



**SYSTEM AND SERVICES AGREEMENT BETWEEN
BROWARD COUNTY AND MISSION CRITICAL SYSTEMS INC.**

This System Services Agreement (the "Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and Mission Critical Systems Inc., a Florida corporation ("Provider").

A. Provider is an authorized reseller of Check Point firewall equipment, which is utilized by the County in connection with the firewall and security administration for the County's computer networks, including for infrastructure and sensitive systems within the County. Provider also provides support and consulting services on firewall services.

B. The County approved Provider as the only reasonable source provider for Check Point Firewall Appliance Hardware, License Subscription, and Premier Support.

C. The Parties desire to enter into this Agreement to enable County to obtain hardware, software, and support and maintenance, as well as consulting and other professional services on an as-needed basis.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 Board. The Board of County Commissioners of Broward County, Florida.
- 1.2 Business hours or business day. 7 a.m. to 7 p.m. Eastern Time during weekdays that are not County holidays and on which County has not otherwise declared its offices closed.
- 1.3 Contract Administrator. The Chief Information Officer of Broward County or such other person as designated by the Chief Information Officer in writing.
- 1.4 Documentation. All manuals, user documentation, specifications, and other related materials pertaining to the System and other hardware and software that Provider customarily furnishes to purchasers of the System.
- 1.5 Equipment. The hardware and other property identified in Exhibit A being provided to County pursuant to this Agreement, including any embedded software and firmware incorporated therein or customarily provided by Provider to purchasers of the Equipment.
- 1.6 Purchasing Director. The Broward County Purchasing Director as appointed by the Broward County Administrator.
- 1.7 Services. All required installation, integration, programming, configuration, customization, and enhancements of the System, together with necessary and appropriate consulting, training, and project management services, to meet County's ongoing needs in connection with the System, as further specified in Exhibit A.

1.8 Software. All proprietary or third-party software or other intellectual property, including the Documentation for same, provided or licensed to County or third party users pursuant to this Agreement, including the computer programs (in machine readable object code form) listed in Exhibit A and any subsequent updates, upgrades, releases, or enhancements thereto developed by Provider during the term of this Agreement.

1.9 Support and Maintenance Services. The maintenance and support required to maintain optimal performance of the System as described in the Documentation and Exhibit C, as well as the support and maintenance services required for County to achieve and maintain optimal performance of the System.

1.10 System. The Software, Equipment, and other property identified in Exhibit A being provided to County pursuant to this Agreement.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A	Statement of Work and Schedule 1
Exhibit B	Payment Schedule
Exhibit C	Support and Maintenance Services
Exhibit D	Insurance Coverages
Exhibit E	Work Authorization Form
Exhibit F	Federal Transportation Administration Supplement

If there is a conflict or inconsistency between any provision contained in Articles 1 - 14 and any provision contained in any of the Exhibits, the provision of Articles 1 - 14 shall prevail and be given effect unless expressly stated to the contrary.

ARTICLE 3. SCOPE OF SERVICES & SOFTWARE LICENSE

3.1 Scope of Services. Provider shall complete all Services required in this Agreement inclusive of the Exhibits. Unless stated otherwise in this Agreement, the work required of Provider includes all labor, materials, and tasks, whether or not enumerated in the Agreement, that are such an inseparable part of the work expressly stated in the Agreement that exclusion thereof would render Provider's performance impractical, illogical, or unconscionable.

3.2 Support and Maintenance Services. For so long as Support and Maintenance Services is requested by County, Provider shall provide, directly or indirectly, Support and Maintenance Services for the Supported Software and Equipment as identified in Exhibit A to ensure the proper functioning and optimal performance of the System as set forth in the Documentation pursuant to the terms of Exhibit C. For the first year following Final Acceptance, all Support and Maintenance Services for the Software and System are included at no additional cost. For subsequent years, Support and Maintenance Services shall be invoiced and paid in accordance with the Payment Schedule set forth in Exhibit B.

3.2.1 Updates, Upgrades, and Releases. For the duration of this Agreement, Provider shall promptly provide to County, with advance notice and at no additional cost, any and all updates (including error corrections, bug fixes, security updates, and patches), upgrades, or new releases to the Software (as well as any firmware included with the Equipment), including all that Provider has made available to other licensees of all or part of the Software licensed pursuant to this Agreement. All such updates, upgrades, and new releases shall remain the sole property of Provider and shall be deemed to be included within the scope of the license granted under this Agreement.

3.2.2 Compatibility. In the event Provider is not be able to support any third-party software update, upgrade, or new release that is not backwards compatible with the Software or System, Provider shall use all reasonable efforts to resolve such issues and to provide optimal functionality of the Software and System in accordance with this Agreement. If Provider is unable to provide continued optimal functionality of the Software and System in accordance with this Agreement due to any third-party software release, update, or upgrade, County shall be entitled to terminate the Agreement upon written notice with no further obligation to Provider.

3.3 License. For any Software or subscription licenses procured by County under this Agreement, Provider grants to County a royalty-free, nonexclusive license to the Software and System, including to any software embedded in or provided with the Equipment, with no geographical limitations, for an unlimited number of users, unless a different scope of license is expressly set forth in the Work Authorization. This license grant is for use solely for County governmental and business purposes, including on- and off-site access and use of the Software and System by Authorized Third Party Users (as defined in Exhibit A), including those persons or entities with which County may contract to operate the System or components thereof, and for the benefit of and use by all governmental entities within County, including the offices of the County constitutional officers.

3.3.1 Authorized Users and Additional Licenses. Unless otherwise stated in Exhibit A (Statement of Work), County and any of its employees, agents, suppliers of services, or other Authorized Third Party Users shall have the right to concurrently operate and use the System for County governmental or business purpose so long as the additional use does not exceed the purchased number or scope of user licenses. If anything less than unlimited, concurrent use is expressly provided under this Agreement and additional licenses may be required, County's Purchasing Director is authorized to execute a Work Authorization (Exhibit E) to purchase additional licenses for the fee specified in Exhibit B (Payment Schedule).

3.3.2 Additional Uses. County may, if required by reason of an emergency, disaster, or operational need, or for testing of recovery resources, temporarily use the Software on recovery resources at no additional cost, including recovery resources that may not be owned by County. County may, at no additional cost, copy the Software for backup and archiving purposes for the purposes of support or maintenance by County or others hired by County to provide such support or maintenance. County may, at no additional cost, utilize a hosted environment, including

without limitation through a third-party hosting provider, for all otherwise permitted uses of the Software.

3.3.3 Prohibited Uses. Except as otherwise provided in this Agreement or required under Florida law, County shall not reproduce, publish, or license the Software to others. County shall not modify, reverse engineer, disassemble, or decompile the Software or any portion thereof, except (a) to the extent expressly authorized in Exhibit A, in which event such authorized actions shall be deemed within the license grant of Section 3.3, or (b) to the extent permitted under any applicable open source license.

3.4 Additional Equipment and Software; Change of Scope Procedures. Provider 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 except as expressly provided herein. Any other equipment, software, or consulting services related to the Equipment and services provided under this Agreement may be acquired as Optional Services. The Contract Administrator may procure additional Equipment under this Agreement through utilization of a purchase order at the scope and prices set forth in this Agreement. For Software or consulting services, a Work Authorization (Exhibit E) must be negotiated by Provider and County and shall include a Statement of Work (SOW) specific to the scope and services requested. To the extent any procurement is funded in whole or part by the Federal Transit Administration, the ordering document shall include the applicable portions of Exhibit F. County may select the type, amount, and timing of such additional Equipment, Software, and other Optional Services provided that no such selection, when combined with those goods or services required under the Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Section 5.1. Notwithstanding anything to the contrary in the Agreement, Work Authorizations pursuant to this section shall be executed on behalf of the County as follows: the Contract Administrator may execute Work Authorizations for which the total cost to County in the aggregate is less than \$30,000.00; the Purchasing Director may execute Work Authorizations for which the total cost to the County in the aggregate is within the Purchasing Director's delegated authority; any Work Authorizations above the County's Purchasing Director delegated authority shall require Board approval. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. Provider shall not commence work on any Work Authorization until after receipt of the applicable Notice to Proceed.

3.5 Contract Administrator Authority. Unless otherwise expressly stated herein or in the applicable Procurement Code, Code of County Ordinances, or County Code of Administrative Procedure, the Contract Administrator may act on behalf of County to exercise the authority and powers of County under this Agreement.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1 Term. The Agreement shall become effective on the date it is fully executed by the Parties (the "Effective Date"). The initial term of the Agreement shall be for a period of three (3) years from the date of Final Acceptance (the "Initial Term").

4.2 Extensions. County shall have the option to renew this Agreement for two (2) additional one (1) year terms by sending notice of renewal to Provider at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise this renewal option. In the event that unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of an extension not practicable or if no extension is available and expiration of this Agreement would result in a gap in the provision of services necessary for the ongoing operations of the County, then this Agreement may be extended on the same terms and conditions by the Purchasing Director for period(s) not to exceed six (6) months in the aggregate, provided that any such extension is within the authority of the Purchasing Director or otherwise authorized by the Board.

4.3 Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes.

4.4 Delivery. For any Equipment provided under this Agreement, Provider shall deliver the Equipment and Documentation via inside delivery to County within the time stated in the applicable purchase order or Work Authorization at the address provided by County. Transportation cost and risk, and the cost of delivery (including lift gate services and depalletization), assembly and installation, including any applicable taxes and all actions necessary to integrate the Equipment into County's existing system, shall be the responsibility of Provider, except to the extent (if any) expressly provided in Exhibit A.

4.5 Timetable. If any Equipment, Software or Services ordered under this Agreement fails to achieve Final Acceptance within the time stated in the applicable Work Authorization (if any), County shall have the option to terminate the order by written notice from its Contract Administrator, in which event Provider shall, within fifteen (15) days, pick up any delivered Equipment or Software at Provider's expense and reimburse all sums paid by County for the applicable goods and services, if any. For purposes of this paragraph, any delays caused by County prior to Final Acceptance shall extend the Final Acceptance deadline by the same number of days as the delay caused by County.

4.6 Performance. Time is of the essence for all performance required under this Agreement.

ARTICLE 5. COMPENSATION

5.1 For the duration of the Agreement, County will pay Provider in accordance with Exhibit B up to the following maximum amount(s):

Services/Goods	Term	Not-To-Exceed Amount
Equipment, Subscriptions, System, and Support and Maintenance Services per Exhibit A	Initial Term (3 years)	\$1,200,000
Optional renewal terms	Each 1 year renewal term Total for all renewal terms	\$400,000 \$800,000 (2 years)
Optional Services (including all installations and any Software other than Subscriptions)	Duration of the Agreement (inclusive of any renewals)	\$300,000
TOTAL NOT TO EXCEED		\$2,300,000

Payment shall be made only for work actually performed and completed pursuant to this Agreement or as otherwise set forth in Exhibit B (Payment Schedule), which amount shall be accepted by Provider as full compensation for all such work. Provider acknowledges that the amounts set forth herein are the maximum amounts payable for the respective terms and constitute a limitation upon County's obligation to compensate Provider for its work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Provider's obligation to perform all items of work required under this Agreement. Unless otherwise expressly stated in this Agreement, Provider shall not be reimbursed for any expenses it incurs under this Agreement.

5.2 Method of Billing and Payment

5.2.1 Invoices. Provider may submit invoices only for goods provided and services completed in accordance with the Payment Schedule set forth in Exhibit B. Unless otherwise indicated in Exhibit B, an original plus one copy of each invoice must be submitted within fifteen (15) days after the end of the month for which payment is sought, except that the final invoice must be submitted no later than sixty (60) days after all services are completed. Provider shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers on the form provided by County, as may be modified in County's reasonable discretion. If applicable, the certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of the certification form, explaining the good cause why payment has not been made. Unless otherwise stated in Exhibit B or the applicable Work Authorization, any Optional Services shall be invoiced in accordance with the existing invoicing schedule for any like goods or services provided under this Agreement, including (if applicable) invoiced pro rata for the initial invoice period.

5.2.2 Payments. County shall pay Provider within thirty (30) days of receipt of Provider's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49). Payment shall be made to Provider at the most recent address designated under the "Notices" provision of this Agreement. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to any instructions prescribed by the Contract Administrator. County shall have the right to

withhold payment of the invoice based on Provider's failure to comply with any term, condition, or requirement of this Agreement. The Parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by County.

5.2.3 CBE Payments. Unless a shorter period is required under applicable law or under the applicable contract, Provider shall pay its Certified Business Entity ("CBE") subcontractors and suppliers within fifteen (15) days following receipt of payment from County and shall pay all other subcontractors and suppliers within thirty (30) days following receipt of payment from County.

5.3 Travel. With respect to travel costs and travel-related expenses, Provider agrees to adhere to Section 112.061, Florida Statutes, except to the extent, if any, that Exhibit B expressly provides to the contrary. County shall not be liable for any such expenses that have not been approved in advance, in writing, by County.

5.4 Fixed Pricing. Prices set forth in Exhibit B shall remain firm and fixed for the term of the Agreement, including any optional terms. However, Provider may offer incentive or volume discounts to County at any time.

ARTICLE 6. WARRANTIES

6.1 Ownership and License Rights. Provider represents and warrants that it is the owner of all right, title, and interest in and to the Equipment and other property being sold to County under this Agreement, that it has the right to sell such Equipment and other property to County, and that such sale is free and clear of any lien or interest of any other person or entity. Provider further represents and warrants that it has the right to grant to County the rights and the licenses granted under this Agreement as to the Software and System. Provider warrants that it has not knowingly granted rights or licenses to any other person or entity that would restrict rights and licenses granted hereunder, except as may be expressly stated herein.

6.2 System Warranty. For the full term of this Agreement, Provider represents and warrants to County that the Software and System will perform substantially as described in the Documentation and in the Statement of Work (Exhibit A). This warranty does not cover any failure of the Software or System resulting from (a) use of the System in a manner other than that for which it was intended; (b) any modification of the Software or System by County that is not intended or authorized by Provider; or (c) County's provision of improperly formatted data to be processed through the System.

6.3 Equipment Warranty. Provider represents and warrants to County that for a period of one (1) year from the date of Final Acceptance, the Equipment will perform substantially as described in the Documentation and the Statement of Work (Exhibit A), will be free from defects in workmanship and material, and will have all of the qualities and features and be capable of performing all of the functions described in the Documentation and Statement of Work. This warranty shall not cover any failure of the Equipment resulting from (a) use of the Equipment in

a manner other than that for which it was intended; or (b) modification of the Equipment by County not authorized by Provider.

6.4 Warranty Regarding Viruses and PCI Compliance. Provider further represents, warrants, and agrees that the System and any software or firmware provided under this Agreement are free from currently-known viruses or malicious software (at the time the System and any subsequent version thereof is provided to County), and that Provider has and will continue, for the full term of this Agreement, to use commercially reasonable security measures to ensure the integrity of such software and firmware from data leaks, hackers, denial of service attacks, and other unauthorized intrusions. If the System will accept, transmit, or store any credit cardholder data, Provider represents and warrants that the System complies with the most recent of the Security Standards Council's Payment Card Industry ("PCI") Payment Application Data Security Standard.

6.5 Intellectual Property Warranty. Provider represents and warrants that at the time of entering into this Agreement, no claims have been asserted against Provider (whether or not any action or proceeding has been brought) that allege that any part of the System or other property provided to County under this Agreement infringes or misappropriates any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party, and that Provider is unaware of any such potential claim. Provider also agrees, represents, and warrants that the System (or any portion thereof) and services to be provided pursuant to this Agreement will not infringe or misappropriate any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party.

6.6 Quality of Performance and Materials. Provider represents and warrants that all services provided under this Agreement will be performed by a person duly qualified and sufficiently experienced to perform such services and, where required, licensed by all appropriate governmental authorities in the applicable area(s). Provider agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall meet or exceed prevailing industry and professional standards for such services. Provider represents and warrants that all materials, Equipment, and products furnished pursuant to this Agreement shall be of good quality and free from defective or inferior workmanship; any items found not to be in conformance with the foregoing and with the Documentation or applicable specifications (if any) in Exhibit A shall be replaced by Provider at no additional cost to County. If requested by County's Contract Administrator, Provider shall develop and utilize a quality assurance plan approved by County to ensure the appropriate quality of the work and materials provided under this Agreement.

6.7 Remedy for Breach of Warranty. In the event of written notice from County of a breach of warranty, Provider shall, at no charge to County, promptly correct the warranty breach including, when required, by (a) correcting or updating the Software, (b) correcting or replacing the affected Equipment, or (c) providing to County other measures that correct the breach. In addition, upon notice from County of any warranty breach or other error or defect in the System, Provider will immediately provide to County any known reasonable methods of operating the

System in a manner that eliminates the adverse effects of the error or defect. If Provider is unable to correct a material breach of this article within a reasonable period of time not to exceed ten (10) business days, County shall be entitled to cancel the Agreement and receive a full refund of all amounts paid to Provider, Provider shall arrange for the return of the Equipment at Provider's expense, and neither party shall have any further obligation under the Agreement except as to any provision that expressly survives the Agreement's termination or expiration. In the event of replacement of any of the Software or Equipment, the Software or Equipment as replaced will be warranted as provided above from the date of installation. The remedies in this section are in addition to any other rights and remedies County may have under this Agreement or applicable law.

ARTICLE 7. DELIVERY, TESTING AND ACCEPTANCE

7.1 **Software.** For any Software procured under this Agreement, Provider shall make the Software available to County within the time stated in the applicable Work Authorization, in electronic files unless otherwise requested by County. All County license keys, usernames, and passwords shall be authenticated by Provider and perform according to the applicable Statement of Work.

7.2 **Documentation.** Provider shall deliver copies of the Documentation to County concurrently with delivery of the applicable Equipment and Software, and thereafter shall promptly provide any updated Documentation as it becomes available during the term of this Agreement. County has the right to copy and modify the Documentation as it deems necessary for its own internal use.

7.3 **Final Acceptance Testing.** The provisions of this Section 7.3 shall apply only to any Software acquired under this Agreement after the Effective Date. Broward County Administrative Code Section 22.148 requires that all applicable software purchases be inspected and tested by the County, including verification by its Enterprise Technology Services ("ETS"), prior to final written acceptance of the software and software-related services. Within thirty (30) days following completion of installation and integration of the System or applicable Software, County shall test the System to determine whether the System: (i) properly functions with any applicable operating software; (ii) provides the capabilities stated in the applicable Work Authorization and the Documentation; and (iii) if applicable, meets the acceptance criteria stated in the Statement of Work (the criteria referenced in (i), (ii), and (iii) are collectively referred to as the "Final Acceptance Criteria"). In the event of a conflict between the Documentation and the acceptance criteria stated in the Statement of Work, the Statement of Work shall prevail. Final payment shall not be made to Provider prior to the written confirmation by the County's Chief Information Officer or his or her designee that the System has successfully passed the Final Acceptance Criteria, and such written confirmation shall constitute "Final Acceptance."

7.3.1 The testing period shall commence on the first business day after Provider informs County in writing that it has completed the Services required to be performed prior to testing and that the System is ready for testing, and shall continue for a period of up to thirty (30) days.

7.3.2 During the testing period, County may notify Provider in writing of any error or defect in the System so that Provider may make any needed modifications or repairs. If Provider so elects in writing, testing will cease until Provider resubmits for Final Acceptance testing, at which time the testing period shall be reset to that of a first submission for testing.

7.3.3 County shall notify Provider in writing of its Final Acceptance or rejection of the System, or any part thereof, within fifteen (15) days after the end of the testing period, as same may be extended or reset. If County rejects the System, or any part thereof, County shall provide notice identifying the criteria for Final Acceptance that the System failed to meet. Following such notice, Provider shall have thirty (30) days to (a) modify, repair, or replace the System or any portion thereof, or (b) otherwise respond to County's notice. If Provider modifies, repairs, or replaces the System or portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this Section 7.3.

7.3.4 In the event Provider fails to remedy the reason(s) for County's rejection of the System, or any part thereof, within ninety (90) days after County's initial notice of rejection, County may elect, in writing, to either accept the System as it then exists or to reject the System and terminate the applicable Work Authorization. If County elects to reject the System and terminate the applicable Work Authorization, all sums paid by County under the applicable Work Authorization shall be reimbursed to County by Provider within 15 days after such election is made. If County elects to accept the System as it then exists (partial acceptance), Provider shall continue to use its best efforts to remedy the items identified in the applicable notice of rejection. If, despite such continuing best efforts, Provider fails to remedy the issue(s) identified by County within a reasonable time as determined by County, then County shall be entitled to deduct from future sums due under the Agreement the value of the rejected portion of the System as mutually determined by the Parties. If the Parties cannot agree upon such value, County shall have the right to reject the System and terminate the applicable Work Authorization on the terms stated above in this paragraph.

ARTICLE 8. PROTECTION OF SOFTWARE AND PROPRIETARY RIGHTS

8.1 County Proprietary Rights. Provider acknowledges and agrees that County retains all rights, title, and interest in and to all materials, data, documentation, and copies thereof furnished by County to Provider under this Agreement, including all copyright and other proprietary rights therein, which Provider as well as its employees, agents, subconsultants, and suppliers may use only in connection with the performance of Services or Support and Maintenance Services under this Agreement. All rights, title, and interest in and to certain ideas, designs and methods, specifications, and other documentation related thereto developed by Provider and its subconsultants specifically for County (collectively, "Developed Works") shall be and remain the property of County. Accordingly, neither Provider nor its employees, agents, subconsultants, or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of Provider, or

any employee, agent, subconsultants, or supplier thereof, without the prior written consent of County, except as required for Provider's performance hereunder.

8.2 Ownership. Except for custom work products, if any, County acknowledges that all copies of the Software (in any form) provided by Provider are the sole property of Provider. County shall not have any right, title, or interest to any such Software or copies thereof except as expressly provided in this Agreement, and shall take all reasonable steps to secure and protect all Software consistent with maintenance of Provider's proprietary rights therein.

ARTICLE 9. CONFIDENTIAL INFORMATION, SECURITY AND ACCESS

9.1 Public Records Law. As a political subdivision of the State of Florida, County is subject to Florida's Public Records Law, Chapter 119 of the Florida Statutes. Notwithstanding anything else in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119 shall not constitute a breach of this Agreement.

9.2 Provider Confidential Information. Provider represents that the Software contains proprietary products and trade secrets of Provider. Accordingly, to the full extent permissible under applicable law, County agrees to treat the Software as confidential in accordance with this article. Any other material submitted to County that Provider contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Provider must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Provider as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Provider. Provider shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of the Software or any Trade Secret Materials in response to a records request by a third party.

9.3 County Confidential Information.

9.3.1 All Developed Works, materials, data, transactions of all forms, financial information, documentation, inventions, designs, and methods that Provider obtains from County in connection with this Agreement, that are made or developed by Provider in the course of the performance of the Agreement, or in which County holds proprietary rights, constitute "County Confidential Information."

9.3.2 All County-provided employee information, financial information, and personally identifiable information for individuals or entities interacting with County (including, without

limitation, social security numbers, birth dates, banking and financial information, and other information deemed exempt or confidential under state or federal law) also constitute County Confidential Information.

9.3.3 County Confidential Information may not, without the prior written consent of County, or as otherwise required by law, be used by Provider or its employees, agents, subconsultants or suppliers for any purpose other than for the benefit of County pursuant to this Agreement. Neither Provider nor its employees, agents, subconsultants or suppliers may sell, transfer, publish, disclose, display, license, or otherwise make available to any other person or entity any County Confidential Information without the prior written consent of County.

9.3.4 Provider expressly agrees to be bound by and to defend, indemnify and hold harmless County and its officers and employees from the breach of any federal, state or local law by Provider or its employees, agents, subconsultants, or suppliers regarding the unlawful use or disclosure of County Confidential Information.

9.3.5 Upon expiration or termination of this Agreement, or as otherwise demanded by County, Provider shall immediately turn over to County all County Confidential Information, in any form, tangible or intangible, possessed by Provider or its employees, agents, subconsultants, or suppliers.

9.4 Maintenance of Confidential Information. Each party shall advise its employees, agents, subconsultants, and suppliers who receive or otherwise have access to the other party's Confidential Information of their obligation to keep such information confidential, and shall promptly advise the other party in writing if it learns of any unauthorized use or disclosure of the other party's Confidential Information. In addition, the Parties agree to cooperate fully and provide reasonable assistance to ensure the confidentiality of the other party's Confidential Information.

9.5 Security and Access. Any access by Provider to any aspect of the County's network must comply at all times with all applicable County access and security standards, as well as any other or additional restrictions or standards for which County provides written notice to Provider. Provider will provide any and all information that County may reasonably request in order to determine appropriate security and network access restrictions and verify Provider's compliance with County security standards. If at any point in time County, in the sole discretion of its Chief Information Officer, determines that Provider's access to any aspect of the County's network presents an unacceptable security risk, County may immediately suspend or terminate Provider's access and, if the risk is not promptly resolved to the reasonable satisfaction of the County's Chief Information Officer, may terminate this Agreement or any applicable Work Authorization upon ten (10) business days' notice (including, without limitation, without restoring any access to the County network to Provider).

Provider shall comply with the following either directly or through the performance of Check Point Software Technologies Ltd.:

- a) Upon request by County or as further required in the applicable Work Authorization, Provider shall notify the County of any terminations/separations of employees performing services under the Agreement or who had access to the County's network in order to disable such employees' access to County systems.
- b) Upon request by County or as further required in the applicable Work Authorization, Provider shall ensure all Provider employees have signed County's Information Security Policy Acknowledgement form prior to accessing County network environment. (PCI 12.3.5).
- c) Provider shall perform privacy and information security training upon hire and at least annually to those employees who have access to the sensitive County environment. (PCI 12.6.1)
- d) Provider must provide a security plan or secure configuration guide (i.e., product documentation and specifications) for Software installed in the County environment by the Provider.
- e) To the extent required in the applicable Work Authorization, Provider shall advise of any third party software (e.g., Java, Adobe Reader/Flash, Silverlight) required to be installed and version supported, and support updates for critical vulnerabilities discovered in the versions of that third party software.
- f) Provider shall ensure that the Software is developed based on industry standards/and or best practices, including following secure programming techniques and incorporating security throughout the software-development life cycle.
- g) Provider shall issue an available temporary security patch for newly identified vulnerabilities within 30 days for all critical or high security vulnerabilities and reasonably longer as needed to issue a permanent fix, to ensure it is ready and working.
- h) Provider shall ensure the Software provides for role-based access controls. (i.e., product administration guide for information on role based administration features for that product).
- i) Provider shall support electronic delivery of digitally signed upgrades from Provider or supplier website.
- j) Provider shall enable auditing by default in software for any privileged access or changes.

- k) If the Software is a payment application which processes, stores, or transmits credit card data, the VISA Cardholder Information Security Program ("CISP") payment Application Best Practices and Audit Procedures will be followed and current validation maintained.
- l. Provider shall regularly provide County with access to the end-of-life-schedules for all applicable Software (i.e., Life Cycle Policy announcements, on Check Point's website at <https://www.checkpoint.com/support-services/support-life-cycle-policy/#latestannouncements>).
- m. Provider shall ensure that physical security features are included in the Hardware acquired under this Agreement to prevent tampering.
- n. Provider shall ensure security measures are followed during the manufacture of the Hardware acquired under this Agreement.
- o. Any Hardware provided under this Agreement shall not contain any embedded remote control features unless approved in writing by County's Contract Administrator.
- p. To the extent default accounts or backdoors exist (if any), Provider shall disclose any default accounts or backdoors for access to County's network.
- q. If a new critical or high security vulnerability is identified, Provider shall issue an available temporary security patch, firmware update or workaround for download via the user center by County's Contract Administrator within 30 calendar days from identification of vulnerability and reasonably longer as needed to issue a permanent fix, to ensure it is ready and working.
- r. Provider shall make available, upon County's request, any required certifications as may be applicable and required (e.g., Common Criteria ("CC"), Federal Information Processing Standard 140 ("FIPS 140")).
- s. Provider shall regularly provide County with end-of-life-schedules for all applicable Hardware and Software (i.e., Life Cycle Policy announcements, on Check Point's website at <https://www.checkpoint.com/support-services/support-life-cycle-policy/#latestannouncements>).
- t. Provider shall support electronic delivery of digitally signed upgrades from Provider or supplier website (via Check Point user center and support center).
- u. Upon County's request, Provider shall make available to the County proof of Provider's compliance with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement (e.g., ISO 9001 certification).

9.6 Data and Privacy. Provider shall comply with all applicable data and privacy laws and regulations, including without limitation the Florida Information Protection Act of 2014, Florida Statutes Section 501.171, and shall ensure that County data transmitted or stored in the System is not transmitted or stored outside the continental United States. Provider may not sell, market, publicize, distribute, or otherwise make available to any third party any personal identification information (as defined by Florida Statutes Section 817.568 or Section 817.5685) that Provider may receive or otherwise have access to in connection with this Agreement, unless expressly authorized in advance by County. If and to the extent requested by County, Provider shall ensure that all hard drives or other storage devices and media that contained County data have been wiped in accordance with the then-current best industry practices, including without limitation DOD 5220.22-M, and that an appropriate data wipe certification is provided to the satisfaction of the Contract Administrator.

9.7 Injunctive Relief. The Parties represent and agree that neither damages nor any other legal remedy is adequate to remedy any breach of this article, and that the injured party shall therefore be entitled to injunctive relief to restrain or remedy any breach or threatened breach.

9.8 Survival. The obligations under this Article 9 shall survive the termination of this Agreement or of any license granted under this Agreement.

ARTICLE 10. INDEMNIFICATION AND LIMITATION OF LIABILITY

10.1 Indemnification. Provider may meet its obligations under this Section 10.1 directly, or through the performance in compliance with this Section 10.1 by the manufacturer of the Equipment or Software at issue. Provider shall be fully liable for the actions of its current and former officers, employees, subcontractors, and other agents under this Agreement. Provider shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, employees, and other agents (collectively, "Indemnified Party") from and against any and all lawsuits, causes of action, demands, claims, losses, fines, penalties, damages, judgments, liabilities, and expenditures of any kind, including attorneys' fees, litigation expenses, and court costs (collectively, "Claim"), raised or asserted by any person or entity that is 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 Provider or any current or former officer, employee, subcontractor, or other agent of Provider, arising from, relating to, or in connection with any obligation or performance under this Agreement. In the event any Claim is brought against an Indemnified Party, Provider shall, upon written notice from County, defend each Indemnified Party against each such Claim through counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the County Attorney, in his or her reasonable discretion, any sums due Provider under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by County.

10.2 Limitation of Liability. Neither Provider nor County shall be liable to the other party for any damages under this Agreement that exceed the largest of the following amounts: (a) \$100,000; (b) twice the maximum compensation amount specified in Section 5.1; or (c) the amount of insurance Provider is required to provide under Article 11. Neither party shall be liable for the other party's special, indirect, punitive, or consequential damages (including damages resulting from lost data or records other than costs incurred in the recovery thereof), even if the party has been advised that such damages are possible, or for the other party's lost profits, lost revenue, or lost institutional operating savings. These limitations of liability shall not apply to (i) any Claim resulting from Provider's actual or alleged disclosure of County Confidential Information or resulting from an actual or alleged data breach in violation of applicable law, (ii) any Claim resulting from an actual or alleged infringement of any interest in any intellectual property, or (iii) any indemnification obligation under this Agreement.

10.3 Infringement Remedy. If any Equipment, Software, or portion of the System is finally adjudged to infringe, or in Provider's opinion is likely to become the subject of such a Claim, Provider shall, at County's option, either: (i) procure for County the right to continue using the applicable portion of the System; (ii) modify or replace the System (in part or in whole) to make it noninfringing; or (iii) refund to County all fees paid under this Agreement. Provider shall have no liability regarding any infringement claim caused by any County modification of the System not authorized by Provider.

10.4 Third Party Pass Thru Rights. Provider shall extend to County all rights and benefits Provider has from any third party as to the Equipment or Software relating to warranty or third party claims, including any and all indemnification and hold harmless rights, to the extent permitted under any applicable agreement with the third-party equipment or software supplier or otherwise available to Provider. Provider shall at all times use all reasonable efforts to cooperate with County in the event of an infringement claim involving System.

ARTICLE 11. INSURANCE

11.1 For purposes of this article, the term "County" shall include Broward County and its members, officials, officers, and employees.

11.2 Provider 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 limits of insurance coverage designated in Exhibit D (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. All required insurance shall apply on a primary basis, and shall not require contribution from, any other insurance or self-insurance maintained by County. Any insurance, or self-insurance, maintained by County shall be in excess of, and shall not contribute with, the insurance provided by Provider.

11.3 Insurers providing the insurance required by this Agreement must either be: (1)

authorized by a current certificate of authority issued by the State of Florida to transact insurance in the State of Florida, or (2) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida law. In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a minimum A. M. Best Company Rating of "A-" and a minimum Financial Size Category of "VII." To the extent insurance requirements are designated in Exhibit D, the applicable policies shall comply with the following:

11.3.1 Commercial General Liability Insurance. Policy shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), with the exception of endorsements specifically required by ISO or the State of Florida, and liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Silica, asbestos or lead
- Sexual molestation
- Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Agreement.

County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

11.3.2 Business Automobile Liability Insurance. Policy shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of work under this Agreement. County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured." The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

11.3.3 Workers' Compensation/Employer's Liability Insurance. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer's right to subrogate against County in the manner which would result from the attachment of the NCCI form "Waiver of our Right to Recover from Others Endorsement" (Advisory Form WC 00 03 13) with County scheduled thereon. Where appropriate, coverage shall be included for any applicable Federal or State employer's liability laws including, but not limited to, the

Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

11.3.4 Professional Liability Insurance. Such insurance shall cover Provider for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in this Agreement. If policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in Exhibit D.

11.3.5 Cyber Liability, or Technology Errors and Omissions Insurance. Coverage is required for any system connected to, and, or accessible from the internet. Coverage may be included as part of the required Professional Liability Insurance. If policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in Exhibit D. Such policy shall cover, at a minimum, the following:

- Data Loss and System Damage Liability
- Security Liability
- Privacy Liability
- Privacy/Security Breach Response coverage, including Notification Expenses

County shall be included on the policy as an "Additional Insured" unless such endorsement is not available by the insurer.

11.4 Within fifteen (15) days after the Effective Date of this Agreement or notification of award, whichever is earlier, Provider shall provide to County satisfactory evidence of the insurance required in this Agreement. With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability, and Business Automobile Liability Insurance, an appropriate Certificate of Insurance identifying the project and signed by an authorized representative of the insurer shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance identifying the project, signed by an authorized representative of the insurer, and copies of the actual additional insured endorsements as issued on the policy(ies) shall be satisfactory evidence of such insurance.

11.5 Coverage is not to cease and is to remain in force until County determines all performance required of Provider is completed. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to County prior to the policy's expiration.

11.6 Provider shall provide County thirty (30) days' advance notice of any cancellation of the policy except in cases of cancellation for non-payment for which County shall be given ten (10) days' advance notice.

11.7 Provider shall provide, within thirty (30) days after receipt of a written request from County, a copy of the policies providing the coverage required by this Agreement. Provider may redact portions of the policies that are not relevant to the insurance required by this Agreement.

11.8 County and Provider, each for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required hereunder, waive all rights against the other party and any of the other party's contractors, subcontractors, agents, and employees for damages or loss to the extent covered and paid for by any insurance maintained by the other party.

11.9 If Provider uses a subcontractor, Provider shall require each subcontractor to endorse County as an "Additional Insured" on the subcontractor's Commercial General Liability policy.

ARTICLE 12. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

12.1 Nondiscrimination. Provider may not 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, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26. Provider shall include substantially similar language in its contracts with any and all permitted subcontractors providing goods or services under this Agreement.

12.2 Material Breach. Failure by Provider to carry out any of the requirements of this article 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.

ARTICLE 13. TERMINATION

13.1 This Agreement may be terminated for cause based on any breach that is not cured 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 upon providing written notice to Provider of the termination date, which shall be not less than thirty (30) days after the date such written notice is provided. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, to the full extent permissible under applicable law, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

13.2 County may terminate this Agreement if Provider is found to have submitted a false certification pursuant to Section 287.135, Florida Statutes, if Provider has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities

in the Iran Petroleum Energy Sector List, or if Provider has failed to promptly implement corrective action for audit deficiencies upon reasonable notice by County. Notwithstanding anything contained in this Agreement to the contrary, the rights and obligations of the Parties under this paragraph shall be governed by Section 287.135, Florida Statutes, to the full extent applicable.

13.3 Provider represents that neither it nor any of its affiliates has been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes. County may terminate this Agreement effective immediately, without any further obligation to Provider, upon learning that such representation is false or if Provider or any of its affiliates is placed on the discriminatory vendor list.

13.4 Additionally, and notwithstanding anything to the contrary in this Agreement, County may terminate this Agreement without any further liability to Provider upon the decertification of Provider as a Certified Business Entity ("CBE") by County's Office of Economic and Small Business Development ("OESBD"), if Provider's status as a CBE was a factor in the award of the Agreement and such status was misrepresented by Provider. However, such termination shall not be effective until expiration of any timely-filed review or appeal of the decertification decision.

13.5 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.

13.6 In the event this Agreement is terminated for convenience, Provider shall be paid for any goods and services properly provided through the termination date specified in the written notice of termination. Provider acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged by Provider, for County's right to terminate this Agreement for convenience, and Provider hereby waives, to the full extent permissible under applicable law, any and all rights to challenge the adequacy of such consideration or the validity of County's right to terminate for convenience.

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 shall be and remain the property of County and, if a copyright is claimed, Provider hereby grants to County a nonexclusive perpetual license to use the copyrighted item(s), to prepare derivative works, and to make and distribute copies to the public. In the event of termination or expiration of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Provider, whether finished or unfinished, shall become the property of County and shall be delivered by Provider to the Contract Administrator within seven (7) days of termination or expiration of this Agreement by either party.

14.2 Audit Right and Retention of Records. County shall have the right to audit the books, records, and accounts of Provider and its subcontractors that are related to this Agreement. Provider 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 and performance thereunder. All books, records, and accounts of Provider 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, Provider or its subcontractor, as applicable, shall make same available at no cost to County in written form.

Provider and its subcontractors shall preserve and make available, at reasonable times within Broward County 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 Provider's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Provider in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of the County's audit shall be reimbursed to the County by Provider in addition to making adjustments for the overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to Provider.

Provider shall ensure that the requirements of this section are included in all agreements with its subcontractor(s).

14.3 Public Records. To the extent Provider is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Provider shall:

- a. Keep and maintain public records required by County to perform the services under this Agreement;
- b. 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;
- c. 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

d. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Provider or keep and maintain public records required by County to perform the services. If Provider transfers the records to County, Provider shall destroy any duplicate public records that are exempt or confidential and exempt. If Provider keeps and maintains public records, Provider 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 Provider 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. Provider will provide any requested records to County to enable County to respond to the public records request.

IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-5918, kawolf@broward.org, 1 N. UNIVERSITY DRIVE, SUITE 4003A, PLANTATION, FL 33324.

14.4 Truth-In-Negotiation Representation. Provider's compensation under this Agreement is based upon representations supplied to County by Provider, and Provider certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Provider's compensation are accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

14.5 Public Entity Crime Act. Provider 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, Provider 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 Provider 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 and recover all sums paid to Provider under this Agreement.

14.6 Independent Contractor. Provider is an independent contractor under this Agreement. Provider shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

14.7 Third Party Beneficiaries. The Parties acknowledge that there are no third party beneficiaries under this Agreement.

14.8 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change.

NOTICE TO COUNTY:

Broward County Enterprise Technology Services
Attn: Information Systems Administrator
1 N. University Drive, Suite 4003A, Plantation, FL 33324
Email address: kawolf@broward.org

NOTICE TO PROVIDER:

Mission Critical Systems
Attn: Controller
1347 E. Sample Road
Pompano Beach, FL 33064
Email address: Contracts@locked.com

14.9 Assignment. Except for Check Point Software Technologies, Ltd. or any other subcontracting approved by County at the time of the execution of this Agreement or by prior written approval of the Contract Administrator, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Provider without the prior written consent of County. If Provider violates this provision, County shall have the right to immediately terminate this Agreement.

14.10 Conflicts. Provider agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Provider's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. Provider further agrees that none of its 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 Provider is not a party, unless compelled by court process. Further, 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 Provider or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. Provider agrees that each of its contracts with subcontractors performing under this Agreement shall contain

substantively identical language to ensure that each subcontractor and its officers and employees meet the obligations contained in this paragraph.

14.11 Waiver of Breach. The failure of either party 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 under this Agreement shall not be deemed a waiver of any subsequent breach.

14.12 Compliance with Laws. Provider shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement.

14.13 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.

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

14.15 Headings and 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.

14.16 Governing Law, Venue and 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 Parties agree that 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 Parties agree that 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, PROVIDER AND COUNTY HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.**

14.17 Amendments. No modification or amendment to this Agreement shall be effective unless it is in writing and executed by authorized representatives of each party. Without limiting the foregoing, the terms of this Agreement shall prevail over and against any additional or contrary terms and conditions in any format or medium whatsoever including, without limitation, shrink-wrap, click-through, or terms and conditions associated with any upgrade, update, release, patch, or other modification of the System or Software, unless expressly agreed to in writing by an amendment hereto executed by authorized representatives of each party.

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 and discussions 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 HIPAA Compliance. It is understood by the Parties that County personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 C.F.R. § 160, 162, and 164 and related statutory and regulatory provisions. In the event Provider is considered by County to be a covered entity or business associate or otherwise required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Provider shall fully protect individually identifiable health information as required by HIPAA and HITECH. If requested by County, Provider shall execute a Business Associate Agreement in the form set forth at www.broward.org/Purchasing/Pages/StandardTerms.aspx. Where required, Provider shall handle and secure such PHI in compliance with HIPAA, HITECH and its related regulations and, if required by HIPAA, HITECH, or other laws, shall include in its "Notice of Privacy Practices" notice of Provider's and County's uses of a client's PHI. The requirement to comply with this provision, HIPAA and HITECH shall survive the expiration or termination of this Agreement. County hereby authorizes the County Administrator to sign Business Associate Agreements if required under this Agreement.

14.20 Payable Interest

14.20.1 Payment of Interest. County shall not be liable to pay any interest to Provider for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Provider waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim interest, including for post-judgment interest, if such application would be contrary to applicable law.

14.20.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

14.21 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

14.22 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he or she is, on the date of execution, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and

does so with full legal authority. Provider represents that it is an entity authorized to transact business in the State of Florida.

14.23 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of Section 16½-157 of the Broward County Code of Ordinances, which requires County contractors to provide benefits to domestic partners of their employees, Provider agrees to fully comply with Section 16½-157 during the entire term of the Agreement. If Provider fails to fully comply with that section, such failure shall constitute a material breach which shall allow County to exercise any remedy available under this Agreement, under applicable law, or under section 16½-157. For that purpose, the contract language referenced in Section 16½-157 is incorporated herein as though fully set forth in this paragraph.

14.24 Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by Provider shall serve as Provider's required certification that it has or will establish a drug-free workplace in accordance with Section 287.087, Florida Statutes, and Chapter 21.31(a)(2) of the Broward County Procurement Code, and that it will maintain such drug-free workplace for the full term of this Agreement.

14.25 Contingency Fee. Provider represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Provider. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Provider under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

14.26 Living Wage Requirement. If Provider is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Broward County Code sections 26-100 – 26-105, Provider agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and Provider shall fully comply with the requirements of such ordinance. Provider shall be responsible for and shall ensure that all of its subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

14.27 Force Majeure. If the performance of this Agreement, or any obligation hereunder, is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, or ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of nonperformance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the

other party in writing and resume performance hereunder whenever and to the full extent such causes are removed. However, if such nonperformance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to immediately terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

14.28 County Logo. Provider shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

14.29 Additional Security Requirements. Consultant certifies and represents that it will comply with the Additional Security Requirements attached hereto and incorporated herein as Exhibit G.

14.30 Counterparts. 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 _____, 2017, and MISSION CRITICAL SYSTEMS INC., signing by and through its _____, 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: _____
____ day of _____, 2017


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: 

Name: WAYNE FLETCHER

Title: RISK MGR.

By:  5/12/17
René D. Harrod (Date)
Assistant County Attorney

RDH
2017-05-15 Mission Critical Systems Services Agreement
5/15/2017
#17-099.01

PROVIDER

WITNESSES:

Harriet R Newlove
Signature

Harriet R Newlove
Print Name of Witness above

K Bacon
Signature

Kimberly Bacon
Print Name of Witness above

Mission Critical Systems Inc.

By: [Signature]
Authorized Signor

Susan Crabtree, President
Print Name and Title

16 day of May, 2017

ATTEST:

Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

Exhibit A – Statement of Work

Provider and County agree that Provider shall provide the following work under this Agreement:

1. Supported Equipment and Software:

Provider shall provide or resell manufacturer Support and Maintenance Services for the Supported Equipment and Software set forth in Schedule 1. The Parties shall periodically review and update Schedule 1 to reflect the current equipment and software being supported and level of support; any updates agreed to in writing by the County Contract Administrator and Provider's CyberSecurity Account Manager shall be deemed automatically included herein as the updated Schedule 1. County may request modifications to Schedule 1, including addition, removal, or replacement of Equipment and Software being supported, the location of the Equipment, or the level of support provided for each item, at any time throughout the duration of the Agreement on thirty (30) days' advance notice.

2. Hardware:

County may acquire any Equipment manufactured by or for, Check Point Software Technologies, LTD, branded under the Check Point name or any other official branding associated with Check Point Software Technologies, Ltd. by issuance of an appropriate Purchase Order or Work Authorization. County is under no obligation to purchase any given quantity or product(s) at any time. County reserves the right to utilize any other County contract, any State of Florida contract, any contract awarded by any other city or county governmental agencies, school boards, other community college/state university system cooperative agreements, or to directly negotiate/purchase per County policy, in lieu of purchasing any good or service under this Agreement.

3. Software:

County may acquire any Software or subscriptions developed by or for, Check Point Software Technologies, LTD, branded under the Check Point name or any other alias associated with Check Point Software Technologies, LTD by joint execution of an appropriate Work Authorization (required for Software) or by purchase order (permitted for subscriptions). County is under no obligation to purchase any given quantity or product(s) at any time. County reserves the right to utilize any other County contract, any State of Florida contract, any contract awarded by any other city or county governmental agencies, school boards, other community college/state university system cooperative agreements, or to directly negotiate/purchase per County policy, in lieu of purchasing any good or service under this Agreement.

4. Additional Services:

Provider will provide Network Security Enterprise level hardware and software solutions. Mission Critical Systems will assist in the identification of Information Technology Security products providing a wide range of services related to Intrusion Prevention, controls governing Ingress/Egress of County communications data with external entities and Internet based services. Internal security solutions for virtualized environments, Data Centers, Wide Area Networks,

Metropolitan Area Networks, Internal Network Protection, and Monitoring of Breach Penetrations, and Distributed Denial of Service destructive attacks.

5. Product Transition:

In connection with contemplated Equipment purchases by County, Provider shall provide pre-sales consultation and guidance at no cost to the County, including to determine the scope of any conversion services that may be appropriate in connection with the Equipment purchase. If requested by County as Optional Services through a Work Authorization, Provider shall perform conversion operations relating to third party vendor security policies and appliance configurations in connection with any migration to the Check Point infrastructure.

6. Security/Access:

Provider shall deliver reasonable information as requested by County regarding levels of experience and certifications to determine appropriate Security and Network Access restrictions of Provider staff, and allow County to verify Provider compliance with County security standards. While on premise or providing remote support on County production equipment, Provider shall work under continuous Supervision of County authorized staff. The County prohibits the sharing of System or Network accounts with third-party entities to support Check Point technologies without the expressed written consent of the Contract Administrator. Configuration records, architectural designs, and other specific changes related to the County security posture remain the sole property of Broward County. Provider shall not maintain this information and shall relinquish any materials jointly created by County and Provider.

7. Installation:

For any procurement of Equipment or Software, County may elect to have some or all of the Equipment or Software installed by Provider. If so elected, installation must be consistent with the procedures described in the applicable product manual and must conform to the installation procedures or specifications provided by County at time of installation, unless otherwise stated in the applicable Purchase Order or Work Authorization. Provider shall provide the means by which County can randomly verify the content of the installed devices to ensure compliance with this Agreement.

Scheduled Installations shall place during normal County business hours (Monday through Friday, 8:30 a.m. to 5:30 p.m., excluding holidays) unless otherwise agreed by the parties in writing. The Contract Administrator or delegated authority will schedule any installation date and time. Installers must be fully competent in the installation and operation of the product as delivered. If determined by the County that an installer is not fully competent, County reserves the right to have the Provider substitute with another qualified installer. If Provider cannot provide a fully competent installer for the awarded product, then County may cancel the order and receive a full refund of any amounts paid for the cancelled products or services.

8. Dedicated Web Site:

If requested by County, within 45 days of request, Provider shall provide County with a dedicated, secure web site that includes, but not limited to, the following features: Check Point Retail Price

Catalog, expiration dates of current products and subscriptions, Order status, Purchase history, Invoice copies, aging report for any outstanding invoices, shipping notification, Equipment Support Links. The dedicated site will also provide the links necessary to download software updates, and hardware drivers that apply to all models of Equipment offered. The dedicated site shall provide warranty, support and service call history information on any serial number or common unique identifier.

9. Communication and Personnel:

Account Representative.

Provider shall provide, during the term of the Agreement, a local (Broward, Miami-Dade, or Palm Beach Counties) Representative (Key Personnel) who will be able, and authorized to resolve all account-related issues. County reserves the right to request a new Account Representative to maintain a mutually beneficial relationship with the Provider. The representative shall be available business days between the hours of 8:30 a.m. to 5:30 p.m. (Eastern Standard Time).

Account Engineer.

Provider shall provide a dedicated account Engineer (Key Personnel) who will be able, and authorized to assist Check Point personnel in the resolution of hardware and engineering issues related to installation, and existing production equipment covered under a Check Point authorized support agreement. The dedicated account representative and account engineer shall schedule a minimum of four (4) one-hour (once per quarter) meetings with County's Contract Administrator or other delegated authorities. County reserves the right to request a new Account Engineer to maintain a mutually beneficial relationship with the Provider. Additionally, Provider shall identify a dedicated account representative employed by Check Point Software Technologies, LTD (Key Personnel) who is readily reachable during County business hours.

Planning Services.

Provider's representatives shall communicate to County regarding, and providing information regarding technology roadmaps; facilitate engineering discussions, process improvement discussions, technology release bulletins, capital funding planning exercises, etc. Information provided by the Provider shall be in the spirit of providing County with the information needed to make informed decisions surrounding strategy and futuristic planning.

Key Personnel.

Provider will ensure that the appropriately trained and experience persons responsible for Provider's performance of the Services under this Agreement have adequate time and resources to perform in accordance with the terms of this Agreement. To the extent Provider seeks or required to make any change to the composition of the Key Personnel, Provider will provide County with thirty (30) days' written notice in advance (or as much notice in advance possible if thirty (30) days' notice is not possible) regarding such changes and the management plan associated with such changes. County shall not be responsible for any additional costs associated with a change in Key Personnel.

Emergency Procurement.

Provider shall provide emergency contact information for preparing high priority orders of equipment herein requested under the terms and specifications of this Agreement. During times of declared State of Emergency enacted by Federal, State or County government for the local geographic area serving this Agreement, Provider shall make staffing available as required for order processing and provide an elevated priority to factory order creation and shipping per specifications. County requires the Provider to process such orders under disaster and post recovery situations where County established procurement processes may revert to manual operations.

10. Optional Services:

Transition & Disentanglement Services

The Parties acknowledge and agree that upon the expiration or termination of this Agreement, the good faith efforts of Provider to facilitate the smooth, efficient, and secure transition of data and services to another provider (or to County, to the extent applicable) without any unnecessary interruption or adverse impact on County operations (“Disentanglement”) is a critical objective of the Parties and a material obligation of Provider under this Agreement. All obligations of Provider under this Agreement shall be construed consistent with this objective.

At request of County, Provider shall provide prompt, good faith, and reasonable assistance to County in disentangling County data, business, and operations from the Software and, to the extent applicable, transitioning to a new software, system, or provider.

Training

Provider shall recommend and make available training course schedules delivered by Check Point Training Partners where students learn how to build, modify, deploy, and troubleshoot Check Point Security Systems on the GAIa© Operating System. Course content shall include hands-on lab exercises detailing optimization and upgrade of Check Point Management Servers. Acceptable venues may include physical or virtual classrooms. Provider shall recommend proper Virtual Courseware kits for County staff to use in a self-paced learning environment with curriculum on different Check Point Enterprise Security technologies.

Additional Professional Services:

County may acquire such other Equipment, Software, or Services as are related to the Equipment, Software and Services provided under this Agreement, including, without limitation, firewall health checks, PEN testing, and performing tuning.

Schedule 1 – County Hardware and Software Listing

SKU	Product Name	Support Level
CPAP-SG276-F	UTM-1 276 Security Gateway Appliance	No Support
CPAP-SG276-F	UTM-1 276 Security Gateway Appliance	No Support
CPAP-SG276-F	UTM-1 276 Security Gateway Appliance	No Support
CPAP-SG3076-F	UTM-1 3076 Security Gateway Appliance	No Support
CPAP-SG3076-HA-F	UTM-1 3076 Security Gateway Appliance- HA	No Support
CPAP-SG1140-NGTP-W-FCCA	1140 W Next Generation Threat Prevention	Premium
CPAP-SG21412	21412 - Security Gateway Appliance	Premium
CPAP-SG21412	21412 - Security Gateway Appliance	Premium
CPAP-SG1200R-NGTP	1200R Next Generation Threat Prevention Security Appliance	Premium
CPAP-SG15600-NGTP-HPP	15600 Next Generation Threat Prevention	Premium
CPAP-SG15600-NGTX-HPP	15600 Next Generation Threat Extraction	Premium
CPAP-SG5600-NGTP-HPP	5600 Next Generation Threat Prevention HPP	Premium
CPAP-SM210	Smart-1 210	Premium
CPEP-FDE-1-100TO4999-LICENSE	Endpoint Security Full Disk Encryption Blade	Premium
CPEP-MEPP-1-100TO4999-LICENSE	Endpoint Security Media Encryption Package 100-4999 Seats	Premium
CPAP-SG4200-NGFW	4200 Next Generation Firewall	Standard
CPAP-SG4200-NGFW	4200 Next Generation Firewall	Standard
CPAP-SG4200-NGFW	4200 Next Generation Firewall	Standard
CPAP-SG4200-NGFW	4200 Next Generation Firewall	Standard
CPAP-SG4200-NGFW	4200 Next Generation Firewall	Standard
CPAP-SG4200-NGFW-HA	4200 Next Generation Firewall HA	Standard
CPAP-SG4800-NGFW	4800 Next Generation Firewall	Standard
CPAP-SG4800-NGFW-HPP	4800 Next Generation Firewall	Standard
CPAP-SG4800-NGFW-HPP	4800 Next Generation Firewall	Standard
CPAP-SG4800-NGFW-HPP	4800 Next Generation Firewall	Standard
CPAP-SG4800-NGFW-HPP-HA	4800 Next Generation Firewall HA	Standard
CPAP-SG4800-NGFW-HPP-HA	4800 Next Generation Firewall HA	Standard
CPAP-SG4800-NGFW-HPP-HA	4800 Next Generation Firewall HA	Standard
CPAP-SG730-NGTP-W-US	730 NGTP Appliance Wireless	Standard
CPAP-SG750-NGTP-W-US	750 NGTP Appliance Wireless	Standard
CPAP-SM504	Smart-1 504	Standard
CPAP-SM504	Smart-1 504	Standard

Exhibit B – Payment Schedule

The rates specified below shall be in effect for the entire term of the Agreement, including any renewal term, unless the contrary is expressly stated below. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the costs and fees expressly provided for in this Exhibit B.

Item Description	Minimum Discount Price	Invoiced
Check Point Equipment (Hardware Servers, Devices, and Appliances)	55% off List Price	Upon delivery (Check Point equipment only) or written Final Acceptance by County (if services included)
Check Point Software (Software Applications, virtual Firewalls, Add-On Feature Software Modules, and Licensing)	55% off List Price	Upon written Final Acceptance by Contract Administrator
Check Point Support and Maintenance Services (including Check Point Support and Subscription, Annual Coverage, varying tiered support plans)	18% off List Price	Upon written Final Acceptance by Contract Administrator
Installation or other services acquired per Work Authorization	Applicable Minimum Discount Prices for components as set forth above, unless otherwise agreed	Per Work Authorization terms

The price at which Provider will sell Equipment, Software and Services to County under this Agreement shall be at the minimum discounts set forth in the table of pricing with additional discounts applied as follows:

- **List Price:** "List Price" as used above is the Check Point U.S. Global Price List Products and, Check Point U.S. Global Price List Services, which is set forth in Column "G" for the products and services references at the following URL <https://pricelist.checkpoint.com/pricelist/US/Global/welcome.jsp> (or such updated or replacement URL as mutually agreed by County Contract Administrator and Provider).
- **Current Retail Catalog:** Discount levels will always apply to the List Price of the most current retail price catalog (for Check Point or Mission Critical, as applicable).
- **Sales Promotion/Price Reduction:** During the term of this Agreement, sales promotions may occur that will lower prices of certain Equipment for the period of the sales

promotion. County shall receive the full benefit of such reductions if lower than the prices set forth below. Provider shall provide advance written notice to County of any applicable sales promotions, including specifying the beginning and ending dates of the sales promotion.

- **Equipment Discounts:** For Equipment purchased with installation or other additional professional services, the Equipment Minimum Discounts shall apply to the total cost of all items and services provided, including installation and professional services.
- **Competitive Pricing:** If County obtains a quotation or other written purchase offer from a third-party for Check Point product(s) at a unit price that is less than that offered by Provider after including the Minimum Discount, Provider shall match the lower price for the product(s) at issue.
- **Other Government Pricing:** If, during the term of this Agreement, Provider sells or executes an agreement to sell any of the Equipment to an educational or government entity on terms that reflect more favorable pricing that provided in this Exhibit B, Provider shall notify County within 30 days and the pricing in this Exhibit B shall be adjusted to reflect the more favorable pricing. County shall be refunded, or, at its option, receive a credit in the amount of the difference between the price paid and the more favorable pricing for any Equipment ordered by County under this Agreement within ninety (90) days prior to the date(s) notice was provided or was otherwise due under this paragraph.
- **Additional Discount Offerings:** Provider may always offer County an additional governmental discount at any time and invoice County at a lower cost than the Minimum Discount or the price otherwise calculated under this Exhibit B.

Any travel expenses or fees incurred by Provider under this Agreement shall be the sole responsibility of Provider, unless otherwise expressly stated.

Optional Services

Description	Unit/Term	Invoicing	Fee
Consulting or Professional Services (including Installation)	Hourly	Upon written Final Acceptance by Contract Administrator	\$300/hour *
Training	n/a	At time of registration	Per Class \$2995 CCSA or CCSE \$4995 CCSA & CCSE
Transition/ Disentanglement	Hourly	Upon written Final Acceptance by Contract Administrator	\$300/hour *

- All projects, prior to start, must have a written statement of work (SOW) from Mission Critical Systems. The SOW will specify the project price for the requested professional services. This project price can be broken down via an hourly rate, however, only projects can be scheduled. Mission Critical Systems does not perform hourly work without a specified project and an SOW.

Exhibit C - Support and Maintenance Services

Provider shall facilitate on behalf of County with Support and Maintenance Services so as to ensure and maintain optimal performance of the System consistent with the Statement of Work and the Documentation, which service shall include the following:

- Timely response and resolution of any errors, defects, malfunctions, or other issues affecting the use or performance of the System (collectively, "Events") in keeping with the Required Response Times stated below;
- Providing and facilitating the installation of updates, upgrades, and publicly available releases;
- Notification of patches and updates for Equipment and Software affecting security, including Check Point patches and updates;
- On-call availability via telephone and e-mail during normal business hours to receive and respond to inquiries or questions from County regarding use, operation, or functionality of the System;
- Address and resolve any software malfunctions, including validation of any issues experienced by County for Check Point products. Provider shall resolve the issue in conjunction with Check Point and apply, if applicable any hot fix software patches;
- Emergency availability via telephone and e-mail after hours to receive and respond to specific technical problems and questions relating to the operation or functionality of the System; In order for emergency support to be provided, a valid Check Point 7 x 24 Support must be in place. If there is no valid support contract in place at the time of request, Mission Critical Systems will use its best efforts to provide support.
- Use of ongoing best efforts to maintain the optimal functioning of the Software, to correct programming and coding errors, and to provide solutions to known errors affecting the operation of the System;
- Routine notification to County as it becomes available of new or updated information regarding the Equipment, Software or the Documentation, including without limitation pertaining to Check Point Systems.

Support and Maintenance Services shall be provided via telephone, electronic communication, on-site, or as otherwise appropriate to address the issue. To the extent included in the level of support purchased by County, Provider shall provide direct access for County to contact and receive directly support from Check Point support services. Any update, upgrades, releases, or other modifications to the Software shall be provided via electronic communication and for download via the Internet, if practicable.

To the extent necessary to resolve an Event or other support request, Provider shall assist in the facilitation of support on-site at any office or location of a Broward County agency. Provider agrees that any Mission Critical support personnel shall be suitably trained in the operation, support, and maintenance of the Check Point hardware and software including the associated

operating system. If in the reasonable opinion of County, the personnel provided are not acceptable, Provider agrees to provide suitable replacements.

Required Response Times. Upon notice by County of an Event, Provider shall address and resolve the Event consistent with the following priority, response, and resolution levels:

Priority Description	Definition	Response Time After Notice	Resolution Time after Notice
Critical	Event that renders the System and/or interfaces inoperable or allows unauthorized access.	In accordance with the purchased level of support and maintenance services provided solely by Check Point Software Technologies	Work until corrected
Severe	Event that results in a significant impairment of performance of the System or impairs essential operations or allows unauthorized access.	In accordance with the purchased level of support and maintenance services provided solely by Check Point Software Technologies	Work until corrected during normal business hours
Minor	Event that has minor impact to County's business and that does not impact normal operation of the System.	In accordance with the purchased level of support and maintenance services provided solely by Check Point Software Technologies	Future patch or release
Minimal	Event that has minimal impact or no impact on County's business.	In accordance with the purchased level of support and maintenance services provided solely by Check Point Software Technologies	Future release

Notwithstanding the above-stated schedule, Provider shall advocate for the County in the continuing best efforts to correct the Event as expeditiously as it can. The Priority Description for each error or issue shall be reasonably determined by the Contract Administrator.

Records and Reports. Provider will maintain records of its Support and Maintenance Services, and provide County with online access to an Event ticketing system, which shall include at least the following:

- a) Date, time, and name of contact for each Event;
- b) Date and time of response by Provider;
- c) Description of Event and analysis of error, defect, or other issue causing Event;
- d) All steps and actions taken to resolve the Event;
- e) Date and time of resolution and County representative notified of resolution; and
- f) All equipment and/or labor costs associated with resolution.

At the request of County, Provider shall provide monthly reports of the foregoing records as well as statistics of Provider's average monthly compliance with the Required Response Times.

Hours of Service. The hours of support shall be the hours set forth in the applicable level of support purchased for the Equipment or Software at issue as set forth on Schedule 1.

Telephone and Email Support. Provider shall facilitate designated contacts for telephone and email support that will be available during regular County business hours, and after hours for specific technical problems and questions. In order for emergency support to be provided, a valid Check Point 7 x 24 Support must be in place. If there is no applicable Support and Maintenance Services in effect at the time of request, Mission Critical Systems will use a best effort to provide support.

Repair Service. Provider shall monitor and advocate for the County on repair service options available from Check Point including prompt response and resolution of any repair request within the applicable Response Time, which includes identifying the cause of malfunction or problem; provision of any applicable temporary solutions or workarounds until completion of repair; permanent repair of the problem; correction, to the extent necessary, of any repercussions of the problem; and thorough inspection of the Equipment post-repair to ensure optimal functioning of the Equipment.

Failure to Meet Required Response Times. If Provider fails to meet the Required Response Times, County may offset against any sums due Provider \$300 for each hour that Provider's average response time in the preceding month exceeds the Required Response Times, which the Parties agree is a fair and reasonable approximation of County's negative financial impact caused by the delay in Provider's response. The amounts charged under this paragraph shall not exceed \$1,000 in any month.

DownTime Maintenance Credit. If (i) a Severe or Critical Event is not resolved or reduced to Minor or Minimal priority level within two (2) business hours after notice to Provider, and (ii) the Event is not escalated to the highest level of contracted support in accordance with the applicable support guidelines, then Provider will refund to County five percent (5%) of the monthly fee (or monthly pro rata equivalent, if the fee is other than monthly) for Support and Maintenance Services for each additional business hour that the Event remains unresolved or at the Severe or Critical priority level. Such refunds will be paid within 10 days or, at County's option, may be credited against future sums due to Provider. This refund shall be in addition to any other remedy that is available in the event of a breach of the Agreement.

Exhibit D Insurance Requirements

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	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
COMMERCIAL GENERAL LIABILITY Broad form or equivalent <i>With no exclusions or limitations for:</i> <input checked="" type="checkbox"/> Premises—Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazards [<input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other:	Bodily Injury		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 1 mil	\$ 2 mil
	Personal Injury		
BUSINESS AUTO LIABILITY* COMPREHENSIVE FORM <input checked="" type="checkbox"/> Owned *May be waived <input checked="" type="checkbox"/> Hired if no driving will be <input checked="" type="checkbox"/> Non-owned done in performance <input checked="" type="checkbox"/> Scheduled of services. <input checked="" type="checkbox"/> Any Auto	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 1 mil	
EXCESS/UMBRELLA LIABILITY <i>May be used to supplement minimum liability coverage requirements.</i>	Follow form basis or Add'l insd endorse- ment is required	\$5 mil	\$5 mil
<input checked="" type="checkbox"/> WORKERS' COMPENSATION <input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	Chapter 440 FS (each accident)	STATUTORY \$ 1 mil	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY ~ E&O* *Also applies to subcontractors	(per occurrence) Claims made-extended reporting period	\$ 2 mil 2 years	
<input type="checkbox"/> CYBER LIABILITY			
<input type="checkbox"/> CRIME AND FIDELITY	(per occurrence) Extended reporting		
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES Broward County is listed as an additional insured on the General Liability and the Business Automobile policies. Waiver of subrogation in favor of certificate holder applies to general liability, automobile liability and workers compensation. Indicate bid number or project name on COI REF: Checkpoint firewalls and support services			
CERTIFICATE HOLDER: Broward County 1 N University Dr. # 4003A Plantation, FL 33324 Attn: ETS		 <small>WAYNE A. FLETCHER dc=cty, dc=broward, dc=bc, ou=Organization, ou=BCC, ou=RM, ou=Users, cn=WAYNE A FLETCHER 2017.05.16 12:39:35 -04'00'</small>	

Exhibit E – Work Authorization Form
WORK AUTHORIZATION FOR AGREEMENT _____

Contract Number: _____
Work Authorization No. _____

This Work Authorization is between Broward County and _____ (“Provider”) pursuant to the Agreement, executed on _____. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

Services to be provided: [DESCRIBE IN DETAIL]

Agreement at issue is __ Lump Sum/ __ Not-to-Exceed for amount: \$ _____

The time period for this Work Authorization will be from the date of complete execution until ____ (____) days after County’s Notice to Proceed for the Services to be provided under this Work Authorization, unless otherwise extended or terminated by the Contract Administrator.

Fee Determination: Payment for services under this Work Authorization is as follows:

Professional Services	\$ _____
General Services	\$ _____
Goods/Equipment	\$ _____
Total Cost of this Work Authorization	\$ _____

The foregoing amounts shall be invoiced by Provider upon written acceptance by County of all goods and services provided under this Work Authorization.

County

_____	_____	Contract Administrator	Date
Project Manager	Date	Board and/or Designee	Date

Provider

_____	_____
Attest	Signed
_____	Date
_____	Typed Name
_____	Title

Exhibit F – FTA Funding Supplement

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

Broward County Board of
County Commissioners
TRANSPORTATION
DEPARTMENT –
TRANSIT DIVISION

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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: http://www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html. References to the Code of Federal Regulations (CFR) website are available at: <http://www.gpoaccess.gov/cfr/index.html>.

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 Dianne DeLyons Shuler, Compliance Manager, Broward County Transit Division, at 954-357-8481, or by email: dshuler@broward.org

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.

- 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: <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>.
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 \$100,000, the CONTRACTOR agrees to comply with 49 USC §5323(j) 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 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 TMV 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.

DDS/SVT/dac
FTA Funding Supplement 4-8-13

Not Applicable


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)

Solicitation Number:	Project Title:
----------------------	----------------

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.

Work to be performed by DBE/ACDBE Firm			
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.

Not Applicable


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: _____

OESBD Compliance Form DBE/ACDBE GFE 031413

Not Applicable
[Signature]

EXHIBIT 3: Monthly DBE Utilization Report



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT
MONTHLY DBE UTILIZATION REPORT

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
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.

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

OE SBD Compliance Form DBEMJR 020113

Not Applicable
[Signature]

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.

OBE 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
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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.

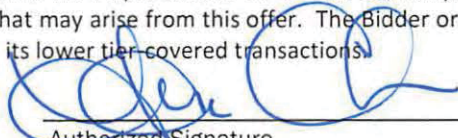
This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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.

5/16/17
(Date)



Authorized Signature

Susan Cebitsoe, President
Print Name and Title

Mission Critical Systems
Name of Contractor


Not Applicable


EXHIBIT 6: Buy America Certification

**FOR PROCUREMENTS OF STEEL, IRON, AND MANUFACTURED PRODUCTS
(INCLUDING CONSTRUCTION CONTRACTS, MATERIALS AND SUPPLIES, AND
ROLLING STOCK) OVER \$100,000**

A. STEEL, IRON OR MANUFACTURED PRODUCTS

If this Contract or purchase order is valued in excess of \$100,000 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 \$100,000 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 \$100,000) made with capital, operating, or planning funds.

EXHIBIT 7: Restrictions On Lobbying Certification

For Procurements of \$100,000 or More

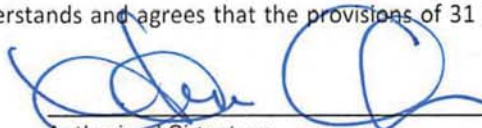
The undersigned certifies, to the best of his or her knowledge and belief, that:

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.

5/16/17
(Date)



Authorized Signature
Susan Cebotaro, President

Print Name and Title
Mission Critical Systems

Name of Contractor

Not Applicable


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."¹

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

¹ 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).


Not Applicable


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

Not Applicable
[Handwritten Signature]

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

FOR PROCUREMENTS OF BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT OVER \$100,000

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 \$100,000.

Not Applicable


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 to be supplied _____ has complied with the above-referenced requirements of Section 26.49 of 49 CFR Part 26.

(Name of Firm)

(Name of Manufacturer)

(Authorized Signature)

(Date)

Print Name and Title

Company: _____

Telephone No.: _____

Fax No.: _____