Agreement between Pinellas County and the MPO for use and administration of FTA Section 5320 FY 2011 grant funds in the amount of $1,000,000; CFDA 20.520, FTA Grant Number FL-20-X004.

AGREEMENT

This Agreement is made and entered into this 26 day of July, 2012, by and between the PINELLAS COUNTY METROPOLITAN PLANNING ORGANIZATION (hereinafter "MPO") and PINELLAS COUNTY by way of its Parks & Conservation Resources Department (PCR) (hereinafter "Subgrantee") for the Ft. De Soto Bay Pier/Dock Replacement (hereinafter "Project").

WHEREAS, Subgrantee desires to construct replacement of the Ft. DeSoto Bay Pier; and

WHEREAS, the Subgrantee received a 2011 Federal Appropriation in the amount of $1,000,000 for Section 5320 Federal Transit Administration (FTA) grant funds to implement said Project; and

WHEREAS, under applicable FTA grant requirements, only an eligible recipient may serve as the direct recipient of the federal funds and enter into a formal grant contract with FTA; and

WHEREAS, applicable FTA regulations permit an eligible recipient grantee to pass FTA funds through to another agency to carry out the purposes of the grant agreement provided that the recipient enters into a written agreement with the Subgrantee passing through the grant requirements to the Subgrantee; and

WHEREAS, the MPO, an eligible recipient grantee, and Subgrantee desire to enter into a formal contract pursuant to which the aforementioned FTA grant funds for implementation of the Project will be passed through the MPO to the Subgrantee.

NOW, THEREFORE, in consideration of the mutual covenants, premises, and representations herein, the parties agree as follows:

Terms and Conditions

The Project shall be undertaken and accomplished in accordance with the terms and conditions specified herein and contained in the Appendices named below, which are attached hereto and by reference incorporated herein: Appendices A and A-1 contain general provisions applicable to this Agreement. Appendix B identifies the Project manager and describes the scope of work for the Project. Appendix C contains the Project Budget, by line item, and identifies the funding sources.

The effective date of this Agreement shall be the date as stated above. The Subgrantee agrees to complete and fully invoice the Project by September 30, 2015. Total FTA participation for FY 2011 grant funds shall not exceed the sum of $1,000,000 of all expenses incurred in performance of the Agreement. Total Subgrantee required local match shall not exceed $400,000. The availability of federal funds shall be a condition precedent to the requirement that that the Subgrantee provides the local match funds to complete the project. Subgrantee agrees to provide documentation of said local match prior to the MPO's issuance of a Notice to Proceed. Funds may not be expended until issuance of a Notice to Proceed by the MPO.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed, the day and year first above written:

PINELLAS COUNTY
METROPOLITANPLANNING ORGANIZATION

Approved As To Form:

BY: _____
David Sadowsky, MPO Attorney

BY: _____
Dave Eggers, Chairman

ATTEST: _____
Sarah Ward, Interim Director

PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS

Attest: _____

By: _____
John Morroni, Chair

(Seal)

Approved As To Content and Form:

_____
County Attorney (Designee)

APPENDIX A

GENERAL PROVISIONS

1. General: Subgrantee shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state or local government, and any agency thereof, which relate to or in any manner affect the performance of this Agreement. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," Federal Transit Administration (FTA) Circular 4220.1F of the, FTA Master Agreement (Form FTA MA(17), October 1, 2010) and FTA Circular 5010.1D, Grant Management Guidelines, are each incorporated herein by reference as though set forth in full, and shall govern this Agreement except as otherwise provided herein. Those requirements imposed upon the MPO as "grantee" or "designated recipient" are hereby imposed upon Subgrantee, and those rights reserved by the DOT, FTA or local government are hereby reserved by the MPO.

2. Accomplishment of the Project: Subgrantee shall accomplish this Project in a timely and satisfactory manner, in conformance with the scope of work and project budget contained in the appendices hereto, and in compliance with the terms and conditions contained herein. Subgrantee may accomplish all or any portion of the project by procurement through subcontractors in accordance with 49 CFR Section 18.36 and FTA Circular 4220.1F. Subgrantee shall furnish the MPO with copies of any subcontract to this Agreement.

3. Financial Management

a. Accounts: In conducting accounting activities, Subgrantee shall comply with provisions contained in 49 CFR Part 18.

b. Allowable Costs: The MPO shall reimburse Subgrantee for those services and allowable expenses required to perform the work in accordance with the project budget as described in Appendix C. Reimbursement shall be in accordance with the cost principles set forth in Office of Management and Budget ("OMB") Circular A-87, Revised, "Cost Principles Applicable to Grants and Contracts with State and Local Governments".

c. Record Retention: Subgrantee shall maintain intact and readily accessible all data, documents, reports, accounting records, contracts and supporting materials relating to the Project ("Records") during the course of the Project that the federal government or MPO may require during the course of the Project and for five years thereafter. If any litigation, claim, negotiation, audit or other action related to the Project is started before the end of said five-year period, Subgrantee shall retain Records for three years after completion and resolution of the action and all issues related to such.

d. Access to Records: Upon request, the Subgrantee agrees to permit the Secretary of Transportation; the Comptroller General of the United States; and, if appropriate, their authorized representatives to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Subgrantee pertaining to the Project as required by 49 U.S.C. § 5325(g).

e. Audit: Subgrantee will provide thorough and complete accounting for all funds expended in the performance of this work, to the extent that such funds are provided by the MPO as set forth in Section 3 of this Agreement, consistent with 49 Code of Federal Regulations, Part 18.37(b). Subgrantee shall be responsible for meeting audit requirements of the Single Audit Act

Amendments of 1996, 31 U.S.C. §§ 7501 et. seq., in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and any revision or supplement thereto. Subgrantee shall annually submit to the MPO one copy in a generally accepted electronic format of its audit completed in accordance with the above-described single audit requirements within 30 days after completion of the audit, but not later than one year after the end of the audit period.

4. Project Reporting: The Subgrantee shall submit electronic narrative progress reports, financial reports and invoices for fees earned on a quarterly basis. The reporting periods are October 1 – December 31, January 1 through March 31, April 1 through June 30 and July 1 through September 30. Project reporting shall be for the percentage of work effort completed to date for the Project. Project reports shall be delivered in a generally accepted electronic format to the MPO within fifteen (15) calendar days after the end of each reporting period (except reports for the final quarter must be received by September 30, 2015). The MPO in no way obligates itself to check the Subgrantee's work and further is not responsible for maintaining Project schedules. All Project reports shall be e-mailed to the attention of the MPO's Interim Director, sward@pinellascounty.org or her designee. The MPO reserves the right to request project reports in alternative format. The MPO shall make quarterly payments to the Subgrantee in accordance with the following terms:

a. Narrative Progress Report: Subgrantee shall prepare a narrative progress report covering accomplishments during regular three-month periods. The progress reports shall contain a narrative description of the following information: Work completed during the period; tasks expected to be performed during the next period; and explanation of problems or delays encountered or anticipated.

b. Financial Report: Subgrantee shall prepare a financial report covering the same reporting periods specified in 4 above. These reports shall include, but not be limited to, a balance sheet and a project expenditure statement by line item code. Financial reports shall be current.

5. Invoices: Subgrantee shall prepare quarterly invoices for reimbursement for services performed and/or expenses incurred under this Agreement. Such invoices shall be signed by Subgrantee's Chief Financial Officer, equivalent, or a designated representative thereof. Subgrantee shall maintain records of payroll distribution, receipted bills, and such other documentation as may be reasonably required by the MPO or FTA. Invoices shall be accompanied by supporting documentation. If an invoice includes payment for work performed under subcontract, copies of the subcontractor invoices and proof of payment shall be enclosed. Invoice submittals shall include a separate Disadvantaged Business Enterprise (DBE) utilization schedule and DBE Payment Certification as provided by the MPO. Failure to submit a properly executed DBE schedule and certification shall be cause for withholding payment. Invoices not properly prepared (mathematical errors, billing not reflecting actual work done, no signature, etc.) shall be returned to the Subgrantee for correction. Within thirty (30) days after receipt of final payment, the Subgrantee agrees and acknowledges plans to submit a final Financial Status Report, a certification of Project expenses, and third party audit reports, as applicable.

6. Payment: The MPO shall make payments to Subgrantee following the approval of invoices and within 3 calendar days of the subsequent receipt of funds from FTA.

7. Project Property: Subgrantee agrees to comply with the property management standards of 49 CFR Sections 18.31-18.34 and Section 19 of the FTA Master Agreement.

8. Changes: From time to time, circumstances or conditions may require changes to this Agreement. Changes which are mutually agreed upon between Subgrantee and the MPO shall be incorporated in written amendments to this Agreement.

9. Additional Federal Clauses: The following federal clauses are required of all FTA funded planning grants. These federally required clauses set forth in Appendix A-1, attached hereto and incorporated herein by this reference, apply to this Agreement. Appendix A-1 is not meant to be an exhaustive list of federal clauses that apply to this Agreement.

APPENDIX A-1: FEDERAL CLAUSE REQUIREMENTS

1. Civil Rights
2. Disadvantaged Business Enterprise (DBE)
3. Environmental Requirements
4. Lobbying
5. No Government Obligation to Third Parties
6. Program Fraud and False or Fraudulent Statements and Related Acts
7. Debarment and Suspension
8. Incorporation of Federal Transit Administration (FTA) Terms
9. Access to Records
10. Federal Changes
11. Termination
12. Breaches and Dispute Resolution
13. Text Messaging While Driving (special provision)
14. Buy America
15. Bonding Requirements
16. Recycled Products
17. ADA Access
18. Davis-Bacon and Copeland Anti-Kickback Acts
19. Safety Standards Act
20. E-Verify

1. CIVIL RIGHTS – The following requirements apply to this Agreement:

a. Nondiscrimination – In accordance with Title VI of the Civil Rights Act of 1964, 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:

"*The Subgrantee shall not discriminate on the basis of race, age, creed, disability, marital status, color, national origin, or sex in the performance of this contract. The Subgrantee shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Subgrantee 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 the MPO deems appropriate.*"

Each subcontract the Subgrantee signs in regards to this federal aid Project must include the assurance in this paragraph (see 49 CFR 26.13(b)). The Subgrantee agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity – The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Subgrantee 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. The Subgrantee 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, the Subgrantee agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 621 through 634 and Federal transit law at 49 U.S.C. § 5332, the Subgrantee agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subgrantee agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Subgrantee 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, the Subgrantee agrees to comply with any implementing requirements FTA may issue.

4. Access to Services for Persons with Limited English Proficiency – To the extent applicable and except to the extent that FTA determines otherwise in writing, the Subgrantee agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001. The MPO's LEP Plan is available at the MPO office or may be viewed on-line at: http://www.pinellascounty.org/mpo/PDFs/DBETitleIV/lep.pdf.

5. Environmental Justice – The Subgrantee agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

6. Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

7. Other Nondiscrimination Laws – The Subgrantee agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting

discrimination, except to the extent the Federal Government determines otherwise in writing.

The Subgrantee 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.

2. Disadvantaged Business Enterprise – This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The MPO's overall 2010-2013 requirement for DBE participation is 2.12**%** and is applicable to this Agreement. This requirement reflects the availability of willing and able DBEs who are registered with the State of Florida that would be expected to participate in MPO and its Subgrantees' contracts absent the effects of discrimination. The 2.12% goal is in effect through July 31, 2013.

The Subgrantee shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Subgrantee 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 the MPO deems appropriate.

The Subgrantee is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Subgrantee's receipt of payment for that work from the MPO. In addition, the Subgrantee may not hold retainage from its subcontractor.

Information on the MPO's DBE Program requirements is available at the MPO offices and on-line at: http://www.pinellascounty.org/mpo/PDFs/DBETitleIV/DBE%202011-2013.pdf.

More information on the State of Florida DBE Program, including an application and available DBE bidders list may be found at:
http://www.dot.state.fl.us/equalopportunityoffice/dbeprogram.htm.

3. Environmental Requirements

a. Energy Conservation – The Subgrantee agrees to the extent applicable, to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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

The Subgrantee also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

c. Clean Air – The Subgrantee 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. The Subgrantee agrees to report each violation to the MPO and understands and agrees that the MPO will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Subgrantee 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. Lobbying – Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] – Subgrantees who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Subgrantee to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned will complete and submit Exhibit D Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

5. No Obligation by the Federal Government – The MPO and Subgrantee acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the MPO, Subgrantee, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

The Subgrantee agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6. Program Fraud and False or Fraudulent Statements and Related Acts – The Subgrantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Subgrantee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this project work is being performed. In addition to other penalties that may be applicable, the Subgrantee 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 Subgrantee to the extent the Federal Government deems appropriate.

The Subgrantee 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 Subgrantee, to the extent the Federal Government deems appropriate.

The Subgrantee agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

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

By signing and submitting this Agreement, the Subgrantee certifies as follows:

> The certification in this clause is a material representation of fact relied upon by the MPO. If it is later determined that the Subgrantee knowingly rendered an erroneous certification, in addition to remedies available to the MPO, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Subgrantee agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Subgrantee further agrees to include a provision requiring such compliance in its lower tier covered transactions and will review the "Excluded Parties Listing System" at the following Internet address: http://epls.arnet.gov before entering into any third party or subagreement.

8. 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 Agreement 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 Subgrantee shall not perform any act, fail to perform any act, or refuse to comply with any MPO requests which would cause the MPO to be in violation of the FTA terms and conditions.

9. Access to Records – Upon request, the Subgrantee agrees to permit the Secretary of Transportation; the Comptroller General of the United States; and, if appropriate or their authorized representatives to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Subgrantee pertaining to the Project as required by 49 U.S.C. § 5325(g).

10. Federal Changes – The Subgrantee 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 as they may be amended or promulgated from time to time during the term of this Agreement. The Subgrantees failure to so comply shall constitute a material breach of this contract.

11. Termination

a. Convenience (General Provision) The MPO may terminate this Agreement, in whole or in part, at any time upon five working day's written notice to the Subgrantee. The Subgrantee shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Subgrantee shall promptly submit its invoice to the MPO for costs incurred up to the effective date of termination, provided Subgrantee has not been previously reimbursed for such costs.

b. Termination for Default [Breach or Cause] (General Provision) If the Subgrantee fails to perform in the manner called for in the Agreement, or if the Subgrantee fails to comply with any other provisions of the Agreement, the MPO may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Subgrantee setting forth the manner in which the Subgrantee is in default. The Subgrantee will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the MPO that the Subgrantee had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Subgrantee, the MPO, after setting up a new delivery of performance schedule, may allow the Subgrantee to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The MPO in its sole discretion may, in the case of a termination for breach or default, allow the Subgrantee within then (10) days of said notice of termination in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If the Subgrantee fails to remedy to MPO satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by the Subgrantee of written notice from the MPO setting forth the nature of said breach or default, the MPO shall have the right to terminate the Agreement without any further obligation to the Subgrantee. Any such termination for default shall not in any way operate to preclude the MPO from also pursuing all available remedies against the Subgrantee and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the MPO elects to waive its remedies for any breach by Subgrantee of any covenant, term or condition of this Agreement, such waiver by the MPO shall not limit the MPO's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

12. Breaches and Dispute Resolution – All services are to be performed by the Subgrantee to the satisfaction of the MPO's Interim Director.

a. Disputes – Disputes, claims, questions and conflicts arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the MPO's Interim Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Subgrantee mails or otherwise furnishes a written notice of appeal to the MPO Interim Director. In connection with any such appeal, the Subgrantee shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the MPO Interim Director shall be binding upon all of the parties.

b. Performance During Dispute – Unless otherwise directed by the MPO, the, Subgrantee shall continue performance under this Agreement while matters in dispute are being resolved.

c. Claims for Damages – Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

d. Remedies – Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the MPO and the Subgrantee arising out of or relating to this Agreement or its breach will be decided by mediation if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida.

e. Rights and Remedies – The duties and obligations imposed by the Agreement 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 the MPO or Subgrantee shall constitute a waiver of any right or duty afforded any of them under the 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.

13. Text Messaging While Driving (special provision).

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Subgrantee is encouraged to comply with the terms of the following Special Provision.

a. Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by state or local law.

b. Safety. The Subgrantee is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(a) Subgrantee-owned or Subgrantee-rented vehicles or government-owned, leased or rented vehicles;

(b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(c) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Subgrantee's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subagreements with its Subgrantee and third party contracts and also encourage its Subgrantee, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

14. Buy America – The Subgrantee 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, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____
Signature _____

Company Name _____

Title _____

_____

15. Bonding Requirements Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described there under.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) 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. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

(a) The following situations may warrant a performance bond:

1. Subgrantee's 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).

2. A contractor sells assets to or merges with another concern, and the Subgrantee, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

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

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

2. The Subgrantee 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. The Subgrantee may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Subgrantee's interest.

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

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million;

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is increased.

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. The Subgrantee shall determine the amount of the advance payment bond necessary to protect the Subgrantee.

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. The Subgrantee shall determine the amount of the patent indemnity to protect the Subgrantee.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to Subgrantee, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Subgrantee, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], 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 Subgrantee and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Subgrantee. 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 Subgrantee written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this 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).

16. Preference for Recycled Products. To the extent applicable, the Subgrantee agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Subgrantee agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

17. Access for Individuals with Disabilities. The Subgrantee agrees 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. The Subgrantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42

U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Subgrantee agrees to comply with applicable implementing federal regulations, and any later amendments thereto, and agrees to follow applicable federal implementing directives, except to the extent FTA approves otherwise in writing.

18. Employee Protections. The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below. The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Davis-Bacon Act:

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (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 CFR 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 (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily been by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer

shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 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 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer 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. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, 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 the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(3) **Payrolls and basic records** – (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Subgrantee for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR 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.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of 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 CFR 5.12.

(4) **Apprentices and trainees** – (i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator 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.

(ii) Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan

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

(iii) Equal employment opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

Copeland Anti-Kickback Act:

(5) **Compliance with Copeland Act requirements** – The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) **Certification of eligibility** – (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a

person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than $100,000." 40 USC 3701(b)(3) (A)(iii). The following clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.,* specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926;

(1) **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.

(2) **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 (1) 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 (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The Pinellas County Parks & Conservation Resources Department 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 (2) of this section.

(4) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) 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 (1) through (4) of this section.

20. EVERIFY – The Subgrantee is required to comply with the U.S. Department of Homeland Security E-Verify system and must include the requirement to comply with any lower tier covered transaction it enters into in relation to the Project.

Contract No:
Financial Project No.:
Project Description: Ft. DeSoto Bay Pier/Dock Replacement
CFDA: 20.520

Subgrantee acknowledges and agrees to the following:

Subgrantee shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system.

Subgrantee or Subcontractor_____

Authorized Signature _____

Title: _____

Date: _____

APPENDIX B

WORK PROGRAM

Project Manager:

The Project shall be conducted and administered by Subgrantee under the direction of Debbie Chayet, who will be responsible for the day to day administration of the Project.

Project Manager:

Debbie Chayet, Grants Specialist
Pinellas County Parks & Conservation Resources Department
12520 Ulmerton Road
Largo, FL 33774
Phone 727-582-2521
Fax 727-582-2149
Email: dchayet@pinellascounty.org

SCOPE OF WORK
Ft. De Soto Bay Pier/Dock Replacement

The Subgrantee Pinellas County, by and through its Parks & Conservation Resource Department owns and operates 1,136 acre Ft. De Soto Park, located at the extreme southern tip of Pinellas County and nestled between the Gulf of Mexico to the west and Tampa Bay to the south and east.

The project calls for the replacement of the existing 500-foot Bay pier/dock at Fort De Soto. The Bay pier/dock is located within 20 minutes by watercraft from Egmont Key National Wildlife Refuge. This pier/dock is the closest public access to the refuge and it is where a public ferry (not a charter) launches daily trips (not excursions) to Egmont Key. This facility not only provides for the docking of the ferry for alternative transportation public access to Egmont Key National Wildlife Refuge; also provides a docking point for the US and the Florida Fish and Wildlife agencies, U.S. Coast Guard and the Tampa Bay Marine Pilots to access Egmont Key. In addition, Florida Marine Patrol, County Sheriff and emergency response agencies use the pier/dock. The Bay pier/dock's attribute to the County's park system is its use for recreational fishing.

The planned alternative transportation project is the replacement of the existing pier/dock with a similar new, safe and structurally sound, pier/dock to provide continued public access to Egmont Key. In order to keep the Bay pier/dock available for access to its users, which includes keeping public access to Egmont and keeping a small business (ferry vendor) afloat, the new facility would be constructed adjacent to the current facility. Demolition of the old pier/dock would occur at the time of the new facility's opening.

Pinellas County received a 2011 Paul B. Sarbanes Transit in Parks Discretionary Program Section 5320 Federal Transit Authority Grant in the amount of $1,000,000 for the Ft. De Soto Bay Pier/Dock Replacement project. Pinellas County has also provided $400,000 in matching CIP funds for this project. Pinellas County proposes to use these combined funds for engineering, design, permitting and initial construction of the replacement Bay Pier/Dock.

APPENDIX C: PROJECT BUDGET

Source of Funds:

FTA Section 5320 FY 2011 D2011-ATPL-009 grant funds $1,000,000

Pinellas County CIP (Capital Improvement Program) Budget Project # 997/000055A $400,000

APPENDIX D: 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements *(To be submitted with each bid or offer exceeding $100,000)*

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq .)]*

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Subgrantee certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subgrantee understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

Ken Welch (signature)

Mayor Title 7/26/12 Date

ATTEST: KEN BURKE, CLERK
By: Deputy Clerk