

AGREEMENT FOR TROLLEY OPERATIONS AND RELATED SERVICES

THIS AGREEMENT is entered into on this 30th day of March 2017, by and between Pinellas Suncoast Transit Authority, an independent special district ("PSTA"), with its principal place of business at 3201 Scherer Drive, St. Petersburg, FL 33716, and Jolley Trolley Transportation of Clearwater, Inc. ("Jolley Trolley"), with its principal place of business located at 410 North Myrtle Avenue, Clearwater, Florida 33755 (collectively referred to as the "Parties").

WHEREAS, PSTA issued Request for Proposal No. 17-001P for Trolley Operations and Related Services on November 9, 2016 (the "RFP"); and

WHEREAS, Contractor submitted a Response to the RFP on January 11, 2017 ("Contractor's Response"); and

WHEREAS, PSTA's Board of Directors awarded the proposal to Contractor at the Board of Director's meeting on February 22, 2017 (the "Effective Date"); and

WHEREAS, the Parties wish to memorialize the terms and conditions of their agreement.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions set forth herein, the receipt and adequacy of which is hereby acknowledged, agree as follows:

1. **RECITALS.** The above recitals are true and correct and incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The "Contract Documents" shall mean and refer to this Agreement, the Federal Transit Administration Contract Clauses (attached hereto as **Exhibit 1**), the RFP and all exhibits attached thereto including all duly executed and issued addenda (collectively, attached hereto as **Exhibit 2**), and the Contractor's Response (attached hereto as **Exhibit 3**), Contractor's Best and Final Offer (attached hereto as Exhibit 4). All of the foregoing are incorporated herein by reference and are made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities or conflicts between this Agreement and the exhibits, precedence will be resolved in the following order:

Federal Transit Administration Contract Clauses
This Agreement
The RFP
Contractor's Best and Final Offer
Contractor's Response

3. **SCOPE OF WORK.** Contractor shall provide trolley operations and related services in accordance with the specifications, tasks, and scope of services set forth in the RFP (the "Services"). Contractor acknowledges that it has read the specification for the Services and understands them. Nothing contained in this Agreement or any of its exhibits or attachments shall be construed as a guarantee or implication as to any minimum quantity of services that Contractor will provide or for which it will be compensated. It is further understood and agreed by the Parties that Contractor, in the performance of the Services, is subject to the control and direction of PSTA as to the designation of tasks to be performed and the results to be accomplished for the Services, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use PSTA facilities, space, equipment or support services in the performance of

the Services, this use shall be at Contractor's sole discretion based on Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contractor, PSTA does not require that Contractor use PSTA facilities, equipment or support services or work in PSTA locations in the performance of the Services.

4. **EFFECTIVE DATE AND TERM OF AGREEMENT.** This Agreement shall become effective and commence on the Effective Date and shall remain in effect for five (5) years ("Contract Term").

5. **TERMS OF PERFORMANCE.**

5.01 *Time for Performance.* Contractor shall begin providing the Services on the Effective Date and shall continue throughout the Contract Term. Time is of the essence in performing the Services under this Agreement.

5.02 *Representatives; Relationship of Parties.* Prior to the start of any work under this Agreement, Contractor shall designate a primary and alternate representative, who will have management responsibility for the Services and who have authority to act on technical matters and resolve problems with the Services and the Contract Documents, to PSTA in writing ("Contractor's Representative"). Such designation shall include the contact information (including phone numbers) of Contractor's Representative. PSTA will advise Contractor in writing of the personnel who will represent PSTA in the administration of the Contract Documents ("PSTA's Project Manager"). Such writing from PSTA may include the specific duties of each individual and each representative's limits of authority. The Parties acknowledge that the relationship created by this Agreement is of independent contractors and neither party shall have the ability or authority to bind the other party to any other contract or obligation. Contractor shall have no authority to and shall not pledge PSTA's credit or in any way render PSTA a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

5.03 *Non-exclusive contract.* PSTA specifically reserves the right to contract with other entities for the Services or for similar services and products if it deems, in its sole discretion, such action to be in PSTA's best interest. Contractor may also perform services for additional persons or companies, in Contractor's discretion.

5.04 *Licenses and Permits.* Contractor shall secure all necessary licenses and permits that may be necessary to perform the Services under this Agreement. PSTA shall not be held responsible in the event Contractor fails to meet any local or state regulation, or to secure any permits or licenses required to provide the Services under this Agreement. Any such failure shall be considered a material breach of the terms and conditions of this Agreement.

5.05 *Contractor Responsibility.* Contractor shall provide Services of first quality in accordance with customary standards of the industries involved in the Services. The Services shall be high-quality in all respects. No advantage will be taken by Contractor in the omission of any part or detail of the Services. Contractor hereby assumes responsibility for all materials, equipment, and processes used in providing the Services. Contractor represents and warrants that it has no obligations or indebtedness that would impair its ability to perform the Services under this Agreement.

5.06 *Compliance with Laws.* Contractor shall be solely responsible for being familiar with and compliance with all federal, state, county, and local laws, rules and/or regulations, and lawful orders of public authorities including but not limited to those set forth in this Agreement, and that, in any manner, could bear on the Services including, but not limited to, data privacy laws, all rules and regulations related to safety and compliance therewith including but not limited to those applicable to conflict of interest and collusion, Executive Order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375, and as supplemented by the Department of Labor Regulations (41 CFR, Part 60). PSTA and PSTA's Project Manager will communicate directly with Contractor's Representative and shall have no authority to direct, oversee, or instruct Contractor's employees, subcontractors, or materialmen, or any other individuals performing the Services. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by PSTA in the Contract Documents shall not relieve Contractor of its obligations to comply with all laws fully and completely. Upon request, Contractor shall furnish to PSTA certificates of compliance with all such laws, orders and regulations.

5.07 *Suspension of Services.* PSTA may, in its sole discretion, suspend or delay all or part of the Services provided by Contractor under this Agreement upon written notice to Contractor. Such notice shall specify the nature and expected duration of the suspension or delay. Contractor shall resume providing services upon written direction from PSTA.

5.08 *Transitioning to a Subsequent Contractor.* Contractor shall cooperate and participate in transitioning the Services with PSTA's previous contractor at the start of the Contract Term and to a new subsequent contractor upon termination or expiration of this Agreement. Contractor shall participate in meetings with PSTA and the other contractors, transfer records, and take all other actions necessary to transition its duties no less than one hundred twenty (120) calendar days prior to the start of a new contractor (the "Transition Period"). Contractor shall participate in the smooth transition of the Services to ensure that the transition results in minimum disruption of the Services and PSTA's operations. During the Transition Period, Contractor shall comply with all PSTA's request related to the transition and in the timeframe designated by PSTA.

6. **COMPENSATION.** In consideration of Contractor's faithful performance of the Services, PSTA agrees to pay Contractor on a per revenue hour basis according to the costs and methods set forth in Exhibit 4, as reduced by any deductions for late trips, missed trips, hold times, and/or erroneous reporting, and any Liquidated Damages pursuant to section 12.04 of this Agreement, all as determined by PSTA. Total costs per revenue hour and any discounts set forth in Exhibit 4 shall be held firm throughout the duration of the Contract Term and any Extension Terms, unless otherwise agreed upon in writing by the Parties.

6.01 *Invoices.* All invoices shall be submitted in accordance with the Florida Prompt Payment Act with all details prescribed by PSTA, including but not limited to the PSTA Purchase Order Number, and delivered to the following address:

Pinellas Suncoast Transit Authority
Attention: Finance Department/Accounts Payable
Purchase Order #: _____
3201 Scherer Drive
St. Petersburg, Florida 33716
Or via E-Mail: Accountspayable@psta.net

6.02 *Payment Due Date.* Payment due date is calculated from time PSTA Accounts Payable Accountant has received and accepted the invoice pursuant to the Florida Prompt Payment Act. Payment due date for purchase of goods or services other than construction services is net forty-five (45) days from the accepted date.

6.03 *Disputed Invoices.* In the event of a disputed invoice, only that portion so contested will be withheld from payment and the undisputed portion shall be due and payable on the terms set forth herein. Contractor shall have thirty (30) days from the date of payment to challenge any payments from PSTA.

6.04 *Security of Performance.* Contractor shall provide a performance bond, letter of credit, or certificate of deposit payable to PSTA ("Security") in the amount of one hundred thousand and NO/100 U.S. dollars (\$100,000.00) to secure Contractor's performance of its obligations under this Agreement. The Security shall be submitted to PSTA prior to providing the Services and shall be maintained at all times during the Contract Term and any Extension Terms. The Security shall be conditioned upon full performance of all obligations imposed upon Contractor under the Contract Documents. The Security must be executed by a company licensed to do business in the State of Florida and must be in a form acceptable to and approved by PSTA's General Counsel. The Security shall provide that in the event the PSTA terminates this Agreement for breach by Contractor, PSTA may have recourse against the Security for all damages that PSTA would be entitled to from Contractor under this Agreement. In the event the Parties agree on a modification to increase the total maximum costs that may be paid under this Agreement (the Contract Price), PSTA may require additional Security up to one hundred percent (100%) of the increase in the Contract Price by directing Contractor to increase the amount of the existing Security or to obtain additional Security. The Security may be provided on an annual basis and, upon a period of at least one (1) year of satisfactory performance, may be reduced for the remaining Contract Term and Extension Terms, upon mutual written consent of the Parties.

6.05 *Tax-exempt.* PSTA does not pay sales or use tax and will provide sales tax exemption certificate at the written request of Contractor, where necessary.

7. **MODIFICATION OF CONTRACT DOCUMENTS.** The Contract Documents, including the scope, specification, and details of the Services may only be modified by written agreement of the Parties.

8. **COVENANTS AGAINST GRATUITIES.**

8.01 *Contractor Gratuities.* Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of PSTA with a view toward securing favorable treatment in the awarding, amending, or evaluating Contractor's performance under this Agreement.

8.02 *Driver Requirements.* Contractor shall prohibit and ensure that no representative, employee, contractor, driver, or any person providing the Services under this Agreement shall not solicit any gratuity, tip, or compensation from any rider who is receiving Services provided under this Agreement.

9. **ASSIGNABILITY; SUBCONTRACTING; EMPLOYEES.**

The terms and provisions of the Contract Documents shall be binding upon PSTA and Contractor, their respective partners, successors, heirs, executors, administrators, assigns and legal representatives.

9.01 *Written Approval Required.* The rights and obligations of Contractor may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without PSTA's prior written consent. Contractor may subcontract a portion of its obligations to other firms or parties but only after having first obtained the written approval of the subcontractor by PSTA.

9.02 *Responsibility for Subcontractors.* If Contractor's assignee or subcontractor fails to perform in accordance with the terms of its assignment or subcontract, Contractor shall complete or pay to have completed the work which the assignee or subcontractor failed to complete at no additional cost to PSTA. In the event of any noncompliance by any assignee or subcontractors, Contractor shall be directly and wholly responsible for the noncompliance of its assignee or subcontractor and shall bear all attributable costs. Contractor shall require all subcontractors performing or contributing to the Services under this Agreement to keep written records in reasonable detail of all services performed and to maintain all books, data information and records in a form that will support the subcontractor's invoice billed to the Contractor.

9.03 *Assignment by PSTA.* PSTA may assign its rights and obligations under the Contract Documents to any successor to the rights and functions of PSTA or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent PSTA deems necessary or advisable under the circumstances.

9.04 *E-Verify.* Contractor shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: (a) all persons employed by Contractor throughout the term of this Agreement; and (b) all persons, including subcontractors, retained or hired by Contractor, regardless of compensation, to perform work on the services provided pursuant to the Contract Documents.

9.05 *Employees.* Contractor is an independent contractor and no relationship of employer-employee exists between the Parties for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable as employees of PSTA. PSTA is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. Contractor shall be solely responsible for paying all of its subcontractors, employees, payroll taxes, and/or benefits. If, in performing the Services, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors. Contractor shall be solely responsible for satisfying all obligations that may be owed its employees, whether derived from statute, regulation or agreement, throughout this Agreement and after expiration or termination of this Agreement, however terminated.

9.06 *Criminal History Checks.* Contractor shall ensure that all employees, subcontractors, and subcontractor employees have completed a fingerprint based criminal history check, which shall include Level 2 Background Screening pursuant to section 435.04, Florida Statutes. Contractor shall not charge any additional fees or expenses for such background checks.

9.07 *Provision for other Governmental Entities.* Unless otherwise stated in Contractor's Response, Contractor agrees to make the unit prices in Contractor's Response available to any other governmental entity, should any such governmental entity desire to purchase under the terms and conditions of the Contract Documents. For purposes of this section, "governmental entity" shall mean all State of Florida agencies, the legislative and judicial branches, political subdivisions, counties, school boards, community colleges, municipalities, transit authorities, special districts, or other public agencies or authorities.

10. DELAY IN PERFORMANCE/FORCE MAJEURE.

10.01 *Time of the Essence.* Time is of the essence for all Services provided under this Agreement. If contractor fails to promptly provide the Services under this Agreement, PSTA may terminate this Agreement immediately, purchase substitute services elsewhere, and recover from Contractor any increased costs and damages thereby incurred by PSTA.

10.02 *Force Majeure.* Neither party shall be liable for its non-performance or delayed performance if caused by Force Majeure. Force Majeure shall be defined as a fire, flood, act of God, war, terrorism, riot, national emergency, sabotage, civil disturbance, governmental act, law, ordinance, rule or regulation, or events which are not the fault or are beyond the control of the party. Notwithstanding the foregoing, Force Majeure shall not include strikes or labor disputes.

10.03 *Unavoidable Delay.* In the event there is a delay in performance that is not reasonably expected to occur, including but not limited to delays in connection with Contractor's suppliers or agent thereof, that are substantial enough to cause delay of Services to PSTA, Contractor shall notify PSTA immediately and in no event more than ten (10) days of Contractor being made aware that such event has occurred, or when Contractor should be aware that such event has occurred, and request extended time for completion. PSTA shall review the request and determine whether it is appropriate. PSTA shall respond to Contractor in writing within ten (10) days of receipt of Contractor's request for extension and, if granted, shall extend the time for completion for the determined number of days attributable to the unavoidable delay. Contractor shall not be entitled to any damages or compensation and shall not be reimbursed by PSTA for losses on account of delays or hindrances resulting from any cause including, but not limited to, any actions which result in change in scheduling, changes in the scope of services, or increases in the cost of performing the Services.

11. TERMINATION OF AGREEMENT.

This Agreement may be terminated with or without cause in accordance with the provisions below.

11.01 *Without Cause.* For and in consideration of \$10.00, if PSTA determines that it is in its best interest to do so, PSTA may terminate this Agreement without cause and without penalty or expense to PSTA, upon thirty (30) days' written notice to Contractor. If PSTA terminates this Agreement pursuant to this subsection, Contractor shall promptly submit to PSTA its costs to be paid for services performed up to the date of termination. If Contractor has any property belonging

to PSTA in its possession, Contractor shall account for the same and dispose of it as directed by PSTA.

11.02 *With Cause.* PSTA may terminate this Agreement with cause at any time immediately upon written notice to Contractor, if: (1) Contractor fails to fulfill or abide by any of the terms or conditions specified in the Contract Documents; (2) Contractor fails to perform in the manner called for in the Contract Documents; or (3) Contractor does not provide services in accordance with the requirements of the specifications in the Contract Documents. In its sole discretion, PSTA may allow Contractor an appropriately short period of time in which to cure a defect in performance or non-performance. In such case, PSTA's written notice of termination to Contractor shall state the time period in which cure is permitted and other appropriate conditions, if applicable. If Contractor fails to cure the defect in performance, or if it has received a written notice of termination to Contractor for the same issue more than two (2) times over the course of this Agreement, this Agreement may be terminated by PSTA immediately. Contractor agrees that any assessment or payment of Liquidated Damages as set forth in section 12.04 of this Agreement does not cure any defect in performance and does not adequately compensate PSTA for the damages and harm sustained from a pattern of substandard performance. Contractor may terminate this Agreement for cause if PSTA fails to fulfill or abide by any duties or conditions specified in the Contract Documents, provided that Contractor must first provide notice of the alleged breach to PSTA and give PSTA ninety (90) days' written notice to cure the alleged breach. If PSTA cures the alleged breach or is making a good faith effort to cure said breach during the ninety (90) day cure period, Contractor may not terminate this Agreement.

11.03 *Effect of Termination.* Upon expiration or termination of this Agreement, however terminated, and final payment for the Services rendered in accordance with the Contract Documents, PSTA shall have no further obligations or responsibilities to Contractor. Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against PSTA arising out of this Agreement or otherwise relating to the Services, except those identified in writing by Contractor to PSTA prior to receipt of final payment. Neither the acceptance of the Services nor payment by PSTA shall be deemed to be a waiver of PSTA's rights or remedies, including but not limited to the right to enforce the warranties provided by Contractor in this Agreement, any obligations of Contractor under this Agreement, or to the recovery of damages for failure to provide the Services in accordance with the Contract Documents.

11.04 *Re-procurement.* Should this Agreement be terminated by PSTA for cause under this Section, Contractor shall be liable for all expenses incurred by PSTA in re-procuring elsewhere the same or similar items or services offered by Contractor.

11.05 *Force Majeure.* If it is later determined by PSTA that Contractor's failure to perform was a result of a Force Majeure, PSTA may allow Contractor to continue performance under a new time for performance or treat the termination as if terminated without cause under Section 11.01 of this Agreement.

11.06 *Appropriation.* In the event PSTA, in its sole discretion, determines that sufficient budgeted funds are not available to appropriate for payments due to Contractor under this Agreement, PSTA shall notify Contractor of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without any penalty or expense to PSTA.

11.07 *Waiver of Remedies for any Breach.* In the event that PSTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by PSTA shall only be valid if set forth in writing and shall not limit PSTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

12. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.

12.01 *Disputes.* Disputes raised by Contractor which are not resolved amicably by the Parties, shall be decided in writing by PSTA's Director of Procurement. This decision shall be final and conclusive unless, within ten (10) days of Contractor's receipt of the decision of PSTA's Director of Procurement, Contractor has furnished a written notice of appeal to PSTA's Chief Executive Officer. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of PSTA's Chief Executive Officer shall be binding upon Contractor and Contractor shall abide by the decision.

12.02 *Performance during Dispute.* Unless otherwise directed by PSTA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

12.03 *Claims for Damages.* Should Contractor suffer injury or damage to person or property because of any act or omission of PSTA or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to PSTA within ten (10) days after the first observance of such injury or damage.

12.04 *Liquidated Damages.* Contractor acknowledges and agrees that the damages PSTA will suffer as a result of Contractor's failure to provide the Services in accordance with the terms set forth in Paragraph 19(B) of Exhibit A to the RFP are not readily ascertainable and would be incapable to quantify. As such, PSTA shall be entitled to liquidated damages as set forth in Paragraph 19(B) of Exhibit A to the RFP ("Liquidated Damages"). Notwithstanding any other provision of this Agreement, Liquidated Damages shall begin to accrue from the date of the breach and shall not be affected by any cure period or grace periods. The Parties acknowledge that the Liquidated Damages are reasonable, are based on the anticipated harm caused by such breach, and are not a penalty. PSTA may, in its sole discretion, upon thirty (30) days' written notice to Contractor, deduct Liquidated Damages from Contractor's invoices for any amounts due or which may become due under this Agreement.

12.05 *Rights and Remedies.* The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by PSTA or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12.06 *Attorneys' Fees.* In the event of legal action or other proceeding arising under this Agreement, PSTA shall be entitled to recover from Contractor all its reasonable attorneys' fees and cost incurred by PSTA in the prosecution or defense of such action, or in any post-judgment or collection proceedings and whether incurred before suit, at the trial level or at the appellate level. This shall include any bankruptcy proceedings filed by or against Contractor. PSTA also shall be entitled to recover any reasonable attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining the amount of attorneys' fees and costs due to

PSTA. The reasonable costs to which PSTA will be entitled include costs that are taxable under any applicable statute, rule, or guideline, as well as costs of investigation, copying costs, electronic discovery costs, mailing and delivery charges, costs of conducting legal research, consultant and expert witness fees, travel expenses, court reporter fees and mediator fees, regardless of whether such costs are taxable under any applicable statute, rule or guideline.

13. INDEMNIFICATION.

13.01 General. The Parties recognize that Contractor is an independent contractor. Contractor agrees to assume liability for and indemnify, hold harmless, and defend PSTA, its board members, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorneys' fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, loss of use, or Contractor's violation or alleged violation of any third parties' trade secrets, proprietary information, trademark, copyright, patent rights or first amendment rights arising out of the execution, performance, nonperformance, or enforcement of this Agreement, whether or not due to or caused by the negligence of PSTA, its board members, officers, employees, agents, and/or attorneys excluding only the sole negligence of PSTA, its officers, employees, agents, and attorneys. Contractor's liability hereunder shall include all attorneys' fees and costs incurred by PSTA in the enforcement of this indemnification provision. This includes claims made by the employees of Contractor against PSTA, and Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which PSTA is entitled to pursuant to the doctrine of sovereign immunity or Section 768.28, Florida Statutes. All obligations contained in this Section 10 shall survive termination of this Agreement, however terminated, and shall not be limited by the amount of any insurance required to be obtained or maintained under the Contract Documents.

13.02 Control of Defense. Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against PSTA arising from or in any way related to this Agreement and, in connection with such defenses, shall appoint lead counsel, in each case at Contractor's expense. Contractor shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If Contractor assumes control of the defense of any third party claim in accordance with this paragraph, Contractor shall obtain the prior written consent of PSTA before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by PSTA and all expenses including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of PSTA, be detrimental in any material respect of PSTA's reputation; (ii) the third party claim seeks an injunction or equitable relief against PSTA; or (iii) Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished records and information, and shall attend any conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

14. INSURANCE.

Before beginning any work under this Agreement, Contractor shall obtain insurance as specified in the RFP at Contractor's sole expense and shall provide PSTA with proof of insurance as specified therein. Contractor shall maintain such insurance throughout the entire Contract Term and any Extension Terms.

15. FEDERAL PROVISIONS.

As required by the Federal Transit Administration (FTA), the attached **Exhibit 1** to this Agreement is hereby incorporated by reference as if set forth fully herein and contains required contractual provisions that apply to all work performed or products delivered under this Agreement.

16. MISCELLANEOUS PROVISIONS.

16.1 Venue and Jurisdiction. The Contract Documents shall be governed by, construed and interpreted in accordance with the laws of the State of Florida. Contractor and PSTA consent to jurisdiction over them and agree that venue for any state action shall lie solely in the Sixth Judicial Circuit in and for Pinellas County, Florida, and for any federal actions shall lie solely in the U.S. District Court, Middle District of Florida; Tampa Division.

16.2 Entire Agreement. The Contract Documents, including all exhibits, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral negotiations, agreements, bids and/or understandings. There are no representations or warranties unless set forth in the Contract Documents.

16.3 Public Records Requirements. Pursuant to Section 119.0701, Florida Statutes, for any tasks performed by Contractor acting on behalf of PSTA, Contractor shall: (a) keep and maintain all public records, as that term is defined in Chapter 119, Florida Statutes ("Public Records"), that ordinarily and necessarily would be required by PSTA in order to perform the work contemplated by this Agreement; (b) provide the public with access to Public Records, on the same terms and conditions that PSTA would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining Public Records and transfer, at no cost, to PSTA all public records in possession of Contractor within thirty (30) days after termination of this Agreement, however terminated, and destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements and provide PSTA with a letter confirming that this has been done within thirty (30) days of the termination of this Agreement. All Public Records stored electronically must be provided to PSTA in a format that is compatible with the information technology of PSTA. If Contractor does not comply with a public records request, PSTA may pursue any and all remedies available in law or equity, including but not limited to specific performance. The provisions of this section only apply to those tasks in which Contractor is acting on behalf of PSTA.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this Contract, contact the custodian of Public Records at:

Telephone number: _____

E-mail address: _____

Mailing address: _____

16.4 Interest of Members of or Delegates to Congress; conflicts of interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to receive any benefit there from. Contractor represents and warrants that no public officers or procurement employees have a material ownership interest in Contractor and this Agreement is not otherwise prohibited by part III, chapter 112, Florida Statutes. Contractor further represents and warrants that its current business dealings will not conflict in any manner with Contractor's performance of the Services. Contractor shall promptly notify PSTA's Project Manager of any potential conflicts of interest which may arise throughout this Agreement with respect to any prospective business association, interest or other circumstance with may influence, or appear to influence, the Contractor's judgment or quality of the Services. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of PSTA as to whether the association, interest or circumstance would, in the opinion of PSTA, constitute a conflict of interest if entered into by the Contractor. PSTA agrees to notify Contractor of its decision within thirty (3) days of receipt of notification by Contractor. If, in the opinion of PSTA, the prospective business association, interest or circumstance would not constitute a conflict of interest, PSTA shall so state in the notification and Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to the Services.

16.5 Notices. All notices required or made pursuant to this Agreement shall be made in writing and sent by certified U.S. mail, return receipt requested, addressed to the following:

To PSTA:

Pinellas Suncoast Transit Authority
Attn: Brad Miller, CEO
3201 Scherer Drive
St. Petersburg, FL 33716

To Jolley Trolley:

Jolley Trolley Transportation of Clearwater, Inc.
Rosemary Windsor, Executive Director
410 North Myrtle Avenue
Clearwater, FL 33755

With required copy to:

Alan S. Zimmet, General Counsel
Bryant Miller Olive
One Tampa City Center
Suite2700
Tampa, Florida 33602
Phone: (813) 273-6677
Fax: (813) 223-2705

With required copy to:

Debra Gregory, Board Secretary
732 Snug Island
Clearwater, FL 33767
Phone: (727) 712-2399
Fax: (727) 712-2367

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

16.6 Severability. If any one or more of the provisions of the Contract Documents shall be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and the Contract Documents shall be treated as though that portion had never been a part thereof.

16.7 *Modification.* The Contract Documents may not be amended or altered without prior written approval by PSTA and which is signed by the Parties. Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract Documents and signed by PSTA.


16.8 *Headings and Section References.* The headings and section references in this Agreement are inserted only for the purpose of convenience and shall not be construed to expand or limit the provisions contained in such sections.

16.9 *No Third Party Beneficiaries.* This Agreement is entered into solely for the benefit of the Parties and shall not be construed as a benefit to any third parties, including but not limited to the general public, constituents of PSTA or citizens of its service area, nor shall it be construed as enforceable by any third parties.

16.10 *Authorization.* Both parties to this Agreement represent and warrant that they are authorized to enter into this Agreement without the consent and joinder of any other party and that the individuals executing this Agreement have full power and authority to bind their respective parties to the terms hereof.


IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the Effective Date.

CONTRACTOR:

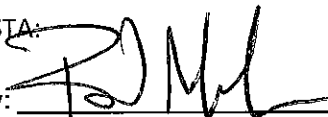
By: 
Duly Authorized Designee

Date: 3/30/2017

WITNESS:

By: 

PSTA:

By: 
Brad Miller, CEO

Date: 3/30/2017

Approved as to form:

By: 
Alan S. Zimmet, General Counsel

Exhibit 1 Federal Transit Administration Clauses

1.0 All Federal Transit Administration (FTA) Third-Party Contracts and Subcontracts

1.1 Application of Federal Laws

Contractor understands that Federal, state and local laws, regulations, policies, and related administrative practices ("Laws") applicable to the Contract on the date the Contract was executed (the "Execution Date") may be modified from time to time, or new Laws may be established after the Execution Date. Contractor agrees that the most recent of such Laws will govern the administration of the Contract at any particular time, unless there is sufficient evidence in the Contract of a contrary intent. Such contrary intent might be evidenced by express language in the Contract, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of the Contract.

1.2 Audits and Inspection

The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of the Work under the Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulation Parts 30 and 31 (48 C.F.R. 30 and 31). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submissions required for the Contract, or any Change Order or claim, and a copy of the cost summary submitted to PSTA. PSTA, the U.S. Government, and the State Government or their authorized representatives shall have access, at all times during normal business hours, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Contractor will provide proper facilities for such access and inspection. The rights granted PSTA and the government under this provision shall remain in full force and effect for the longer of: (a) three (3) years after termination of the Contract for whatever reason, or (b) the date on which all litigation, appeals, claims or exceptions related to any litigation or settlement of claims arising from the performance of the Contract are resolved or otherwise terminated. The foregoing record keeping obligations shall extend to any subcontractor performing Work valued in excess of ten thousand dollars (\$10,000.00). In addition, with respect to major capital projects, Contractor agrees to provide 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.

1.3 Civil Rights (EEO, Title VI & ADA)

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.

Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal

Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal Transit Law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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.

1.4 Compliance with Law

Contractor shall perform all Work hereunder in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, any applicable licensing or permitting laws. The Contractor shall use only licensed personnel to perform Work required by law to be performed by such personnel and shall bear the costs of obtaining all necessary licenses and permits.

1.5 Contracts Involving Federal Privacy Act Requirements

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. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that 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. The 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.

1.6 Energy Conservation

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

1.7 Federal Assistance and Incorporation of FTA Terms

The procurements under the Contract may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Federal Transit Laws, 49 U.S.C. Chapter 53; Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206; Sections 401 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. §403(11) and 40 U.S.C. §481(b), respectively; 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 49 C.F.R. Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; Executive Order 12612, "Federalism," dated 10-26-1987; FTA Super Circular; FTA Master Agreement; Appendix D, Best Practices Procurement Manual. When so funded, the Contract shall be subject to all rules and regulations promulgated pursuant thereto, as they may be amended from time to time during the course of the Contract. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as the same may be amended or superseded from time to time, 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 the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any PSTA requests which would cause PSTA to be in violation of the FTA terms and conditions.

1.8 Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between PSTA and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to comply shall constitute a material breach of the Contract.

1.9 No Obligation by the Federal Government

Contractor and PSTA 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 of the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to PSTA, the Contractor or any other party pertaining to any matter resulting from the underlying Contract. Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

1.10 Program Fraud and False or Fraudulent Statements or Related Acts

Contractor agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the 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 the Contract Work is being performed. In addition to other penalties that may be applicable, the

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 the Contractor to the extent the Federal Government deems appropriate. The 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 the Contractor, to the extent the Federal Government deems appropriate. Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

1.11 Program Funding

PSTA's performance and obligations to pay under the Contract are contingent upon the availability of various Federal, State and local funding.

1.12 Access to Records and Sites of Project Performance

- A. Access to Contractor Records. The Contractor agrees to and assures its Subcontractors will agree to:
 - (1) Provide and require its Subcontractor at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:
 - (a) U.S. Secretary of Transportation or the Secretary's duly authorized representatives,
 - (b) Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and
 - (c) PSTA
 - (2) Permit all interested parties of this Contract to:
 - (a) Inspect all Project work and materials, and
 - (b) Audit any information related to the Project under the control of PSTA within books, records, accounts, or other locations, and
 - (3) Otherwise comply with:
 - (a) 49 U.S.C. § 5325(g), and
 - (b) 49 C.F.R. 49 C.F.R. § 18.36(i)(10) and 49 C.F.R. § 19.53(e), until U.S. DOT promulgates new regulations that will supersede and apply in lieu of 49 C.F.R. parts 18 and 19, 36.
- B. Access to Sites of Project Performance. Contractor agrees to permit, and to require its Subcontractor to permit, Federal awarding agencies, specifically FTA, to make site visits as needed in compliance with 49 C.F.R. § 18.40(e) or 49 C.F.R. § 19.51(g) until U.S. DOT promulgates new regulations that will supersede and apply in lieu of 49 C.F.R. parts 18 and 19.
- C. Project Closeout. Project closeout does not alter the access requirements of this section.

2.0 Awards Exceeding \$10,000

2.1 Termination

- A. Termination for Convenience
PSTA may terminate the Contract, in whole or in part, at any time and for any reason by written notice to the Contractor when it is in the best interest of PSTA. The Contractor shall be paid its costs and profit on Work performed up to the time of termination. The Contractor shall

promptly submit its termination claim to PSTA to be paid the Contractor. If the Contractor has any property in its possession belonging to PSTA, the Contractor will account for the same, and dispose of it in the manner PSTA directs.

B. Termination for Default

If the Contractor fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of ten (10) days after receiving such notice from PSTA, thereafter, PSTA may terminate the Contract for default and have the Work completed and the Contractor shall be liable for any resulting cost to PSTA. In the event of termination for default, the Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of PSTA.

C. Termination Due to Insufficient Funds

If at any time during the term of the Contract the PSTA Governing Board makes a determination that PSTA has insufficient funds with which to carry out its performance and obligations under the Contract, then PSTA may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to PSTA.

D. Termination Due to Failure to Receive a Grant or other Funding Device

If at any time during the term of the Contract PSTA ceases to receive a grant or other funding device from a third party with which it intended to pay for the goods or services Contracted for, then, unless otherwise directed by the PSTA Governing Board, PSTA may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to PSTA.

E. Damages upon Termination

Any damages to be assessed to the Contractor as a result of a default termination or any claim by Contractor for costs resulting from a termination for convenience by PSTA, a termination due to insufficient funds by PSTA, or a termination due to a failure to receive a grant or other funding device by PSTA will be computed and allowable in accordance with federal regulations in effect at the time of termination.

F. Special Termination Provisions

PSTA may terminate the Contract in whole or in part, for the convenience of PSTA or because of the failure of the Contractor to fulfill the Contract obligations. PSTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to PSTA all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing the Contract, whether completed or in process. If the termination is for the convenience of PSTA, PSTA shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the Contract obligations, PSTA may complete the Work by Contract or otherwise and the Contractor shall be liable for any additional cost incurred by PSTA. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of PSTA.

2.2 Recovered Materials

With respect to contracts for items designated by the Environmental Protection Agency, when PSTA procures at least ten thousand Dollars (\$10,000) of such materials per year, the Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

2.3 Approval of Materials

When required by the Contract or by PSTA, the Contractor shall obtain PSTA's approval of the material or articles, which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall furnish to PSTA full information concerning the material or articles, including, but not limited to the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When directed to do so by PSTA, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection. All Work under the Contract shall be performed in a skillful and workmanlike manner, unless a higher standard of care is specified. PSTA may require, in writing, that the Contractor removes from the Work any employee PSTA deems incompetent, careless, or otherwise objectionable.

2.4 Changes

- A. PSTA may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes:

In the specifications (including drawings and designs);
In the method or manner of performance of the work;
In the Government-furnished facilities, equipment, materials, services, or site; or
Directing acceleration in the performance of the work.

- B. Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from PSTA that causes a change shall be treated as a change order under this clause, provided, that the Contractor gives PSTA written notice stating:
- (i) The date, circumstances, and source of the order; and
 - (ii) That the Contractor regards the order as a change order.
- C. Except as provided in this clause, no order, statement, or conduct of PSTA shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- D. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under the Contract, whether or not changed by any such order, PSTA shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than twenty (20) days before the Contractor gives written notice as required.
- E. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- F. The Contractor must assert its right to an adjustment under this clause within thirty (30) days after:
- (i) Receipt of a written change order under paragraph (a) of this clause or
 - (ii) The furnishing of a written notice under paragraph (b) of this clause, by submitting to PSTA a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- G. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Contract.

3.0 Awards Exceeding \$25,000

3.1 Suspension and Debarment

The Contract is a "covered transaction" for purposes of 49 C.F.R. Part 29. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into. Contractor certifies as follows:

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

4.0 Award Exceeding \$100,000 by Statute

4.1 Clean Air and Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to PSTA and understands and agrees that PSTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The 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.

4.2 Lobbying

Per 49 CFR Part 20, Contractor shall complete and submit as part of their proposal the Certification of Restrictions on Lobbying for all projects when the total aggregate value of the contract exceeds \$100,000. The Contractor shall also submit a list of subcontracts and subcontractor that will exceed \$100,000. A Certification of Restrictions on Lobbying shall be submitted by the Contractor to PSTA for each listed subcontractor prior to contract award.

Lobbying of any PSTA board member, officer, evaluation/selection committee member, employee, agent or attorney by a Contractor, any member of the Contractor's staff, any agent or representative of the Contractor, whether compensated or not, or any person employed by any legal entity affiliated with or representing the Contractor shall be prohibited on all competitive selection processes and contract awards, including but not limited to requests for proposals, requests for quotations, requests for qualification, invitation for bids, bids or the award of purchasing contracts of any type. Lobbying is strictly prohibited from the date of the advertisement or on a date otherwise established by PSTA's Board of Directors, until an award is final, any protest is finally resolved, or the competitive selection process is otherwise concluded.

The purposes of this prohibition is to protect the integrity of the procurement process by shielding it from undue influences prior to the contract award, a protest is resolved, or the competitive selection process is otherwise concluded. Nothing herein shall prohibit a Contractor from contacting the purchasing division or PSTA's general counsel to address situations such as clarification and/or questions related to the procurement process or protest.

For the purposes of this paragraph, lobbying shall mean influencing or attempting to influence action or non-action, and/or attempting to obtain the goodwill of persons specified herein relating to the selection, ranking, or contract award in connection with the bidding process through direct or indirect oral or written communication. Lobbying includes such actions whether performed by the Contractor itself, any employee of the Contractor, the Contractor's attorney, agent or other paid or non-paid representative, or any person who performs such actions of behalf or at the behest of the Contractor. Further, lobbying includes the attempt to influence Board members while they are performing their functions for other governmental entities (e.g.) a city or Pinellas County).

Any board member, officer, evaluation/selection committee member, employee, agent or attorney who has been lobbied shall immediately report the lobbying activity to the Chief Executive Officer.

5.0 Awards Exceeding the Simplified Acquisition Threshold (\$100,000)

5.1 Disputes

Disputes arising in the performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the Executive Director of PSTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection 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 Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

5.2 Performance during Dispute

Unless otherwise directed by PSTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

5.3 Rights and Remedies

Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between PSTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Hillsborough and Pinellas County, Florida. The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by PSTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

6.0 Awards Exceeding \$500,000

6.1 Notification of Federal Participation

Contractor agrees to provide notification to PSTA specifying the amount of Federal assistance intended to be used to finance the acquisition of goods or services (including construction services) having an aggregate value of \$500,000 or more, and to express the amount of that Federal assistance as a percentage of the total cost of the Contract.

7.0 Construction Activities

7.1 Davis-Bacon and Copeland Anti-Kickback Acts

With respect to all construction contracts and subcontracts over two thousand dollars (\$2,000) at least partly financed by a loan or grant from the Federal Government, and including contracts for actual construction, alteration and/or repair, including painting and decorating, the following provisions shall apply.

A. Minimum wages.

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 C.F.R. 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 (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 29 C.F.R. Part 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 classifications and wage rates conformed under paragraph (a)(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.

- B. PSTA shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. PSTA shall approve an additional classification and

wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), 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; and
- (4) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.
 - (A) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and PSTA 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 PSTA 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 30 days of receipt and so advise PSTA or will notify PSTA within the 30-day period that additional time is necessary.
 - (B) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and PSTA do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), PSTA shall refer the questions, including the views of all interested parties and the recommendation of PSTA, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise PSTA or will notify PSTA within the 30-day period that additional time is necessary.
 - (C) The wage rate (including fringe benefits where appropriate determined pursuant to paragraphs (a)(ii)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

- C. 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.
- D. If the Contractor does not make payments, 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.
- E. PSTA shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. PSTA shall approve an additional classification and wage rate and fringe benefits therefor 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.
- F. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and PSTA 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 PSTA to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise PSTA or will notify PSTA within the 30-day period that additional time is necessary.
- G. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and PSTA do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), PSTA shall refer the questions, including the views of all interested parties and the recommendation of PSTA, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise PSTA or will notify PSTA within the 30-day period that additional time is necessary.
- H. The wage rate (including fringe benefits where appropriate) determined pursuant to above paragraphs of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

1. Withholding.

PSTA 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 the 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, PSTA 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.

2. Payrolls and basic records.

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 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 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 C.F.R. 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 the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- I. The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to PSTA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- J. 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 maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. 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 C.F.R. 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.
- K. 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 (c)(i)(B) of this section.

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.

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 the Federal Transit Administration 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 C.F.R. 5.12.

1. Apprentices and trainees

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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training 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 subcontractors 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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.

Trainees. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

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 C.F.R. part 30.

e. Compliance with Copeland Act requirements

The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in the Contract.

f. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 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 subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.

g. Contract termination: debarment A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

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

i. Certification of eligibility.

B. By entering into the 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 C.F.R. 5.12(a)(1).

C. No part of the 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 C.F.R. 5.12(a)(1).

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

7.2 Seismic Safety

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 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the 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.

7.3 Bonding

a. Bid Bond Requirements (Construction)

A Bid Bond must be issued by a fully qualified surety company acceptable to PSTA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder. To the extent a defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check shall prove inadequate to fully recompense PSTA for the damages occasioned by default, then such bidder agrees to indemnify PSTA and pay over to PSTA the difference between the bid security and PSTA's total damages, so as to make PSTA whole.

b. Advance Payment Bonding Requirements.

The Contractor may be required to obtain an advance payment bond if the Contract contains an advance payment provision and a performance bond is not furnished. PSTA shall determine the amount of the advance payment bond necessary to protect PSTA.

c. Patent Infringement Bonding Requirements (Patent Indemnity).

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. PSTA shall determine the amount of the patent indemnity to protect PSTA.

d. Performance and Payment Bonding Requirements (Construction).

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds

The penal amount of performance bonds shall be 100 percent of the original Contract price, unless PSTA determines that a lesser amount would be adequate for the protection of PSTA. PSTA may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. PSTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds

The penal amount of the payment bonds shall equal:

- Fifty percent (50%) of the Contract price if the Contract price is not more than \$1 million.
- Forty percent (40%) of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
- Two and one half million (\$2.5 million) if the Contract price is more than \$5 million. If the Contract price is \$5 million or less, PSTA may require additional protection as required by (d)(ii)(A) if the Contract price is increased.

e. Performance and Payment Bonding Requirements (Non-Construction).

The Contractor may be required to obtain performance and payment bonds when necessary to protect PSTA's interest.

The following situations may warrant a performance bond:

- A. PSTA property or funds are to be provided to the Contractor for use in performing the Contract or as partial compensation (as in retention of salvaged material).
- B. A Contractor sells assets to or merges with another concern, and PSTA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- C. Substantial progress payments are made before delivery of end items starts.
- D. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

The penal amount of performance bonds shall be 100 percent of the original Contract price, unless PSTA determines that a lesser amount would be adequate for the protection of PSTA.

PSTA may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. PSTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond. A payment bond is required only when a performance bond is required, and if the use of payment bond is in PSTA's interest.

When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- Fifty percent (50 %) of the Contract price if the Contract price is not more than \$1 million;
- Forty percent (40 %) of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
- Two and one half million (\$2.5 million) if the Contract price is increased.

f. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to PSTA, the Architect and/or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by PSTA, free from faults and defects and in conformance with the Contract. All Work not so conforming to these standards shall be considered defective. If required by PSTA, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by PSTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to PSTA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to PSTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for the Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to one hundred percent (100%) of the Contract SUM, as adjusted (if at all).

7.4 Contract Work Hours and Safety Standards

The following provisions shall apply with respect to all U.S. federal government financed contracts and subcontracts in excess of \$100,000, involving employment of laborers or mechanics, including

watchmen and guards, provided, however, that these provisions shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market.

- 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 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty 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 therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States 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 \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty 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.** PSTA 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 paragraphs (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).
- e. Record Keeping Requirements.** The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of PSTA and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

8.0 Conformance with ITS National Architecture.

With respect to all Contracts involving the provision of Intelligent Transportation Systems ("ITS"), Contractor agrees to conform to the ITS National Architecture, as promulgated by the United States Department of Transportation, Intelligent Transportation Systems, Joint Program Office.

9.0 Cargo Preference: Use of United States Flag Vessels

Contractor agrees:

- a. To use privately owned United States-Flag commercial vessels to ship at least 50 percent 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) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" 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 PSTA (through the Contractor in the case of a subcontractor's bill-of-lading.); and
- c. To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

10.0 Planning, Research, Development, and Documentation Projects

10.1 Patent Rights.

The following requirements apply to each Contract involving experimental, developmental, or research work:

- a. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this Section applies and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, PSTA 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.
- b. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), PSTA and the 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 Agreements," 37 C.F.R. Part 401.

- c. The 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.

10.2 Rights in Data and Copyrights

The following requirements apply to each Contract involving experimental, developmental or research work:

- a. 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.
- b. The following restrictions apply to all subject data first produced in the performance of the Contract to which this Section applies:
 - 1. Except for its own internal use, PSTA or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may PSTA or 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.
 - 2. 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 (b)(ii)(A) and (b)(ii)(B) 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.
 - a. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - 3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the Work to participants in that work. Therefore, unless FTA determines otherwise, PSTA and the Contractor performing experimental, developmental, or research Work required by the underlying Contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the

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

4. Unless prohibited by state law, upon request by the Federal Government, PSTA and the Contractor agree 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 PSTA or 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. Neither PSTA nor the Contractor shall 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.
 5. 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.
 6. Data developed by PSTA 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 Section applies is exempt from the requirements of subsections (ii), (iii), and (iv) of this clause, provided that PSTA or Contractor identifies that data in writing at the time of delivery of the Contract work.
 7. Unless FTA determines otherwise, the 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.
- c. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), PSTA and the 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 Agreements," 37 C.F.R. Part 401.
 - d. The 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.

11.0 Rolling Stock Purchase

11.1 Bus Testing

Contractor agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 C.F.R. 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 PSTA at a point in the procurement process specified by PSTA, which will be before PSTA'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. This must be provided to PSTA before PSTA'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" (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.
- e. Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by PSTA.

11.2 Buy America

Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. 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 C.F.R. 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Contractor agrees to submit to PSTA a Buy America certification on FTA-funded contracts, except those subject to a general waiver.

11.3 Pre-Award and Post Delivery Audit Requirements

Contractor agrees to comply with 49 U.S.C. 5323(1) and FTA's implementation regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- a. Buy America Requirements. The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America requirements. If the Contractor certifies compliance with the Buy America requirements, it shall submit documentation which lists (i) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs; and (ii) the location of final assembly point for rolling stock, including a description of activities that take place at the final assembly and the cost of final assembly.

- b. Solicitation Specification Requirements. The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- c. Federal Motor Vehicle Safety Standards ("FMVSS"). The Contractor shall submit (i) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (ii) manufacturer's certified statement that the Contracted buses will not be subject to FMVSS regulations.

12.0 Transit Operations

12.1 Transit Employee Protective Provisions

With respect to Contracts for "Transit Operations" as classified by the FTA, and performed by employees of a Contractor recognized by FTA to be a transit operator, the Contractor agrees to comply with applicable Transit Employee Protective requirements as follows:

- a. General Transit Employee Protective Requirements. To the extent that FTA determines that transit operations are involved, the 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 the Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor 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. Department Of Labor to FTA applicable to PSTA's project from which Federal assistance is provided to support Work on the underlying Contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. Department of Labor letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this Section.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for PSTA, the Contractor agrees to carry out the Work 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. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. Department of Labor's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with PSTA. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. Department of Labor letter. 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, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of

Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. Department of Labor or any revision thereto.

- c. Requirements Apply to Subcontracts. The Contractor agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with assistance provided by FTA.

12.2 Charter Service Operations

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provides 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 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve charter service operations.

12.3 Drug and Alcohol Testing

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or PSTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before October 31st of each year and to submit the Management Information System (MIS) reports before January 1st of each year. To certify compliance the 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.

12.4 School Bus Operations

Contractor agrees to comply with 49 U.S.C. 5323(f) and 49 C.F.R. Part 605, which provide that recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, Contractor agrees not to use federally funded equipment, vehicles, or facilities. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve school bus operations.

13.0 Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. 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. The Contractor shall submit, if a foreign air carrier was 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. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

14.0 Preference for Recycled Products

To the extent applicable, Contractor agrees to comply with U.S. Environmental Protection Agency (U.S. EPA) "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

15.0 Access for Individuals with Disabilities

PSTA and Contractor agree to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. PSTA and Contractor also agree to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; 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; and 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, PSTA and Contractor agree to comply with applicable implementing Federal regulations any later amendments thereto, and agree to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those 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 Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (k) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

16.0 DBE Participation

Contractor and any subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as PSTA deems appropriate. A minimum of nine point seven eight percent (9.78%) of the total contract price, as awarded, may be awarded to a certified DBE's by Contractor.

DBE Subcontractor's Payment and Reporting Terms.

- a. **Contractor Reporting Requirements:** Contractor agrees to count only the value of the work actually performed by the DBE firm toward its overall DBE goal. When a DBE performs as a participant in a joint venture, Contractor agrees to count the portion of the work of the contract that the DBE performs with its own forces toward its DBE goal only if the DBE is performing a commercially useful function of the contract. The factors listed in 49 CFR Part 26 will be used to determine whether a DBE trucking firm is performing a commercially useful function. Contractor understands that expenditures with DBEs for materials or supplies toward DBE goals will be counted according to the factors listed in 49 CFR Part 26. Contractor agrees to meet with the PSTA DBE Liaison Officer for the purpose of verifying Contractor reporting requirements prior to the signing of a contract.
- b. **Legal and Contract Remedies:** Contractor agrees to report quarterly to the PSTA DBE Liaison Officer on all payments made to DBE Subcontractors. Further, Contractor shall provide all copies of canceled checks made to DBE Subcontractors showing proof of actual payment. Contractor understands that failure to report quarterly to the PSTA DBE Liaison Officer may result in the termination of this Agreement or such other remedy as PSTA deems appropriate.
- c. Contractor understands that PSTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT inspector General, action under suspension and debarment of Program Fraud or Civil Penalties rules) provided in 26.109. Contractor understands that PSTA will consider similar action under their own legal authorities, including responsibility determinations in future contracts.

17.0 Assignability

The terms and provisions of the Contract shall be binding upon PSTA and Contractor their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. PSTA may assign its rights and obligations under the Contract to any successor to the rights and functions of PSTA or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent PSTA deems necessary or advisable under the circumstances.

18.0 Equal Employment Opportunity Requirements for Construction

In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will comply, with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

(b) Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.

19.0 Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any PSTA requests which would cause PSTA to be in violation of the FTA terms and conditions.

EXHIBIT 2
THE RFP AND ALL ADDENDUMS

EXHIBIT 3
CONTRACTOR'S RESPONSE

EXHIBIT 4
CONTRACTOR'S BEST AND FINAL OFFER

YEAR	Cost/Rev. Hour
FY2018	\$75.43
FY2019	\$77.69
FY2020	\$80.80
FY2021	\$83.22
FY2022	\$85.72