# AGREEMENT BETWEEN BROWARD COUNTY AND THE CENTER FOR TRANSPORTATION AND THE ENVIRONMENT FOR THE BROWARD COUNTY TRANSIT ZERO EMISSION BUS PROJECT

This is an Agreement ("Agreement"), made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County," and CENTER FOR TRANSPORTATION AND THE ENVIRONMENT, a not-for-profit 501(c)(3) organization, authorized to transact business in Florida, hereinafter referred to as "CTE" (County and CTE are collectively referred to as the "Parties").

### **RECITALS**

- A. County, through the Broward County Transit Zero Emission Bus Project (the "Project"), desires to reduce the energy consumption, emission of certain particulates, and emission of greenhouse gases associated with Broward County Transit's ("BCT") current fleet of diesel buses; and
- B. County applied for and received Federal Transit Administration ("FTA") grant funds under the FTA's Low or No Emission Bus Program to assist with the purchase five (5) 45' all battery electric buses and five (5) 200Kw depot charging units; and
- C. County, as a prime recipient of FTA funds, is responsible for project implementation, owning, operating, and maintaining all battery electric buses; and
- D. County has selected CTE to provide the Services necessary to successfully deploy the all battery electric buses as part of BCT's fleet; and
- E. CTE represents that it has the experience necessary to adequately and competently provide all Services contemplated in this Agreement to County's satisfaction; and
- F. The Board of County Commissioners of Broward County waived the Procurement Code of Broward County under Section 21.6(c) and authorized BCT to enter into this Agreement with CTE to provide Services for the Project; and
- G. Negotiations pertaining to the Services to be performed and the compensation were therefore undertaken between the Parties and this Agreement incorporates the results of such negotiations.
- NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

# ARTICLE 1 REPRESENTATIONS

1.1 The foregoing recitals are true and correct and by this reference are fully incorporated herein.

# ARTICLE 2 DEFINITIONS AND IDENTIFICATIONS

- 2.1 **Board** shall mean the Broward County Board of County Commissioners.
- 2.2 **Contract Administrator** shall mean the Director of the Broward County Transportation Department, the Deputy Director of the Broward County Transportation Department, or County Administrator, who is the representative of County concerning the Project. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 2.3 **County Administrator** shall mean the administrative head of County pursuant to Section 3.02 and 3.03 of the Broward County Charter.
- 2.4 **County Attorney** shall mean the chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 2.5 **Federal Transit Administration** shall mean the agency by that name within the United States Department of Transportation ("USDOT").
- 2.6 **Low or No Emission Program** shall mean the program that, in part, provides funding to state and local government authorities for the purchase or lease of zero-emission and low-emission transit buses created by the FAST Act Pub. L. No. 114–94.
- 2.7 **Notice to Proceed** shall mean a written authorization to proceed with the Project, phase, or task thereof, issued by the Contract Administrator.
- 2.8 **Project** shall mean the Broward County Transit Zero Emission Bus Project for which CTE is to provide its Services.
- 2.9 **Services** shall mean the work required by CTE under this Agreement including, without limitation, all deliverables, technical assistance, modeling, Tasks, or other Services specified in Exhibit A.
- 2.10 **Task(s)** shall mean the deliverables enumerated in Exhibit A.

# ARTICLE 3 PREAMBLE

In order to establish the background, context, and frame of reference for this Agreement and to generally express the objectives and intentions of the respective Parties hereto, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 This Project is funded with FTA Low or No Emission Program funds.
- 2.2 Negotiations pertaining to the Services to be performed by CTE were undertaken with CTE, and this Agreement incorporates the results of such negotiations.

# ARTICLE 4 SCOPE OF SERVICES

- 4.1 CTE shall perform all work identified in this Agreement including without limitation Exhibit A. The Exhibit A Base Technical Services Plan is a description of CTE's obligations and responsibilities and is deemed to include all preliminary considerations and prerequisites, all labor, materials, equipment, and tasks which are such inseparable part of the work described that exclusion would render performance by CTE impractical, illogical, or unconscionable, and all necessary, incidental, and related activities and Services required by the Scope of Services and contemplated in CTE's level of effort.
- 4.2 The Scope of Services does not delineate every detail and minor work task required to be performed by CTE to complete the Services for this Project. If, during the course of the performance of the Services included in this Agreement, CTE determines that work should be performed to complete the Project, which is in CTE's opinion outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CTE shall notify the Contract Administrator in writing in a timely manner before proceeding with the work. If CTE proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to the Contract Administrator does not constitute authorization or approval by County to CTE to perform the work. Performance of work by CTE outside the originally anticipated level of effort without prior written County approval is at CTE's sole risk.
- 4.3 CTE acknowledges that the 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 set forth in this Agreement or, to the extent applicable, the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code).

# ARTICLE 5 TERM AND TIME OF PERFORMANCE

- Prior to beginning the performance of any Services under this Agreement, CTE must receive a Notice to Proceed. The term of this Agreement shall commence from the date of the Notice to Proceed for a period of two (2) years (the "Initial Term"). 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.
- 5.2 All duties, obligations, and responsibilities of CTE required by this Agreement shall be completed no later than July 31, 2020. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 5.3 In the event CTE is unable to complete the above Services because of delays resulting from untimely review by County or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CTE, or because of delays which were caused by factors outside the control of CTE, County shall grant a reasonable extension of time for completion of the Services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CTE to notify the Contract Administrator promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.
- In the event County elects to extend the term of this Agreement beyond the Initial Term, CTE agrees that it shall continue to provide the Services upon the same terms and conditions as set forth in this Agreement for such extended period, which shall not be more than six (6) months beyond the Initial Term. CTE shall be compensated for the Services at the rate in effect when the extension was invoked by County. This option, if elected by County, shall be exercised by County's Director of Purchasing upon written notice stating the duration of the extended period which notice shall be provided to CTE at least thirty (30) calendar days prior to the end of the Initial Term.

# ARTICLE 6 COMPENSATION

#### 6.1 <u>Amount and Method of Compensation</u>

6.1.1 Maximum Amount Not-To-Exceed Compensation. Compensation to CTE for the performance of the Base Technical Services in Exhibit A is payable on a "Maximum Amount Not-To-Exceed" basis, and as otherwise required by this Agreement, up to a maximum amount not-to-exceed of One Hundred Twenty Thousand Dollars (\$120,000). Payment shall be made only for work actually performed and completed pursuant to this Agreement, at the rates

- set forth in Exhibit B, which amount shall be accepted by CTE as full compensation for all such work.
- 6.1.2 The dollar limitation set forth in Section 6.1.1 is a limitation upon, and describes the maximum extent of, County's obligation to CTE, but does not constitute a limitation, of any sort, upon CTE's obligation to incur expenses in the performance of Services hereunder.

### 6.2 <u>Method of Billing</u>

CTE must submit invoices upon completion of each Task no more than thirty (30) calendar days after such completion. Each invoice shall specify the Task that has been completed, the nature of the Services performed, and the expenses incurred. Where prior approval by the Contract Administrator is required for the invoiced work, a copy of said approval shall accompany the invoice for such work.

### 6.3 Method of Payment.

County shall pay CTE within thirty (30) calendar days from receipt of CTE's proper invoice, as defined by County's Prompt Payment Ordinance (Section 1-51.6, Broward County Code of Ordinances), ninety percent (90%) of the total shown to be due on such invoice for each Task. When the Services to be performed on all Tasks are one hundred percent (100%) complete, as determined by the Contract Administrator, County shall remit to CTE the ten percent (10%) portion of the amount previously withheld on each completed Task. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of CTE to comply with a term, condition, or requirement of this Agreement.

- 6.4 Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by County.
- 6.5 Payment shall be made to CTE at the address designated in the "NOTICES" section of this Agreement.

# ARTICLE 7 COUNTY'S RESPONSIBILITIES

- 7.1 County shall assist CTE by placing at CTE's disposal pertinent information County has available to the Project to be performed by CTE under this agreement.
- 7.2 County shall arrange for access to, and make all provisions for, CTE to enter upon public and private property as required for CTE to perform its Services.
- 7.3 County shall give prompt written notice to CTE whenever County observes or otherwise becomes aware of any development that affects the scope or timing of CTE's Services.

# ARTICLE 8 INDEMNIFICATION

8.1 CTE shall at all times hereafter indemnify, hold harmless, and defend County and all of County's current or former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorney's fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of CTE, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, CTE shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, County may retain any sums due to CTE under this Agreement until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

# ARTICLE 9 INSURANCE

- 9.1 For purposes of this article, the term "County" shall include Broward County and its members, officials, officers, and employees.
- 9.2 CTE shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit C (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 CTE.

- 9.3 Insurers providing the insurance required by this Agreement must either be: (1) authorized by 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 C, the applicable policies shall comply with the following:
  - 9.3.1 Commercial General Liability Insurance. Policy should 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 requested 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 profession

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

- 9.3.2 <u>Business Automobile Liability Insurance</u>. 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.
- 9.3.3 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 for "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, to Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

- 9.3.4 <u>Professional Liability Insurance</u>. Such insurance shall cover CTE for those sources of liability arising out of the failure to render professional Services in the performance of the Services required in this Agreement. If the 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 C.
- 9.4 Within fifteen (15) calendar days after the full execution of this Agreement or notification of award, whichever is earlier, CTE 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.
- 9.5 Coverage is not to cease and is to remain in force until County determines all performance required of CTE is completed. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provide to County prior to the policy's expiration.
- 9.6 CTE shall provide County thirty (30) calendar 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) calendar days' advance notice.
- 9.7 CTE shall provide, within thirty (30) calendar days after receipt of a written request from County, a copy of the policies provided the coverage required by this Agreement. CTE may redact portions of the policies that are not relevant to the insurance required by this Agreement.
- 9.8 County and CTE, each for itself and on behalf of its insurers, to the fullest extent permitted by law without violating 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.
- 9.9 If CTE uses a subcontractor, CTE shall require each subcontractor to endorse County as an "Additional Insured" on the subcontractor's Commercial General Liability policy.

### ARTICLE 10 TERMINATION

- 10.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) calendar days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) calendar days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, and welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such notice of termination for cause is provided.
- 10.2 This Agreement may be terminated for cause for reasons, including, but not limited to, CTE'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 Agreement. This Agreement may also be terminated for cause if CTE is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if CTE provides a false certification submitted pursuant to Section 287.135, Florida Statutes.
- 10.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 10.4 In the event this Agreement is terminated for convenience by County, CTE shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination. CTE acknowledges that it has received good, valuable, and sufficient consideration from County, the

- receipt and adequacy of which are hereby acknowledged by CTE, for County's right to terminate this Agreementfor convenience.
- 10.5 In the event this Agreement is terminated for any reason, any amounts due to CTE shall be withheld by County until all documents are provided to County pursuant to Section 13.1 "Rights in Documents and Work" of this Agreement.

# ARTICLE 11 EQUAL EMPLOYMENT OPPORTUNITY

- 11.1 No Party to this Agreement may 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. CTE shall comply with the non-discrimination requirements of 49 C.F.R. Parts 23 and 26. If CTE uses a contractor, CTE shall include the foregoing or similar language in its contracts with any subcontractors.
- 11.2 Failure to comply with the foregoing requirements shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.
- 11.3 By execution of this Agreement, CTE represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. County hereby materially relies on such representations in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from CTE all monies paid by County pursuant to this Agreement and may result in debarment from County's competitive procurement activities.

# ARTICLE 12 MISCELLANEOUS

### 12.1 Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of County; and, if a copyright is claimed, CTE grants to County a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CTE, whether finished or unfinished, shall become the property of County and shall be delivered by CTE to the Contract Administrator within fifteen

(15) calendar days of the receipt of the written notice of termination. If applicable, County may withhold any payments then due to CTE until CTE complies with the provisions of this section.

### 12.2 Public Records

- 12.2.1 To the extent CTE is a contractor acting on behalf of County as stated in Section 119.0701, Florida Statutes, CTE shall:
  - a. Keep and maintain public records required by County to perform the Services under this Agreement; and
  - 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; and
  - 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 CTE or keep and maintain public records required by County to perform the Services. If CTE transfers the records to County, CTE shall destroy any duplicate public records that are exempt or confidential and exempt. If CTE keeps and maintains public records, CTE 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.
- 12.2.2 The failure of CTE to comply with this Section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law. If CTE uses a subcontractor, CTE shall ensure that the requirements of this Section are included in all agreements with its subcontractor(s).
- 12.2.3 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. CTE will provide any requested records to County to enable County to respond to the public records request.

12.2.4 Any material submitted to County that CTE 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, CTE must, simultaneously 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 Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by CTE 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 CTE. CTE 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 attorney's fees, litigation expenses and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a public records request by a third party.

IF CTE HAS ANY QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO CTE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-8424, TGARLING@broward.org, ONE NORTH UNIVERSITY DRIVE, SUITE 3100A, PLANTATION, FLORIDA 33324.

#### 12.3 Audit Right and Retention of Records

- 12.3.1 CTE shall preserve all Contract Records (as defined below) 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. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Agreement and for a period of three years after the expiration or termination of this Agreement (or longer if required by law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with CTE's employees, subconsultants, vendors, or other labor.
- 12.3.2 Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase

orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by CTE or subconsultants.

- 12.3.3 County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. County reserves the right to conduct such audit or review at CTE's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. CTE agrees to provide adequate and appropriate work space. CTE shall provide County with reasonable access to CTE's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.
- 12.3.4 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment reliant upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by CTE or its subconsultants in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by CTE in addition to making adjustments for the overcharges. Any adjustments 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 CTE.
- 12.4 CTE shall ensure that the requirements of this section are included in all agreements with subcontractors.

### 12.5 <u>Truth-In-Negotiation Certificate</u>

CTE'S compensation under this Agreement is based upon representations supplied to County by CTE, and CTE certifies that the wage rates, factual unit costs, and other information supplied to substantiate CTE's compensation, included without limitation in the negotiation of this, 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.

#### 12.6 Public Entity Crime Act

CTE 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, CTE 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" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committed an act defined as a "public entity crime" regardless of the amount of money involved or whether CTE has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this section is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to CTE under this Agreement.

#### 12.7 Independent Contractor

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

### 12.8 Third Party Beneficiaries

Neither CTE nor County intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 12.9 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 in accordance with the provisions of this section.

#### For County:

Broward County Transportation Department Attn: Department Director 1 North University Drive, Suite 3100A Plantation, Florida 33324

Email address: cwalton@broward.org

#### For CTE:

Will Manget
Center for Transportation and the Environment
730 Peachtree Street, Suite 760
Atlanta, Georgia 30308
Email Address: will@cte.tv

#### 12.10 Assignment And Performance

Except for subcontracting approved in writing by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by CTE without prior written consent of County. If CTE violates this provision, County shall have the right to immediately terminate this Agreement. CTE represents that each person and entity that will provide Services under this Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. CTE acknowledges that all Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such Services shall equal or exceed prevailing industry standards or the provisions of such Services.

#### 12.11 Conflicts

Neither CTE nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CTE's loval and conscientious exercise of judgment and care related to its performance under this Agreement. None of CTE's officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or CTE 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 limitation of this section shall not preclude CTE or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event CTE is permitted pursuant to this Agreement to utilize subcontractors, to perform any Services required by this Agreement, CTE shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CTE.

#### 12.12 Contingency Fee

CTE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CTE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CTE, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Board shall have the right to terminate this Agreement without liability at its discretion, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

#### 12.13 Materiality and Waiver of Breach

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties in exchange for *quid pro quo*. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

### 12.14 Compliance with Laws

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

#### 12.15 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 remainder of this Agreement shall remain in full force and effect.

#### 12.16 Joint Preparation

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

#### 12.17 Interpretation

The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise

requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

#### 12.18 Priority of Provisions

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect.

#### 12.19 Law, Jurisdiction, Venue, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, CTE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

#### 12.20 Amendments

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

#### 12.21 Prior Agreements

This document 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.

### 12.22 Payable Interest

- 12.22.1 Payment of Interest. County shall not be liable to pay any interest to CTE for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof CTE 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 for interest, including for post-judgment interest, if such application would be contrary to applicable law.
- 12.22.2 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 calculated consistent with Section 218.74, Florida Statutes.

#### 12.23 Incorporation by Reference

The attached Exhibits are incorporated into and made a part of this Agreement.

### 12.24 Representation of Authority

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

#### 12.25 Counterparts and Multiple Originals

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

### 12.26 Requirements Related to Federal Funding

CTE shall comply with the provisions set forth in the Federal Transit Administration United States Department of Transportation Funding Supplement attached hereto as Exhibit D and incorporated herein by reference.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Agreement: BROWARD COUNTY throu signing by and through its Director of P action on the day of TRANSPORTATION AND THE EN, duly author	gh its BOAR Purchasing, a	D OF COUNTY COMMISSION of the country of the countr	ONERS, y Board
ATTEST:		COUNTY	
Broward County Administrator, as Ex-officio Clerk of the Broward County		COUNTY, by and Director of Purchasing	
Board of County Commissioners	,	Brenda J. Billingsley	
		day of	, 2018
Insurance requirements approved by Broward County Risk Management Divising Signature (Date)  Name Title		Approved as to form by Andrew J. Meyers Broward County Attorney Governmental Center, Su 115 South Andrews Aven Fort Lauderdale, Florida 3 Telephone: (954) 357-760 Telecopier: (954) 357-764	ue 3301 00
	Ву _	Claudia Capdesuner Assistant County Attorney	
	Ву _	Angela J. Wallace	(date)
		Deputy County Attorney	()

CC/hb CTE and Broward County Agreement.doc 5/24/2018 #295384v2

# AGREEMENT BETWEEN BROWARD COUNTY AND THE CENTER FOR TRANSPORTATION AND THE ENVIRONMENT FOR THE BROWARD COUNTY TRANSIT ZERO EMISSION BUS PROJECT

### **CENTER FOR TRANSPORTATION AND THE ENVIRONMENT**

Witnesses:	
	By
Signature	Authorized Signor
Printed Name of Witness above	Printed Name and Title
Signature	, 2018
Printed Name of Witness above	Corporate Secretary or other person authorized to attest
	(CORPORATE SEAL OR NOTARY)



#### CTE's Base Technical Services Plan

FTA Low- or No-Emission Vehicle Deployment Program (Low-No)

#### **Base Technical Services Plan**

The Base Technical Services Plan offered by the Center for Transportation and the Environment (CTE) provides the minimal level of support required to initiate the deployment of zero-emission buses. CTE's Technical Service Plan is designed to educate transit agencies on the limitations associated with BEB's to ensure that they can be successfully deployed in passenger service.

The technical services are separated into the following tasks, as follows:

- 1. Route Modeling. CTE will develop computer models for the transit agency's routes and the bus model from the selected OEM. The models are used to simulate operation of the BEB on the agency's route under varying conditions to predict the performance and energy efficiency of the selected bus on the selected route. The model utilizes powertrain simulation software developed by Argonne National Laboratory called Autonomie. CTE will collect data by riding the route on an existing transit agency bus with a GPS data logger to capture time, distance, vehicle speed, vehicle acceleration, GPS coordinates, and roadway grade. CTE will use this data, along with specifications for the bus model and charging systems (on-route and/or shop charging units), to develop a baseline route performance model. The model will analyze variable passenger and power accessory (e.g., HVAC) load parameters to estimate real-world vehicle performance, including the impact of different weather conditions if applicable. CTE shall also assess the impact of battery degradation on range and performance over time. CTE will provide a profile report for each route.
- **2. Charge Modeling.** CTE will analyze alternatives for charging equipment and develop charging profiles based on charge energy and charge rate requirements to determine charge duration.
- **3. Rate Modeling.** CTE will develop a rate model to assess the operational cost of the proposed service and charging alternatives. Rate Modeling will provide the transit agency with an estimated annual cost of energy for the electric buses, as determined by the vehicle and duty cycle modeling and simulation activities.
- **4. Vehicle & Equipment Specifications.** CTE will assist the transit agency with finalizing vehicle and equipment specifications and other documents required for bus procurement. Specifications will be modified based on results of the route model so that buses and equipment are optimized for the transit agency's deployment plan. CTE will help the transit agency identify any impact to their operating service caused by the specified buses and charging strategy.

	Base Technical Services Plan Fees	Price
1	Route Modeling: In accordance with the attached Base Technical Service Plan	\$ 30,000
2	Charge Modeling: In accordance with the attached Base Technical Service Plan	\$ 24,000
3	Rate Modeling: In accordance with the attached Base Technical Service Plan	\$ 27,000
4	Vehicle & Equipment Specifications: In accordance with the attached Base Technical Service Plan	\$ 27,000
5	Project Retainage: To be paid upon completion of project	\$ 12,000



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

Broward County Board of County Commissioners TRANSPORTATION DEPARTMENT — TRANSIT DIVISION

Rev. 12/11/2017 Page 1 of 47

	le of Contents HORITY	4
	INITIONS	
	THER INFORMATION	
	T A: GENERAL CONDITIONS – APPLICABLE TO ALL CONTRACTS	
	NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES	
2.		.ATED
3.		
4.	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	
5.	ACCESS TO RECORDS AND REPORTS	
6.	CIVIL RIGHTS REQUIREMENTS	
7.	DISADVANTAGED BUSINESS ENTERPRISE (DBE)	
8.	CONTRACT COMPLIANCE MONITORING.	
9.	ENERGY CONSERVATION	
10.		
PAR <sup>®</sup>	T B: ADDITIONAL REQUIREMENTS - CONDITIONAL	
11.		
12.		
13.		
14.	RESOLUTION OF DISPUTES	15
15.	LOBBYING	16
16.	CLEAN AIR	16
17.	CLEAN WATER REQUIREMENTS	17
18.	BONDING REQUIREMENTS	17
19.	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	17
20.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	25
21.	TRANSIT EMPLOYEE PROTECTIVE CONTRACTS	26
22.	FLY AMERICA	27
23.	CARGO PREFERENCE	28
24.	DRUG AND ALCOHOL TESTING	28
25.	PATENT AND RIGHTS IN DATA	29
26.	PRIVACY ACT	32

27.	CHARTER BUS	32
28.	SCHOOL BUS REQUIREMENTS	32
29.	BUS TESTING	33
30.	PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS	33
31.	SEISMIC SAFETY	34
32.	TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATION	34
33.	NATIONAL ITS ARCHITECTURE	34
34.	ACCESS FOR INDIVIDUALS WITH DISABILITIES	35
EXHIB	IT 1: Letter of Intent	. 37
EXHIB	IT 2: Application for Evaluation of Good Faith Effort	. 38
EXHIB	IT 3: Monthly DBE Utilization Report	. 39
EXHIB	IT 4: Final DBE Utilization Report	. 40
	IT 5: Government-Wide Debarment and Suspension (Nonprocureme	•
	cation	
EXHIB	IT 6: Buy America Certification	. 42
EXHIB	IT 7: Restrictions On Lobbying Certification	. 43
EXHIB	IT 8: Drug and Alcohol Testing Program Compliance Certification	. 44
EXHIB	IT 9: Bus Testing Compliance Certification	. 45
EXHIB	IT 10: Pre-Award and Post-Delivery Audit Requirements Certification	. 46
	IT 11: Transit Vehicle Manufacturer (Tvm) Certification of Compliance v	

Rev. 12/11/2017 Page 3 of 47

#### **AUTHORITY**

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

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

#### **DEFINITIONS**

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

#### **FURTHER INFORMATION**

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

Rev. 12/11/2017 Page 4 of 47

#### 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.

Rev. 12/11/2017 Page 5 of 47

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.

Rev. 12/11/2017 Page 6 of 47

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 seg. (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,

Rev. 12/11/2017 Page 7 of 47

CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

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

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

Rev. 12/11/2017 Page 8 of 47

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 ABOVEPRIOR TO AWARD OF YOUR BID, OFFER, OR PROPOSAL.

<u>Letter of Intent (Exhibit 1):</u> 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.

Rev. 12/11/2017 Page 9 of 47

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.

Rev. 12/11/2017 Page 10 of 47

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

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

http://www3b.dot.state.fl.us/equalopportunityofficebusinessdirectory/
IF DBE PARTICIPATION HAS BEEN TARGETED THROUGH RACE-NEUTRAL
MEANS, THE FORMS SET FORTH ABOVE NEED NOT BE SUBMITTED.

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

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

- f) CONTRACTOR agrees that throughout the term of this Contract, the services as provided by the firms listed on **Exhibit 1 (Letter of Intent)** shall remain at least at the percentage levels set forth therein.
- g) CONTRACTOR shall pay its Subcontractors and suppliers within ten (10) days for a construction Contract or within thirty (30) days for a non-construction Contract following receipt of payment from the COUNTY for such subcontracted work or supplies. CONTRACTOR agrees that if it withholds an amount as retainage from its Subcontractors or suppliers, that it will release such retainage and pay same within ten (10) days for a construction Contract or within thirty (30) days for a non-construction Contract following receipt of payment of retained amounts from COUNTY, or within ten (10) days for a construction Contract or within thirty (30) days for a non-construction Contract after the Subcontractor has satisfactorily completed its work, whichever shall first occur.
- h) CONTRACTOR agrees that nonpayment of a Subcontractor or supplier shall be a material breach of this Contract and that COUNTY may, at its option, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such Subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude COUNTY's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its Subcontractor or supplier.

Rev. 12/11/2017 Page 11 of 47

- 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.
- I) 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.

Rev. 12/11/2017 Page 12 of 47

- 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:

Rev. 12/11/2017 Page 13 of 47

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.

Rev. 12/11/2017 Page 14 of 47

# PART B: ADDITIONAL REQUIREMENTS – CONDITIONAL (Please read each qualifying condition carefully.)

#### 11. RECYCLED PRODUCTS

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

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

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

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

#### 13. BUY AMERICA

If this Contract exceeds \$150,000, the CONTRACTOR agrees to comply with 49 USC §5323(j)(13) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have more than 65 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

Rev. 12/11/2017 Page 15 of 47

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.

Rev. 12/11/2017 Page 16 of 47

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

Rev. 12/11/2017 Page 17 of 47

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

Rev. 12/11/2017 Page 18 of 47

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.

Rev. 12/11/2017 Page 19 of 47

(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

Rev. 12/11/2017 Page 20 of 47

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

Rev. 12/11/2017 Page 21 of 47

- 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

Rev. 12/11/2017 Page 22 of 47

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

Rev. 12/11/2017 Page 23 of 47

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,

Rev. 12/11/2017 Page 24 of 47

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

Rev. 12/11/2017 Page 25 of 47

- (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

Rev. 12/11/2017 Page 26 of 47

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 <u>Disabilities</u> - 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

Rev. 12/11/2017 Page 27 of 47

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.);
- 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.

Rev. 12/11/2017 Page 28 of 47

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:
  - 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.

Rev. 12/11/2017 Page 29 of 47

- 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 awards Federal assistance for FTA 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. 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

Rev. 12/11/2017 Page 30 of 47

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 (<u>i.e.</u>, 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) <u>Patent Rights</u> 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.

Rev. 12/11/2017 Page 31 of 47

- 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

Rev. 12/11/2017 Page 32 of 47

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) <u>Buy America Requirements</u>. The CONTRACTOR shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If

Rev. 12/11/2017 Page 33 of 47

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) <u>Solicitation Specification Requirements.</u> CONTRACTOR shall submit evidence that it will be capable of meeting the bid specifications.
- c) <u>Federal Motor Vehicle Safety Standards (FMVSS).</u> 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.

Rev. 12/11/2017 Page 34 of 47

#### 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;
- 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;

Rev. 12/11/2017 Page 35 of 47

- 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.

Rev. 12/11/2017 Page 36 of 47

FTA/USDOT	Funding	Supp	lement
-----------	---------	------	--------

Solicitation	No.		

# 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 Nu	ımber:	Project Title:		
Bidder/Offeror I	Name:			
Address:		City:	State	: Zip:
Authorized Rep	presentative:		Phone:	
DBE/ACDBE S	ubcontractor/Supplier Name:			
Check one:	Address:			
DBE	City:	State: _	Zip: Phone:	
ACDBE	Authorized Representative:			
B. By signing described C. By signing D. By signing	below, the above-named DBE/ACD below, the bidder/offeror and DBE below, it may only subcontract/hat ork/	consistent with Title 49 CFR ing to utilize the above-name BE is committing to perform ACDBE affirm that if the Ework to another DBE/ACDB	Parts 26 or 23 as appliced DBE/ACDBE to perform the work described belonger by DBE/ACDBE subcontractions. E if it wishes to receive D	able.  orm the work  ow.  ts any of the work
		e performed by DBE(ACD		
	Description	NAICS*	DBE/ACDBE Contract Amount <sup>†</sup>	DBE/ACDBE Percentage of Total Project Value
			\	
-				
AFFIRMATIO	N: I hereby affirm that the information	on above is true and correc	t.	
Bidder/Offeror	r Authorized Representative			
(Signature)		(Title)		(Date)
DBE/ACDBE S	Subcontractor/Supplier Authorize	d Representative		
(Signature)		(Title)		(Date)
Visit http://ww	w census gov/eos/www/naics/ to se	arch Match type of work w	vith NAICS code as close	elv as nossible

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.

Rev. 2/1/2017

Visit <u>http://www.census.gov/eos/www/naics/</u> 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.

TA/USDOT Funding Supplement	Solicitation No/
EXHIBIT 2: App	lication for Evaluation of Good Faith Effort
APPLICATION PURSUA	FOR EVALUATION OF GOOD FAITH EFFORT NT TO TITLE 49 CFR PARTS 23 AND 26
SOLICITATION NO	
Please check one of the following to in	ndicate the program goal on this solicitation:   ACDBE   DBE
PROJECT NAME:	
ADDRESS:	
TELEPHONE:	FAX:/
Disadvantaged Business Enterprise (I certified firms in good faith effort to not to meet the goal. Consistent with the hereby submits documentation (attack under these requirements.  The prime contractor understands to contingent on both the information protection of the other factors listed in Appendix A, this colisitation. The prime contractor	the prime contractor affirms that his/her company has contacted DBE)/ Airport Concessions Disadvantaged Business Enterprise (ACDBE) neet the DBE or ACDBE goal for this solicitation but has not been able requirements of Title 49 CFR Part 26, Appendix A, the prime contractor ned to this form) of good faith efforts made and requests to be evaluated that a determination of good faith effort to meet the contract goal is ovided by the prime contractor as an attachment to this application and of Title 49 CFR Part 26, as those factors are applicable with respect to acknowledges that the determination of good faith effort is made by the and Small Business Development, as the Disadvantaged Business is keeping with federal requirements.
SIGNATURE:	
PRINT NAME/ TITLE	
DATE:	
	OESBD Compliance Form DBE/ACDBE GFE 031413

Rev. 12/11/2017

Page 38 of 47

			CONT	RACT AMT.:			DATE FORM	supi	ATTED:		
PROJECT TITLE:							PROJECT		E:		
PRIME			·		PERIO	D ENDING:	-/	TO	PRIME:		
CONTACT PERSO				SUBCONTRAC	TING INFORMA	HONE #: ( )			X#: (	)	
	TO'BE SUBI	MITTED MONTH	Original	Revised	% of Work	7		Gen		Ethnic	c Cate
DBE Subcontractor	Address	Description of Work	Agreed Price	Agreed Price	To Date	Amt. Paid This Period	Amt. Paid To Date	M	F B	н	A I
					-	/		-	-	+	+
		-			-	1			+	+	+
	L	Total Am	. Paid to DBE	Firms		L					
NON-DBE		Description	Original Agreed	Revised Agreed	% of Work Completed	Amt, Paid	Amt. Paid	Gen	der F B	Ethnic	Cate
Subcontractor	Address	of Work	Price	Price	To Date	This Period	To Date	Id			
											+
		Total Amt a	aid to Non-DB	F 50-7-	<u></u>						
Black American	B, Hispanic Am				NA; Non-Minority	Woman – W					
I attest that the info Signature	rmation submitte	d in this report is in	fact true and dom	ect to the best of	my knowledge			Date			
	Note: Th	e information prov	rided herein is s	ubject to verifica	nion by the Office	of Economic and	d Small Busines		opment.  Complan		
							)		1		
		/			\						
	{						1			1	
$\sim$	1						1	1		1	
$\wedge$							+	_		+	
$\overline{}$							1	_		1	
							\ \tag{\pm}	_		1	\
							1	_			\
							1	_			
							1	<del> </del>			\
							1	_			\

FTA/USDOT Funding Supplement Solicitation No. **EXHIBIT 4: Final DBE Utilization Report** OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT **FINAL DBE UTILIZATION REPORT** (To be submitted with the final invoice) DATE FORM SUBMITTED: PROJECT COMPLETION DATE: CONTRACT#: CONTRACT AMT.: PROJECT TITLE: AMT. PAID TO PRIME: PRIME CONTRACTOR: PERIOD ENDING: FAX #: ( ) TELEPHONE #: ( CONTACT PERSON: SUBCONTRACTING INFORMATION de to DBE Firms must be reported on this form Origina Agreed Price Revised % of Work Amt. Paid Agreed Price Completed To Date Amt. Paid DBE F 8 Н NA М This Perig To Date of Work Total Amt. Paid to DBE Firms % of Work Completed To Date Original Agreed Price Amt Paid Description Agreed Price NON-DBE 8 н To Date Address This Period Total Amt. paid to Non-DBE Firms Black American - B; Hispanic American - H; Asian American - A; Native I attest that the information submitted in this report is in fact true and correct to oject to verification by the Office of Economic and St s Development. Note: The information provided herein is OESBD Compliance Form DBEMUR 020113 Page 40 of 47

Rev. 2/1/2017

Solicitation No.	
------------------	--

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

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

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

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

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

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

(Date)

DANIEL J. ROLDEGAUGH

Print Name and Title

Name of Contractor

Rev. 2/1/2017 Page 41 of 47

Page 42 of 47

No.	
	No.

# **EXHIBIT 6: Buy America Certification**

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

A. STEEL, IRON OR MANUFACTURED PRODUCTS
If this Contract or purchase order is valued in excess of \$150,000 and involves the <u>procurement of steel, iron, or manufactured products</u> , the Bidder or offeror hereby certifies that it:
Will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR part 661.5.
Cannot meet the requirements of 49 USC 5323(j)(1) and 49 CFR part 661.5, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.
B. BUSES, OTHER ROLLING STOCK, AND ASSOCIATED EQUIPMENT
If this Contract or purchase order is valued in excess of \$150,000 and involves the <u>procurement of buses</u> , <u>other rolling stock</u> , <u>and associated equipment</u> 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.  Authorized Signature  Print Name and Title  Name of Contractor
Note: This Buy America certification must be submitted to Broward County with all bids or offers on FTA-funded Contracts involving construction or the acquisition of goods or rolling stock, except those subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$150,000) made with capital, operating, or planning funds.

Solicitation	No.	

## **EXHIBIT 7: Restrictions On Lobbying Certification**

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

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

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

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

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

(Date)

Authorized Signature

OANIEL J. Rancepancy

CTE

Name of Contractor

Print Name and Title

Rev. 2/1/2017 Page 43 of 47

# **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 48 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations."

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.

Authorized Signature

Print Name and Title

Name of Contractor

Rev. 2/1/2017

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

# **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 depar a manufacturer under the procedures in 49 CFR Part 29.

(Date) Authorized Signature, Print Name and Title Name of Contractor

<b>ATA/USDOT Funding Suppleme</b>	er	ne	er	ple	ıpr	Su	ling	u	ГΙ	O.	D	IS	/U	A	F(I	
-----------------------------------	----	----	----	-----	-----	----	------	---	----	----	---	----	----	---	-----	--

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

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

	ASSOCIATED EQUIPMENT OVER \$150,000
Check one:	
	The Bidder hereby certifies that it <u>will comply</u> 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 OFR 661.11.
	The Bidder hereby certifies that it <u>cannot comply</u> 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
	Name of Contractor
Note: This federal ass	s certification must be submitted with each bid or offer exceeding the small purchase threshold for istance programs currently set at \$150,000.
_	

Solicitation	No.	

# 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.

not include the certification will not be considered.
Transit Vehicle Manufacturer (TVM) CERTIFICATION
a TVM, herby 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 ————————————————————————————————————
, 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.
(Authorized Signature)  Print Name and Title
Company:
Telephone No.:
Fax No.: