employees of DIRECT MEDIA to enter, at times acceptable to COUNTY in its sole discretion, upon COUNTY Transit Division property for the purpose of inspecting, installing and servicing advertising frame racks and/or advertising material.
3. COUNTY shall not permit advertising in and upon interior and exterior commercial advertising spaces on buses, a future light rail system, transit schedules and maps, transit facilities, or other designated locations that compete with DIRECT MEDIA during the term of this Agreement.
4. COUNTY may use unsold space in or upon its buses, at any time, for the purpose of promoting its own business, alone or in conjunction with other businesses or entities. DIRECT MEDIA shall not be responsible for furnishing display materials used under this provision; however, DIRECT MEDIA shall install and remove the display materials at no cost to COUNTY.
5. COUNTY retains the right to a minimum of twelve (12) spaces (11 inches by 28 inches) each on the interior display racks of each bus for the promotion of COUNTY transit ridership or other transit programs. COUNTY shall provide or cause to be provided the display materials to DIRECT MEDIA and DIRECT MEDIA shall install and remove the display materials at no cost to COUNTY.

## EXHIBIT "B"

### Insurance Requirement

The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

TYPE OF INSURANCE	Limits on Liability		
		Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury	Bodily Injury		
	Property Damage		
	Bodily Injury and Property Damage Combined	<b>\$ 1 mil</b>	<b>\$ 2 mil</b>
	Personal Injury		
<b>AUTO LIABILITY*</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto If applicable <i>*IF THERE IS NO USE OF AN AUTO IN PERFORMANCE OF SERVICES, THIS REQUIREMENT IS WAIVED.</i>	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Bodily Injury and Property Damage Combined	<b>\$ 1 mil</b>	
<b>EXCESS LIABILITY</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form	Bodily Injury and Property Damage Combined	<b>\$</b>	
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b>	(each accident)	STATUTORY	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>		<b>\$ 1 mil</b>	
<input checked="" type="checkbox"/> <b>PROFESSIONAL LIABILITY</b>	Claims-made form w/ Extended Reporting Period of <b>3 yr.</b> Deductible not to exceed: <b>\$250k</b>		<b>\$ 1 mil</b>
<input type="checkbox"/> <b>PROPERTY COVERAGE /BUILDER'S RISK "ALL RISK" WITH WIND AND FLOOD</b> Coverage must remain in force until written final acceptance by County.	Maximum Deductible: <b>\$10 k</b> <b>DED for WIND or WIND &amp; FLOOD not to exceed 5% of completed value</b> <b>CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE</b>		<b>Completed Value</b>
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. Coverage must be "All Risk", completed value. Coverage must remain in force until written final acceptance by County.	Maximum Deductible: <b>\$10 k</b> <b>CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE</b>		<b>Completed Value</b>
Description of Operations/Locations/Vehicles " <b>Broward County</b> " is listed as an additional insured for commercial general liability and business automobile policies. "Waiver of subrogation" in favor of Certificate Holder applies to general liability, automobile liability, and workers compensation." Indicate Bid#, RLI, RFP, and Project Manager on COI. <b>REFERENCE: Transit Advertising Program - BCT</b>			

**CANCELLATION:** Thirty (30) days written notice of cancellation is required to the Certificate Holder:

**Certificate Holder:**  
 Broward County  
 115 South Andrews Avenue  
 Fort Lauderdale, FL 33301  
**Attn: BCT**



ELIZABETH PLASKA  
 dc=cty, dc=broward, dc=bc,  
 ou=Organization, ou=BCC, ou=RM,  
 ou=Users, cn=ELIZABETH PLASKA  
 2016.09.23 15:34:10 -04'00'

Risk Management Division

VALID FOR ONE YEAR FROM THE DATE OF SIGNATURE

**EXHIBIT "C"**

**CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS**

RLI/Bid/Contract No. \_\_\_\_\_

Project Title \_\_\_\_\_

\_\_\_\_\_

DIRECT MEDIA hereby swears under penalty of perjury that:

1. DIRECT MEDIA has paid all Subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following Subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or suppliers name and address	Date of disputed invoice	Amount in dispute
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. The undersigned is authorized to execute this Certification on behalf of DIRECT MEDIA.

Dated \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
DIRECT MEDIA

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS  
(Continued)

STATE OF \_\_\_\_\_ )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of officer taking acknowledgment)  
**typed, printed or stamped**

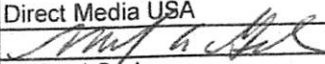
\_\_\_\_\_  
(Title or rank)

My commission expires:

\_\_\_\_\_  
(Serial number, if any)

**EXHIBIT "D"**  
**ADVERTISING PRICE SHEET**


Column1	Column2	Column3	Column4
<b>Exterior Media Ads</b>	<b>Production Cost</b>	<b>Installation Cost</b>	<b>Removal Cost</b>
Full Bus Wrap - 40' Bus	\$3,000.00	\$1,200.00	\$300.00
Ultra-Super King - 96"h x 264"w	\$500.00	\$350.00	\$50.00
Ultra Square - 96"h x 112"w	\$400.00	\$350.00	\$50.00
Kong Poster - 36"h x 226"w	\$125.00	\$125.00	\$50.00
Headliner - 14"h x 372"w	\$50.00	\$50.00	\$25.00
King Ad Poster - 30"h x 144"w	\$30.00	\$25.00	\$0.00
Full Tail Wrap - 96"h x 112"w	\$250.00	\$299.00	\$50.00
Tail Poster - 21"h x 72"w	\$25.00	\$25.00	\$0.00
Back Rack Display Poster - 15"h x 46"w	\$20.00	\$20.00	\$0.00
Michaelangelo - 48"H x 24"w	\$30.00	\$25.00	\$0.00
<b>Interior Media Ads</b>	<b>Production Cost</b>	<b>Installation Cost</b>	<b>Removal Cost</b>
Interior Card - 11"h x 24"h	\$3.00	\$2.00	\$0.00
Interior Card - 11"h x 28"h	\$3.00	\$2.00	\$0.00
Interior Card - 11"h x 42"h	\$4.00	\$2.00	\$0.00

Company Name:	Direct Media USA
Signed:	
Printed:	Michael Geden
Date:	10/28/16





**Federal Transit Administration (FTA)  
United States Department of Transportation (USDOT)  
Funding Supplement**



**Broward County Board of  
County Commissioners  
TRANSPORTATION  
DEPARTMENT –  
TRANSIT DIVISION**

**Table of Contents**

**AUTHORITY ..... 4**

**DEFINITIONS ..... 4**

**FURTHER INFORMATION..... 4**

**PART A: GENERAL CONDITIONS – APPLICABLE TO ALL CONTRACTS..... 5**

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES..... 5

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS..... 5

3. FEDERAL CHANGES..... 5

4. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS. .... 6

5. ACCESS TO RECORDS AND REPORTS ..... 6

6. CIVIL RIGHTS REQUIREMENTS..... 7

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)..... 8

8. CONTRACT COMPLIANCE MONITORING. .... 13

9. ENERGY CONSERVATION ..... 13

10. TERMINATION..... 13

**PART B: ADDITIONAL REQUIREMENTS – CONDITIONAL..... 16**

11. RECYCLED PRODUCTS..... 16

12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION..... 16

13. BUY AMERICA..... 16

14. RESOLUTION OF DISPUTES ..... 16

15. LOBBYING ..... 17

16. CLEAN AIR..... 17

17. CLEAN WATER REQUIREMENTS..... 18

18. BONDING REQUIREMENTS..... 18

19. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS ..... 18

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT..... 26

21. TRANSIT EMPLOYEE PROTECTIVE CONTRACTS ..... 27

22. FLY AMERICA..... 29

23. CARGO PREFERENCE ..... 29

24. DRUG AND ALCOHOL TESTING..... 30

25. PATENT AND RIGHTS IN DATA ..... 30

26. PRIVACY ACT..... 33

---

27.	CHARTER BUS.....	34
28.	SCHOOL BUS REQUIREMENTS.....	34
29.	BUS TESTING.....	34
30.	PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.....	35
31.	SEISMIC SAFETY.....	35
32.	TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATION.....	36
33.	NATIONAL ITS ARCHITECTURE.....	36
34.	ACCESS FOR INDIVIDUALS WITH DISABILITIES.....	36
	<b>EXHIBIT 1: Letter of Intent.....</b>	<b>38</b>
	<b>EXHIBIT 2: Application for Evaluation of Good Faith Effort.....</b>	<b>39</b>
	<b>EXHIBIT 3: Monthly DBE Utilization Report.....</b>	<b>40</b>
	<b>EXHIBIT 4: Final DBE Utilization Report.....</b>	<b>41</b>
	<b>EXHIBIT 5: Government-Wide Debarment and Suspension (Nonprocurement) Certification.....</b>	<b>42</b>
	<b>EXHIBIT 6: Buy America Certification.....</b>	<b>43</b>
	<b>EXHIBIT 7: Restrictions On Lobbying Certification.....</b>	<b>44</b>
	<b>EXHIBIT 8: Drug and Alcohol Testing Program Compliance Certification.....</b>	<b>45</b>
	<b>EXHIBIT 9: Bus Testing Compliance Certification.....</b>	<b>46</b>
	<b>EXHIBIT 10: Pre-Award and Post-Delivery Audit Requirements Certification.....</b>	<b>47</b>
	<b>EXHIBIT 11: Transit Vehicle Manufacturer (Tvm) Certification of Compliance with Sub Part D, Part 26.....</b>	<b>48</b>

**AUTHORITY**

This solicitation, purchase order, or Contract (all of which shall be referred to hereinafter as the "Contract" or "underlying Contract") is funded in part by funds received from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of this Contract is subject to the requirements of financial assistance agreements between Broward County, a political subdivision of the state of Florida (hereinafter referred to as "COUNTY"), and the United States Department of Transportation (USDOT). This Contract is subject to the conditions herein and which are set forth in greater detail in 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; Federal Transit Administration (FTA) Circular 4220.1F, "Third Party Contracting Guidance," as may be amended from time to time; and other laws and regulations governing procurement activities for Broward County programs and projects. Conditions imposed by the FTA are also described in Appendix A to FTA's "Best Practices Procurement Manual," available at:

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual> References to the Code of Federal Regulations (CFR) website are available at: <http://www.ecfr.gov> .

---

**DEFINITIONS**

As used in this document, "Board" means the Broward County Board of County Commissioners." Contract" means any binding agreement, regardless of how called, for the procurement or disposal of supplies, services, or construction awarded by any officer or agency of COUNTY. "CONTRACTOR" means the person, firm, or corporation or business entity that enters into a Contract with COUNTY and includes all partners and all joint ventures of such person with whom COUNTY has contracted and who is responsible for the acceptable performance of the work and for the payment of all legal debts pertaining to the work. "Subcontractor" means a person, firm or corporation or combination thereof having a direct Contract with CONTRACTOR for all or any portion of the work or who furnishes material worked into a special design according to the plans and specifications for such work, but not those who merely furnish equipment or materials required by the plans and specifications.

---

**FURTHER INFORMATION**

If you have any questions or need clarification as to the applicability of any term, condition, or requirement as contained in Part A, General Conditions – Applicable to All Contracts, and Part B, Additional Requirements – Conditional, of this Contract, contact The Safety and Compliance Section, Broward County Transit Division, at 954-357-8300.

---

**PART A: GENERAL CONDITIONS – APPLICABLE TO ALL CONTRACTS****1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.**

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

**2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

- a) CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA-assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.
- b) CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.
- c) CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

**3. FEDERAL CHANGES.**

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between COUNTY and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. CONTRACTOR's failure to so comply shall constitute a material breach of this Contract. CONTRACTOR agrees to include this language in each Subcontract financed in whole or in part with Federal assistance provided by FTA.

#### **4. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.**

The provisions contained in this FTA/USDOT Funding Supplement include, in part, standard terms and conditions required by the U.S. Department of Transportation (USDOT), whether or not expressly set forth in the Contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Broward County requests which would cause the COUNTY to be in violation of the FTA terms and conditions. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

#### **5. ACCESS TO RECORDS AND REPORTS**

- a) CONTRACTOR agrees to provide COUNTY, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. CONTRACTOR also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or his authorized representatives including any Project Management Oversight ("PMO") CONTRACTOR access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
  
- b) In the event that COUNTY, which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a), enters into a Contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, CONTRACTOR shall make available records related to the Contract to COUNTY, the Secretary of Transportation and the Comptroller General or any authorized officer, agent, or employee of any of them for the purposes of conducting an audit and inspection.

- c) CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- d) CONTRACTOR agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case CONTRACTOR agrees to maintain same until COUNTY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

## 6. CIVIL RIGHTS REQUIREMENTS

- a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Equal Employment Opportunity
  - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

- (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- (4) Equal Employment Opportunity Requirements for Construction Activities: In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Contractor agrees to comply, and assures the compliance of each subcontractor, with:
- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.,
- (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity."
- c) CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

- a) This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.
- b) The CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of Contract, which may result in the termination of the Contract or such other remedy as COUNTY may deem appropriate. Each subcontract the CONTRACTOR signs with a Subcontractor must include the assurance in this paragraph.



- c) The Disadvantaged Business Enterprise (DBE) regulation (49 CFR Part 26) establishes requirements for setting an overall goal for DBE participation in federally-funded contracts. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal COUNTY would expect DBEs to achieve in the absence of discrimination.
- d) Since this project is funded in part using federal funds, it is the policy of the Broward County Office of Economic and Small Business Development to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, are afforded maximum opportunity to receive and participate as Subcontractors and suppliers on all Contracts awarded by COUNTY; therefore, good-faith efforts must be made to provide DBEs an opportunity to participate in the project in accordance with the DBE Program Plan.
- e) COUNTY fully supports the Federal government's Disadvantaged Business Enterprises Program.
  - i. The overall goal setting provisions of 49 CFR Part 26 require that the COUNTY, as a recipient of federal funds, set overall goals based on demonstrable evidence of the relative availability of ready, willing and able DBEs in the areas from which the COUNTY obtains contractors. In this regard, the COUNTY has established DBE participation goals, and said goals have been established based primarily on the availability of certified DBE firms that are ready, willing, and able to participate in the project.

The Office of Economic and Small Business Development will review all forms to determine bidders'/proposers' responsibility:

1. Letter of Intent to Utilize a DBE Subcontractor/Subconsultant – Exhibit 1.
2. DBE Good Faith Effort Evaluation Report, only required if goals were not met – Exhibit 2.

These forms are included herein as Exhibits 1 and 2. **All forms may be downloaded from the Small Business Development Division website.** <http://www.broward.org/ECONDEV/SMALLBUSINESS/Pages/compliance.aspx>

**IF DBE PARTICIPATION HAS BEEN TARGETED THROUGH RACE-NEUTRAL MEANS (NO DBE NUMERICAL PARTICIPATION GOAL), EACH BIDDER/RESPONDER IS STRONGLY ENCOURAGED TO SUBMIT THE FORMS SET FORTH ABOVE PRIOR TO AWARD OF YOUR BID, OFFER, OR PROPOSAL.**

**Letter of Intent (Exhibit 1):** Letter of Intent must be executed by the Bidder and countersigned by all DBE Subcontractors.

Each DBE listed on the Letter of Intent must be certified prior to bid opening as DBE in order to be eligible for award.

For further information regarding DBE submittals, contact the Office of Economic and Small Business Development Division at (954) 357-6400.

**Application for Evaluation of Good Faith Effort (Exhibit 2):** Bidder that submits an **Application for Evaluation of Good Faith Effort**, Exhibit 2, must be able to demonstrate through proper documentation its reasonable good-faith efforts to meet the goal, if Bidder wishes to remain eligible for award.

Reasonable efforts as determined by the Office of Economic and Small Business Development to meet the DBE Participation goals may include, but are not limited to:

- Attendance at any scheduled pre-bid meeting concerning DBE participation.
- Timely advertisement in general circulation media, trade association publications, and minority-focus media.
- Timely notification of minority business or CONTRACTOR groups and associations of solicitation for specific sub-bids.
- Proof of written solicitations to DBE firms.
- Efforts to select portions of the work proposed to be performed by DBE in order to increase the likelihood of achieving the stated goal.
- Efforts to provide DBEs that need assistance in obtaining bonding or insurance required by the Bidder or COUNTY.
- A report submitted by the Bidder to the Small Business Development Division prior to award explaining the Bidder's efforts to obtain DBE participation. The report shall include the following:
  - A detailed statement of the timely efforts made to negotiate with DBEs including, at a minimum, the names, addresses and telephone numbers of DBEs who were invited to bid or otherwise contacted;
  - A description of the information provided to DBE regarding the plans and specifications for portions of the work to be performed; and a detailed statement of the reasons why additional Contracts with DBE, if needed to meet the stated goal, were not reached.
  - A detailed statement of the efforts made to select portions of the work proposed to be performed by DBE in order to increase the likelihood of achieving the stated goal.
  - As to each DBE that bids on a subcontract but declared "unqualified" by the Bidder, a detailed statement of the reasons for the Bidder's conclusion.
  - As to each DBE invited to bid, but the Bidder considers to be unavailable because of a lack of bid response or submission of a bid which was not the

low responsible bid, an Unavailability of DBE Certificate signed by the Bidder.

For the purposes of goal achievement, the COUNTY requires the successful Bidder to use firms certified as DBEs in accordance with Federal Guidelines.

The Florida Department of Transportation (FDOT) maintains a directory of certified DBE firms that are eligible to participate on DBE contracts within the state of Florida.

A listing of these DBEs can be viewed at the following Unified Certification Program (UCP) Website:

<http://www3b.dot.state.fl.us/equalopportunityofficebusinessdirectory/>

**IF DBE PARTICIPATION HAS BEEN TARGETED THROUGH RACE-NEUTRAL MEANS, THE FORMS SET FORTH ABOVE NEED NOT BE SUBMITTED.**

For purposes of this section, the term, “DBE Race-Neutral Participation,” means the Office of Economic and Small Business Development Division (OESBD) has determined that because federal funds are available for this project, DBE participation has been targeted through the use of RACE-NEUTRAL means. Race-Neutral does not mean that no efforts are made to facilitate DBE participation. Race-Neutral DBE participation occurs when a DBE wins a contract or subcontract that was not assigned numerical DBE goals, or when the DBE status was not considered in making the award. Some-examples of Race-Neutral means can be found in 49 CFR 26.51.

Although there are no numerical goals assigned to DBE race-neutral participation projects, bidders/responders are highly encouraged to utilize the services of DBE-certified firms as much as possible.

- f) CONTRACTOR agrees that throughout the term of this Contract, the services as provided by the firms listed on **Exhibit 1 (Letter of Intent)** shall remain at least at the percentage levels set forth therein.
- g) CONTRACTOR shall pay its Subcontractors and suppliers within ten (10) days for a construction Contract or within thirty (30) days for a non-construction Contract following receipt of payment from the COUNTY for such subcontracted work or supplies. CONTRACTOR agrees that if it withholds an amount as retainage from its Subcontractors or suppliers, that it will release such retainage and pay same within ten (10) days for a construction Contract or within thirty (30) days for a non-construction Contract following receipt of payment of retained amounts from COUNTY, or within ten (10) days for a construction Contract or within thirty (30) days for a non-construction Contract after the Subcontractor has satisfactorily completed its work, whichever shall first occur.
- h) CONTRACTOR agrees that nonpayment of a Subcontractor or supplier shall be a material breach of this Contract and that COUNTY may, at its option, increase

allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such Subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude COUNTY's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its Subcontractor or supplier.

- i) CONTRACTOR agrees to complete and submit a monthly report to the Office of Economic and Small Business Development, with copy to the using department project manager, on DBE participation, which should contain a record of payments made to its DBE Subcontractors during the current reporting period. CONTRACTOR shall utilize the form attached as **Exhibit 3 – Monthly DBE Utilization Report**.
- j) CONTRACTOR agrees to complete and submit a Final Monthly DBE Participation Report containing the total amount paid to its DBE Subcontractors. This report must be submitted with the CONTRACTOR's request for final payment and release of retainage, if applicable. CONTRACTOR shall utilize the form attached as **Exhibit 4- Final Monthly DBE Utilization Report**.
- k) CONTRACTOR shall certify to COUNTY the amounts paid to each DBE involved in the project as either a joint venture partner or pursuant to a subcontract with the disadvantaged businesses. All such certifications shall be signed by both CONTRACTOR and DBEs. One of the main purposes of these provisions is to make sure that DBEs actually perform work committed to them at Contract award.
- l) CONTRACTOR agrees that failure to provide appropriate certification as to the payment of DBEs and participants in the Contract, and provide certification in a form acceptable to COUNTY that disadvantaged business participation requirements of the Contract have been met, notwithstanding any other provisions of this Contract, shall be cause for COUNTY to withhold further payments under the Contract until such time as such certification is received and accepted by COUNTY, and shall not entitle CONTRACTOR to terminate the Contract, to cease work to be performed, or to be entitled to any damages or extensions of time, whatsoever, due to such withholding of payment or delay in work associated thereto.
- m) If CONTRACTOR fails to comply with the requirements herein, COUNTY shall have the right to exercise any right or remedy provided in the Contract or under applicable law, with all such rights and remedies being cumulative.
- n) CONTRACTOR shall not terminate a DBE subcontract for convenience and then perform the work with its own forces or its affiliate without the COUNTY's prior written consent. CONTRACTOR shall inform COUNTY immediately when a DBE firm is not able to perform or if CONTRACTOR believes the DBE firm should be

replaced for any other reason, so that the Office of Economic and Small Business Development may review and verify the good faith efforts of CONTRACTOR to substitute the DBE firm with another DBE firm. Whenever a DBE firm is terminated for any reason, including cause, CONTRACTOR shall make good faith efforts to find another DBE firm to perform the work required of the original DBE firm.

#### **8. CONTRACT COMPLIANCE MONITORING.**

- a) Compliance monitoring is conducted to determine if CONTRACTOR and/or Subcontractors are complying with the requirements of the DBE Program. Failure of the CONTRACTOR to comply with this provision may result in the COUNTY imposing penalties or sanctions pursuant to the provisions of the DBE regulation, 49 CFR Part 26.
- b) Contract compliance will encompass monitoring for Contract dollar achievement and DBE CONTRACTOR utilization. The Office of Economic and Small Business Development staff will have the authority to audit and monitor all Contracts and Contract-related documents related to COUNTY projects. The requirements of the DBE Program are applicable to all CONTRACTORS, general CONTRACTORS, and Subcontractors.
- c) CONTRACTOR shall be responsible for ensuring proper documentation with regard to its utilization and payment of DBE Subcontractors.

#### **9. ENERGY CONSERVATION**

CONTRACTOR agrees to comply with mandatory standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. CONTRACTOR further agrees to include this provision in each subcontract financed in whole or in part with federal assistance provided by FTA.

#### **10. TERMINATION.**

This Contract may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Contract may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Contract may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. The parties agree that if COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Contract may be terminated for cause for reasons including, but not limited to, CONTRACTOR's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Contract. This Contract may also be terminated by the Board:

Upon the disqualification of CONTRACTOR as a DBE by COUNTY's Director of the Office of Economic and Small Business Development Division if CONTRACTOR's status as a DBE was a factor in the award of this Agreement and such status was misrepresented by CONTRACTOR;

Upon the disqualification of CONTRACTOR by COUNTY's Director of the Office of Economic and Small Business Development due to fraud, misrepresentation, or material misstatement by CONTRACTOR in the course of obtaining this Contract or attempting to meet the DBE contractual obligations;

Upon the disqualification of one or more of CONTRACTOR's DBE participants by COUNTY's Director of the Office of Economic and Small Business Development if any such participant's status as a DBE firm was a factor in the award of this Contract and such status was misrepresented by CONTRACTOR or such participant;

a. Upon the disqualification of one or more of CONTRACTOR's DBE participants by COUNTY's Director of the Office of Economic and Small Business Development if such DBE participant attempted to meet its DBE contractual obligations through fraud, misrepresentation, or material misstatement; or

b. If CONTRACTOR is determined by COUNTY's Director the Office of Economic and Small Business Development to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the DBE status of its disqualified DBE participant.

Notice of termination shall be provided in writing except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare, may be verbal notice that shall be promptly confirmed in writing.

In the event this Contract is terminated for convenience, CONTRACTOR shall be paid for any services properly performed under the Contract through the termination date specified in the written notice of termination. CONTRACTOR acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are hereby

acknowledged by CONTRACTOR, for COUNTY's right to terminate this Agreement for convenience.

**In the event that the underlying Contract contains a termination provision which conflicts with the termination provision above, the termination provisions set forth in the underlying Contract shall prevail over the termination provision set forth in this FTA/USDOT Funding Supplement.**

**PART B: ADDITIONAL REQUIREMENTS – CONDITIONAL****(Please read each qualifying condition carefully.)****11. RECYCLED PRODUCTS**

If this Contract is for items designated in Subpart B, 40 CFR Part 247 by the EPA, and COUNTY or CONTRACTOR procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year using federal funds, the CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

If this Contract has a value of \$25,000 or more, this procurement is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTORS, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR agrees to comply with 49 CFR 29, Subpart C, and must include the requirement to comply 49 CFR 29, Subpart C, in each Subcontract financed in whole or in part with federal assistance provided by FTA. **(The form for certifying compliance, Government-wide Debarment and Suspension, is attached as Exhibit 5.)**

**13. BUY AMERICA**

If this Contract exceeds \$150,000, the CONTRACTOR agrees to comply with 49 USC §5323(j)(13) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Bidder or offeror must submit to COUNTY the appropriate Buy America certification, **the certification form is attached as Exhibit 6**, with all bids or proposals on FTA-funded Contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive.

**14. RESOLUTION OF DISPUTES**

Disputes – Unless the Contract provides otherwise, disputes arising in the performance of this Contract which are not resolved by agreement of the parties



shall be decided in writing by the COUNTY Project Manager for the Contract. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to the COUNTY Contract Administrator. In connections with any such appeal, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position.

The decision of the Contract Administrator shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

Performance During Dispute – Unless otherwise directed by COUNTY, CONTRACTOR shall perform under the Contract while matters in dispute are being resolved.

Unless the Contract provides otherwise, jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Contract shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS CONTRACT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

## 15. LOBBYING

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the COUNTY. **A Restrictions on Lobbying Certification is attached as Exhibit 7.**

## 16. CLEAN AIR

The Clean Air requirements apply to all Contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

- a) CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, et seq. CONTRACTOR agrees to report each violation to Broward

County and agrees that COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- b) CONTRACTOR further agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **17. CLEAN WATER REQUIREMENTS**

If this Contract is valued at \$100,000 or more, CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.

- a) CONTRACTOR agrees to report each violation to COUNTY and agrees that COUNTY will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.
- b) CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **18. BONDING REQUIREMENTS**

CONTRACTOR agrees to comply with the terms and conditions relating to bid guaranty, performance bond and payment bond ("Bonding Requirements") as set forth in the underlying Contract to which this FTA/USDOT Funding Supplement is attached. In the event that the underlying Contract involves a construction or facility improvement exceeding \$100,000, and the underlying Contract: (1) does not contain specific Bonding Requirements, or (2) the Bonding Requirements do not meet the minimum requirements set forth below, the following Bonding Requirements shall apply:

CONTRACTOR shall provide a bid guarantee from each Bidder equivalent to five percent (5%) of the bid price, a performance bond on the part of the CONTRACTOR for 100 percent (100%) of the Contract price and a payment bond on the part of the CONTRACTOR for 100 percent (100%) of the Contract price in the form and of a type acceptable by COUNTY.

#### **19. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

If this purchase order or Contract involves a construction project over \$2,000, the CONTRACTOR agrees to comply with Davis-Bacon and Copeland Act requirements at 40 USC 3141, et seq., and 18 USC 874. The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) and are set forth in 29 CFR 5.5(a). Section 29 CFR 5.5(a) is reproduced in its entirety below:

- a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual

construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency; *provided*, that such modifications are first approved by the Department of Labor):

**(1) Minimum wages.**

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any Contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) a) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

b) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

c) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the Contracting Officer, or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

d) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided*, that the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

**(2) Withholding.**

COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this Contract or any other Federal Contract with the same prime CONTRACTOR, or any other federally-assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Broward County may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records.**

- (i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) a) The CONTRACTOR shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to COUNTY if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all Subcontractors. CONTRACTORS and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Transit Administration if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the COUNTY, the CONTRACTOR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime CONTRACTOR to require a Subcontractor to provide addresses and social security numbers to the prime CONTRACTOR for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

d) The falsification of any of the above certifications may subject the CONTRACTOR or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The CONTRACTOR or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of COUNTY or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and Trainees--**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or Subcontractor 's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work



performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, who is not registered and participating in a training plan approved by the Employment and Training Administration, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) **Compliance with Copeland Act requirements.** The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The CONTRACTOR or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any Subcontractors or lower tier Subcontractor with all the Contract clauses in 29 CFR 5.5.

**(7) Contract termination:** debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a Subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

**(9) Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its Subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility.**

(i) By entering into this Contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government Contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

If this purchase order or Contract involves a construction project in excess of \$100,000 or more, the CONTRACTOR shall comply with the Contract and Work Hours Safety Act, 40 USC 3701 and 29 CFR 5.5 (b) are reproduced below.

As used in the paragraphs below, the terms laborers and mechanics include watchmen and guards.

a) **Overtime requirements.** No CONTRACTOR or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times (1½)

- the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b) **Violation**; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section, the CONTRACTOR and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and Subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of ten dollars (\$10.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- c) **Withholding for unpaid wages and liquidated damages.** COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or Subcontractor under any such Contract or any other Federal Contract with the same prime CONTRACTOR, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- d) **Subcontracts.** The CONTRACTOR or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

## 21. TRANSIT EMPLOYEE PROTECTIVE CONTRACTS

If this Contract involves transit operations performed by employees of a CONTRACTOR recognized by FTA to be a transit operator:

- a) CONTRACTOR agrees to comply with the applicable transit employee protective requirements, as follows:
- 1) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work on the underlying Contract

in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying Contract. CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements this subsection 1., however, do not apply to any Contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections 2. and 3. of this clause.

- 2) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying Contract, CONTRACTOR agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Contract or Cooperative Contract with the state. CONTRACTOR agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.
- 3) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

- b) CONTRACTOR also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **22. FLY AMERICA**

CONTRACTOR agrees to comply with 49 USC 40118 (the "Fly America" Act) in accordance with the General Services Administration regulations at 41 CFR part 301-10, which provide that recipients and subrecipients of federal funds and their CONTRACTORS are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier is used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **23. CARGO PREFERENCE**

The Cargo Preference requirements apply to all Contracts and subcontracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Cargo Preference - Use of United States-Flag Vessels - CONTRACTOR agrees:

- a) to use privately-owned United States-Flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the COUNTY (through CONTRACTOR in the case of a Subcontractor's bill of lading.);
- c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## 24. DRUG AND ALCOHOL TESTING

If this Contract involves a safety-sensitive function on behalf of COUNTY, the CONTRACTOR agrees to participate in Broward County Transit Division's drug and alcohol testing program or agrees to establish and implement its own drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the USDOT or its operating administrations, the State Oversight Agency, or COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process.

In the event CONTRACTOR subcontracts all or part of the transit service to a third party, a similar requirement including review and approval by the COUNTY's Contract Administrator must be included in any Contract.

CONTRACTOR further agrees to certify, prior to the commencement of services under this Contract or purchase order and annually thereafter, compliance with current FTA regulations, and to submit the Management Information System (MIS) reports before March 15 to the Director, Transit Division (**a model form for certifying compliance, Drug and Alcohol Testing Program Compliance Certification, is attached as Exhibit 8**). To certify annual compliance, CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Contracts," which is published annually in the Federal Register.

## 25. PATENT AND RIGHTS IN DATA

If this Contract involves patent and rights in data requirements for federally-assisted research projects in which FTA finances in whole or in part the development of a product or information, CONTRACTOR agrees to be bound by the terms and conditions specified below.

### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

a) **Rights in Data** - The following requirements apply to each Contract involving experimental, developmental or research work:

- 1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports,

catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

- 2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Attachment has been added:
  - A) Except for its own internal use, CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any Contract with an academic institution.
  - B) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
    1. Any subject data developed under that Contract, whether or not a copyright has been obtained; and
    2. Any rights of copyright purchased by the COUNTY or CONTRACTOR using Federal assistance in whole or in part provided by FTA.
  - C) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the COUNTY and CONTRACTOR performing experimental, developmental, or research work required by the underlying Contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever,

all data developed under that Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the COUNTY or CONTRACTOR's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- D) CONTRACTOR agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. CONTRACTOR shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - E) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - F) Data developed by the COUNTY or CONTRACTOR and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the COUNTY or CONTRACTOR identifies that data in writing at the time of delivery of the Contract work.
  - G) Unless FTA determines otherwise, CONTRACTOR agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- 3) Unless the Federal Government later makes a contrary determination in writing, irrespective of CONTRACTOR's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), CONTRACTOR agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," 37 C.F.R. Part 401.



- 4) CONTRACTOR also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- b) **Patent Rights** - The following requirements apply to each Contract involving experimental, developmental, or research work:
- 1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the underlying Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the COUNTY and CONTRACTOR agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
  - 2) Unless the Federal Government later makes a contrary determination in writing, irrespective of CONTRACTOR's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the COUNTY and CONTRACTOR agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," 37 C.F.R. Part 401.
  - 3) CONTRACTOR also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## 26. PRIVACY ACT

The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any Contract:

- a) CONTRACTOR agrees to comply with, and assures the compliance of its employees with, information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552a.

Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of the Act, apply to those individuals involved,

and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

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

## **27. CHARTER BUS**

If this is an Operational Service Contract, CONTRACTOR agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR Part 604.

## **28. SCHOOL BUS REQUIREMENTS**

If this is an Operational Service Contract, pursuant to 49 USC 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally-funded equipment, vehicles, or facilities.

## **29. BUS TESTING**

**The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.** If this Contract pertains to the acquisition of rolling stock/turnkey, the CONTRACTOR manufacturer agrees to certify, prior to commencement of services under this Contract, to comply with 49 USC A5323(c) and FTA's implementing regulations at 49 CFR Part 665, and shall perform the following:

- a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to COUNTY at a point in the procurement process specified by COUNTY which will be prior to COUNTY's final acceptance of the first vehicle.
- b) A manufacturer who releases a report under paragraph a. above shall provide notice to the operator of the testing facility that the report is available to the public.
- c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to COUNTY prior to recipient's final acceptance of the first vehicle. If the

configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

- d) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**A Bus Testing Compliance Certification is attached as Exhibit 9.**

### **30. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**

If this Contract pertains to the acquisition of rolling stock, the CONTRACTOR agrees to comply with 49 USC §5323(m) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- a) Buy America Requirements. The CONTRACTOR shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists: 1) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- b) Solicitation Specification Requirements. CONTRACTOR shall submit evidence that it will be capable of meeting the bid specifications.
- c) Federal Motor Vehicle Safety Standards (FMVSS). CONTRACTOR shall submit: 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**A Pre-Award and Post-Delivery Audit Requirements Certification is attached as Exhibit 10.**

### **31. SEISMIC SAFETY**

If this Contract pertains to the construction of new buildings or additions to existing buildings, CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations at 49 CFR Part 41, and will certify compliance to the extent required by the regulation. CONTRACTOR also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is

in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

### **32. TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATION**

If this Contract involves the procurement of transit vehicles, the CONTRACTOR must obtain from each Transit Vehicle Manufacturer (TVM), distributor, or dealer, and submit with its bid, a TVM certification stating that, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, the TVM certifies that it has complied with the requirements of 49 CFR 26.49, by submitting a current annual DBE Goal to the FTA. **A Transit Vehicle Manufacturer (TVM) Certification of Compliance is attached as Exhibit 11.**

### **33. NATIONAL ITS ARCHITECTURE**

If this Contract involves an Intelligent Transportation System project (ITS), CONTRACTOR agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA LU Section 5307, Chapter, 23 U.S.C. section 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects, " 66 Fed. Reg. 1455 et seq., January 8, 2001, and to any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

### **34. ACCESS FOR INDIVIDUALS WITH DISABILITIES**

CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation, and that special efforts must be made to plan and assure that they do have similar access. CONTRACTOR also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, CONTRACTOR agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives. Among these regulations and directives are:

- a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F. R. Part 37;

- b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- f) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act," 29 C.F.R. Part 1630;
- h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- k) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

**EXHIBIT 1: Letter of Intent  
OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT**

**LETTER OF INTENT BETWEEN BIDDER/OFFEROR AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) /  
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) SUBCONTRACTOR/SUPPLIER  
(Form to be completed and signed for each DBE/ACDBE firm)**

<b>Solicitation Number:</b>	<b>Project Title:</b>
-----------------------------	-----------------------

Bidder/Offeror Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_ Phone: \_\_\_\_\_

DBE/ACDBE Subcontractor/Supplier Name: \_\_\_\_\_

Check one: Address: \_\_\_\_\_

DBE City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

ACDBE Authorized Representative: \_\_\_\_\_

- A. This is a letter of intent between the bidder/offeror on this project and a DBE/ACDBE firm for the DBE/ACDBE to perform subcontracting work on this project, consistent with Title 49 CFR Parts 26 or 23 as applicable.
- B. By signing below, the bidder/offeror is committing to utilize the above-named DBE/ACDBE to perform the work described below.
- C. By signing below, the above-named DBE/ACDBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and DBE/ACDBE affirm that if the DBE/ACDBE subcontracts any of the work described below, it may only subcontract that work to another DBE/ACDBE if it wishes to receive DBE/ACDBE credit for said work.

<b>Work to be performed by DBE/ACDBE Firm</b>			
Description	NAICS *	DBE/ACDBE Contract Amount †	DBE/ACDBE Percentage of Total Project Value

**AFFIRMATION:** I hereby affirm that the information above is true and correct.

**Bidder/Offeror Authorized Representative**

\_\_\_\_\_  
(Signature) (Title) (Date)

**DBE/ACDBE Subcontractor/Supplier Authorized Representative**

\_\_\_\_\_  
(Signature) (Title) (Date)

\* Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.

† To be provided only when the solicitation requires that bidder/offer include a dollar amount in its bid-offer.

*In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.*

**EXHIBIT 2: Application for Evaluation of Good Faith Effort**

APPLICATION FOR EVALUATION OF GOOD FAITH EFFORT  
PURSUANT TO TITLE 49 CFR PARTS 23 AND 26

SOLICITATION NO.: \_\_\_\_\_

Please check one of the following to indicate the program goal on this solicitation:  ACDBE  DBE

PROJECT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

The undersigned representative of the prime contractor affirms that his/her company has contacted Disadvantaged Business Enterprise (DBE)/ Airport Concessions Disadvantaged Business Enterprise (ACDBE) certified firms in good faith effort to meet the DBE or ACDBE goal for this solicitation but has not been able to meet the goal. Consistent with the requirements of Title 49 CFR Part 26, Appendix A, the prime contractor hereby submits documentation (attached to this form) of good faith efforts made and requests to be evaluated under these requirements.

The prime contractor understands that a determination of good faith effort to meet the contract goal is contingent on both the information provided by the prime contractor as an attachment to this application and the other factors listed in Appendix A, of Title 49 CFR Part 26, as those factors are applicable with respect to this solicitation. The prime contractor acknowledges that the determination of good faith effort is made by the Director of the Office of Economic and Small Business Development, as the Disadvantaged Business Enterprise Liaison Officer (DBELO), in keeping with federal requirements.

SIGNATURE: \_\_\_\_\_

PRINT NAME/ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT 3: Monthly DBE Utilization Report**



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT  
MONTHLY DBE UTILIZATION REPORT

Report No. \_\_\_\_\_

<b>CONTRACT#:</b>		<b>CONTRACT AMT.:</b>	<b>DATE FORM SUBMITTED:</b>
<b>PROJECT TITLE:</b>		<b>PROJECT COMPLETION DATE:</b>	
<b>PRIME CONTRACTOR:</b>		<b>PERIOD ENDING:</b>	<b>AMT. PAID TO PRIME:</b>
<b>CONTACT PERSON:</b>		<b>TELEPHONE #:</b> ( )	<b>FAX #:</b> ( )

SUBCONTRACTING INFORMATION  
TO BE SUBMITTED MONTHLY TO BROWARD COUNTY OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

DBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of Work Completed To Date	Amt. Paid This Period	Amt. Paid To Date	Gender		Ethnic Category								
								M	F	B	H	A	NA	W				
Total Amt. Paid to DBE Firms																		
NON-DBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of Work Completed To Date	Amt. Paid This Period	Amt. Paid To Date	Gender		Ethnic Category								
								M	F	B	H	A	NA	W				
Total Amt. paid to Non-DBE Firms																		

Black American – B; Hispanic American – H; Asian American – A; Native American – NA; Non-Minority Woman – W

I attest that the information submitted in this report is in fact true and correct to the best of my knowledge

<b>Signature</b>	<b>Title</b>	<b>Date</b>
------------------	--------------	-------------

Note: The information provided herein is subject to verification by the Office of Economic and Small Business Development.

OESBD Compliance Form DBEMUR 020113



**EXHIBIT 4: Final DBE Utilization Report**



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT  
FINAL DBE UTILIZATION REPORT  
(To be submitted with the final invoice)

Report No. \_\_\_\_\_

CONTRACT#:		CONTRACT AMT.:		DATE FORM SUBMITTED:	
PROJECT TITLE:				PROJECT COMPLETION DATE:	
PRIME CONTRACTOR:			PERIOD ENDING:		AMT. PAID TO PRIME:
CONTACT PERSON:			TELEPHONE #: ( )		FAX #: ( )

SUBCONTRACTING INFORMATION  
All Payments made to DBE Firms must be reported on this form.

DBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of Work Completed To Date	Amt. Paid This Period	Amt. Paid To Date	Gender		Ethnic Category								
								M	F	B	H	A	NA	W				
Total Amt. Paid to DBE Firms																		
NON-DBE Subcontractor	Address	Description of Work	Original Agreed Price	Revised Agreed Price	% of Work Completed To Date	Amt. Paid This Period	Amt. Paid To Date	Gender		Ethnic Category								
								M	F	B	H	A	NA	W				
Total Amt. paid to Non-DBE Firms																		

Black American – B; Hispanic American – H; Asian American – A; Native American – NA; Non-Minority Woman – W

I attest that the information submitted in this report is in fact true and correct to the best of my knowledge

Signature	Title	Date
-----------	-------	------

Note: The information provided herein is subject to verification by the Office of Economic and Small Business Development.

OESBD Compliance Form DBEMUR 020113

**EXHIBIT 5: Government-Wide Debarment and Suspension (Nonprocurement)  
Certification**

**IF THIS CONTRACT OR PURCHASE ORDER HAS A VALUE OF \$25,000 OR MORE, THIS PROCUREMENT IS A COVERED TRANSACTION FOR PURPOSES OF 49 CFR PART 29.**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier-covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by COUNTY. If it is later determined that the Bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any Contract that may arise from this offer. The Bidder or proposer further agrees to include a provision requiring such compliance in its lower tier-covered transactions.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Name of Contractor

**EXHIBIT 6: Buy America Certification**

**FOR PROCUREMENTS OF STEEL, IRON, AND MANUFACTURED PRODUCTS (INCLUDING CONSTRUCTION CONTRACTS, MATERIALS AND SUPPLIES, AND ROLLING STOCK ) OVER \$150,000**

**A. STEEL, IRON OR MANUFACTURED PRODUCTS**

If this Contract or purchase order is valued in excess of \$150,000 and involves the **procurement of steel, iron, or manufactured products**, the Bidder or offeror hereby certifies that it:

- Will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR part 661.5.
- Cannot meet the requirements of 49 USC 5323(j)(1) and 49 CFR part 661.5, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.

**B. BUSES, OTHER ROLLING STOCK, AND ASSOCIATED EQUIPMENT**

If this Contract or purchase order is valued in excess of \$150,000 and involves the **procurement of buses, other rolling stock, and associated equipment**, the Bidder or offeror certifies that it:

- Will comply with the requirements of 49 USC 5323(j)(2)(C) and the regulations at 49 CFR part 661.11.
- Cannot comply with the requirements of 49 USC 5323(j)(2)(C) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j) (2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Name of Contractor

**Note:** This Buy America certification must be submitted to Broward County with all bids or offers on FTA-funded Contracts involving construction or the acquisition of goods or rolling stock, except those subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$150,000) made with capital, operating, or planning funds.

**EXHIBIT 7: Restrictions On Lobbying Certification**

**For Procurements of \$100,000 or More**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying,"
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC A3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Name of Contractor

**EXHIBIT 8: Drug and Alcohol Testing Program Compliance Certification**

**FOR TRANSIT OPERATIONAL SERVICE CONTRACTS INVOLVING THE OPERATION OF A TRANSIT SERVICE, OR MAINTAINING, REPAIRING, OVERHAULING, AND REBUILDING REVENUE SERVICE VEHICLES OR EQUIPMENT (ENGINES AND PARTS) USED IN REVENUE SERVICE, OR BODY WORK, OR CONTRACTS FOR SECURITY PERSONNEL THAT CARRY FIREARMS.**

The undersigned certifies that CONTRACTOR, and its SUBCONTRACTORS as required, has established and implemented an anti-drug and alcohol prevention program in accordance with 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations."<sup>1</sup>

The undersigned further agrees to produce any documentation necessary to establish its compliance with 49 CFR Part 655, and to permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency (the Florida Department of Transportation), or COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and to review the testing process.

The undersigned further agrees to certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports no later than February 15) to COUNTY.

To certify compliance, CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Name of Contractor

<sup>1</sup> The Federal Transit Administration (FTA) – mandated drug and alcohol testing program is separate from and in addition to the provisions of the Drug-Free Workplace Act (DFWA).  
Rev. 2/1/2017

FTA/USDOT Funding Supplement

Solicitation No. \_\_\_\_\_

**EXHIBIT 9: Bus Testing Compliance Certification**

**FOR ALL PROCUREMENTS OF BUSES/ROLLING STOCK/TURNKEY**

The undersigned (CONTRACTOR/manufacturer) certifies that the vehicle offered in this procurement complies with 49 USC A5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with federal financial assistance may subject the undersigned to civil penalties as outlined in the U.S. Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Name of Contractor

**EXHIBIT 10: Pre-Award and Post-Delivery Audit Requirements Certification**

**FOR PROCUREMENTS OF BUSES, OTHER ROLLING STOCK, OR  
ASSOCIATED EQUIPMENT OVER \$150,000**

Check one:

- The Bidder hereby certifies that it **will comply** with the requirements of 49 USC 5323(j) (2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11.
  
- The Bidder hereby certifies that it **cannot comply** with the requirements of 49 USC 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 USC Sections 5323(j)(2)(B) or 5323(j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982 as amended, and regulations in 49 CFR 661.7.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Name of Contractor

Note: This certification must be submitted with each bid or offer exceeding the small purchase threshold for federal assistance programs, currently set at \$150,000.

**EXHIBIT 11: Transit Vehicle Manufacturer (TVM) Certification of Compliance with Sub Part D, Part 26**

**FOR ALL BUSES/ROLLING STOCK PROCUREMENTS**

This procurement is subject to the provisions of Section 26.49 of 49 CFR Part 26. Accordingly, as a condition of permission to bid, the following certification must be completed and submitted with the bid. A bid which does not include the certification will not be considered.

**Transit Vehicle Manufacturer (TVM) CERTIFICATION**

\_\_\_\_\_, a TVM, hereby certifies that it has complied with the requirements of Section 26.49 of 49 CFR Part 26 by submitting a current DBE Goal to the FTA. The goals apply to fiscal year \_\_\_\_\_ and have been approved or not disapproved by the FTA.

(Name of Firm)

(Date of Fiscal Year)

\_\_\_\_\_, hereby certifies that the manufacturer of the transit vehicle

(Name of Firm)

to be supplied \_\_\_\_\_ has complied with the above- referenced

(Name of Manufacturer)

requirements of Section 26.49 of 49 CFR Part 26.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Print Name and Title

Company: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_