

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

=====

Meeting Date: May 18, 2010  Consent  Regular  
 Ordinance  Public Hearing

Department: Palm Tran

Submitted By: Palm Tran

Submitted for: Palm Tran

=====

**I. EXECUTIVE BRIEF**

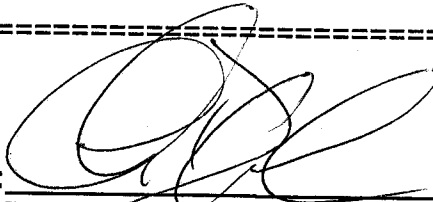
**Motion and Title:** Staff recommends motion to adopt: Resolution authorizing Palm Tran to file a Transportation Disadvantaged (TD) Trip and Equipment Grant Application in the estimated amount of \$2,170,179 and delegating authority to Palm Tran's Executive Director, through the County Administrator, to execute standard form and coordination/operator contracts.

**Summary:** The State of Florida Commission for the Transportation Disadvantaged (CTD) annually makes funds available to Community Transportation Coordinators (CTCs) through the Transportation Disadvantaged Trip and Equipment Grant Program. The Grant cycle runs from July 1, 2010 – June 30, 2011. Palm Beach County has been allocated funds for FY 2010/2011: Trip and Equipment Grant: \$2,170,179; Total State Grant: \$1,953,161; Local Match: \$217,018; Voluntary Dollar Contributions: \$2,262; In-Kind Match for Voluntary Dollar: \$251; Total Grant: \$2,172,692. The local match has already been budgeted in Palm Tran's proposed FY 2011 operating budget. Countywide (DR)

**Background and Justification:** The Transportation Disadvantaged Trust Fund (TDTF) is administered by the Commission for the Transportation Disadvantaged, pursuant to Section 427.0159, Florida Statutes, and Rule 41-2, Florida Administrative Code. The purpose of the TDTF is to provide a dedicated funding source for the operational and planning expenses of the CTD in carrying out its legislative responsibilities, and to provide transportation opportunities for non-sponsored transportation disadvantaged citizens. This grant's purpose is specifically to provide opportunities for non-sponsored transportation disadvantaged citizens to obtain access to transportation for daily living needs when they are not sponsored for that need by any other available funding source.

- Attachments:**
1. Authorization Resolution (3 copies)
  2. CTD Grant Acknowledgement Form
  3. CTD Standard Assurances
  4. *Standard Coordination/Operator Contract*

=====

Recommended By:  \_\_\_\_\_ Date: *April 15, 2010*

Department Director Date

Approved By:  \_\_\_\_\_ Date: \_\_\_\_\_

Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2010	2011	2012	2013	2014
Grant Expenditures					
Operating Costs		\$2,172,692			
External Revenues		\$1,955,423			
Program Income (County)		\$0			
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>		<b>\$217,269</b>			
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>		<b>0</b>			

Is Item Included In Current Budget? Yes X No       
 Budget Account No.: Fund 1340 Dep't. 540 Unit 5011 Object various  
 Program            Reporting Category           

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**  
 The local match of \$217,269 = State Grant Match \$217,018 + Voluntary Dollar Match \$251  
 Total State Grant of \$1,955,423 = \$1,953,161 + Voluntary Dollar Contribution: \$2,262

**C. Departmental Fiscal Review:** Suzanne McDermott, for John Murphy  
 John Murphy, Finance Manager 4/15

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

[Signature]  
 SN116  
 39 OFMB  
 Moe  
 4-27-10  
 4/22/10

[Signature]  
 Contract Dev. and Control

**B. Legal Sufficiency:**

[Signature] 5/11/2010  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**RESOLUTION NO. R -**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE FILING OF THE TRANSPORTATION DISADVANTAGED TRUST FUND GRANT APPLICATION.**

**WHEREAS**, the Palm Beach County Board of County Commissioners (BOARD) has the authority to file a Transportation Disadvantaged Trust Fund Grant Application for a transportation disadvantaged service project as authorized by Section 427.0159, Florida Statutes, and Rule 41-2, F.A.C.

**NOW, THEREFORE**, be it resolved by the BOARD that:

1. The BOARD has the authority to file this grant application.
2. The BOARD authorizes the Executive Director of Palm Tran, through the County Administrator, to file and execute the application, on behalf of Palm Beach County, with the Florida Commission for the Transportation Disadvantaged.
3. The BOARD's Registered Agent in Florida is Palm Tran's Executive Director. The Registered Agent's address is: 3201 Electronics Way, West Palm Beach, FL 33407-4618.
4. The BOARD authorizes the Executive Director of Palm Tran to execute the standard form "State of Florida Commission for Transportation Disadvantaged Standard Coordination/Operator Contract," on behalf of the Board of County Commissioners of Palm Beach County, Florida; provided, that, the terms and conditions of each contract are in accordance with the terms and conditions of the standard form contract attached to the BOARD's agenda item approving this resolution, the duration of the contract does not exceed three years, the contract amount has been budgeted by the Board and that each contract to be executed has been approved as to legal form and sufficiency by the County Attorney or her designee. Should any special conditions be added or modifications be made to the standard form contract which are neither contemplated nor allowed by the standard form attached hereto, then said contract shall be presented to the Board of County Commissioners for its consideration and approval. These requirements shall be incorporated into and made a part of Palm Beach County's operating policies and procedures pertaining to its role and designation as the Community Transportation Coordinator.
5. The BOARD authorizes Palm Tran CONNECTION's Director to sign any and all assurances, reimbursement invoices, warranties, certifications and any other document that may be required in connection with the application, grant agreement or resultant grant agreement.

The foregoing resolution was offered by Commissioner \_\_\_\_\_,  
who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_,  
and upon being put to a vote, the vote was as follows:

Commissioner Burt Aaronson, Chair	_____
Commissioner Karen T. Marcus, Vice Chair	_____
Commissioner Jeff Koons	_____
Commissioner Shelley Vana	_____
Commissioner Steven L. Abrams	_____
Commissioner Jess R. Santamaria	_____
Commissioner Priscilla A. Taylor	_____

The Chair thereupon declared the resolution duly passed and adopted this  
\_\_\_\_\_ day of 2010.

PALM BEACH COUNTY,  
FLORIDA  
By its BOARD OF  
COMMISSIONERS  
Sharon R. Bock, Clerk &

APPROVED AS TO FORM AND  
Comptroller  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Deputy Clerk

2010/2011 Transportation Disadvantaged Trust Fund Grant  
Acknowledgement Form

GRANT RECIPIENT LEGAL NAME: Palm Beach County, Florida c/o Palm Tran

FEDERAL IDENTIFICATION NUMBER: 65-0627086

REGISTERED ADDRESS: 3201 Electronics Way

CITY AND STATE: West Palm Beach, FL ZIP CODE: 33407-4618

CONTACT PERSON FOR THIS GRANT: Ron Jones

PHONE NUMBER: 561-649-9848 FAX NUMBER: 561-656-7157

(REQUIRED) E-MAIL ADDRESS: rxjones@pbcgov.org

PROJECT LOCATION (County): Palm Beach County

PROPOSED START DATE: July 1, 2010

<u>ANTICIPATED CAPITAL EQUIPMENT REQUEST</u>		<u>PLANNING FUNDS</u>
<u>Equipment</u>	<u>\$ Amount</u>	<u>\$</u> _____
_____	_____	
_____	_____	

Only Required If Capital Equipment is Purchased:

This Acknowledgement Form requesting the purchase of capital equipment has been reviewed by the \_\_\_\_\_ Local Coordinating Board.

\_\_\_\_\_  
LCB Chairperson's Signature

I, \_\_\_\_\_, as the authorized Grant Recipient Representative, hereby certify that the information contained in these forms is true and accurate and is submitted in accordance with the instructions.

\_\_\_\_\_  
Grant Recipient Representative (Signature)

\_\_\_\_\_  
Date

### STANDARD ASSURANCES

The recipient hereby assures and certifies that:

- (1) The recipient will comply with the federal, state, and local statutes, regulations, executive orders, and administrative requirements which relate to discrimination on the basis of race, color, creed, religion, sex, age, and handicap with respect to employment, service provision, and procurement.
- (2) Public and private for-profit, transit and paratransit operators have been or will be afforded a fair and timely opportunity by the local recipient to participate to the maximum extent feasible in the planning and provision of the proposed transportation planning services.
- (3) The recipient has the requisite fiscal, managerial, and legal capacity to carry out the Transportation Disadvantaged Program and to receive and disburse State funds.
- (4) The recipient intends to accomplish all tasks as identified in this grant application.
- (5) Transportation Disadvantaged Trust Funds will not be used to supplant or replace existing federal, state, or local government funds.
- (6) Capital equipment purchased through this grant meets or exceeds the criteria set forth in the Florida Department of Transportation's Guidelines for Acquiring Vehicles on file with the Commission on July 1, 2001 or criteria set forth by any other federal, state, or local government agency.
- (7) Capital equipment or consultant services purchased through this grant comply with the competitive procurement requirements of Chapter 287 and Chapter 427, Florida Statutes.
- (8) If capital equipment is purchased through this grant, the demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:
  - (a) response time,
  - (b) fares,
  - (c) geographic service area,
  - (d) hours and days of service,
  - (e) restrictions on trip purpose,
  - (f) availability of information and reservation capability, and
  - (g) contracts on capacity or service availability.

In accordance with 49 CFR Part 37, public entities operating demand responsive systems for the general public which receive financial assistance under Sections 5310 or 5311 of the Federal Transit Administration (FTA) have filed a certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving FTA funds have also filed a certification with the appropriate program office. Such public entities receiving FTA funds under any other section of the FTA have filed a certification with the appropriate FTA regional office.

This certification is valid for no longer than the contract period for which the grant application is filed.

Date: April 15, 2010 Signature: 

Name: Charles D. Cohen  
Title: Executive Director, Palm Tran

TRANSPORTATION DISADVANTAGED TRUST FUND  
SERVICE RATES

SERVICE RATES

COMMUNITY TRANSPORTATION COORDINATOR:

Palm Beach County Board of County Commissioners, Palm Tran

EFFECTIVE DATE:

July 1, 2010

TYPE OF SERVICE TO BE PROVIDED	UNIT (Passenger Mile or Trip)	COST PER UNIT \$
Ambulatory	Per Trip	\$20.34
Wheelchair	Per Trip	\$34.88
31 - Day	Per Pass	\$55.00
1 - Day	Per Pass	\$3.00

# Contract No. FY-XX-TD

Effective: October 1, 20XX to September 20XX  
[Not to exceed three (3) years]

## STATE OF FLORIDA COMMISSION FOR THE TRANSPORTATION DISADVANTAGED STANDARD COORDINATION/OPERATOR CONTRACT

**THIS CONTRACT** is made and entered into this day of \_\_\_\_\_, 20\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Executive Director of Palm Tran, who has been delegated the authority to execute this contract on behalf of the Board of County Commissioners of Palm Beach County, and which has been designated as the Community Transportation Coordinator pursuant to Chapter 427, F.S., to serve the transportation disadvantaged of Palm Beach County, (hereinafter referred to as the "Coordinator") and \_\_\_\_\_, hereinafter referred to as the "Agency/Operator" whose Federal I.D. Number is \_\_\_\_\_. The terms and conditions of this Contract take effect as of October 1, 20\_\_, and will continue through and expire on September 30, 20\_\_.

**WHEREAS**, the Coordinator is required under Rule 41-2, F.A.C., Contractual Arrangements, to provide and/or enter into subcontract(s) or to broker transportation services to transportation operators, where cost effective and efficient; and

**WHEREAS**, transportation disadvantaged funds include any local government, state or federal funds that are for the transportation of the transportation disadvantaged; and

**WHEREAS**, the Coordinator desires to contract with the Agency/Operator for the provision of transportation services for the transportation disadvantaged; and

**WHEREAS**, the Coordinator believes it to be in the public interest to provide such transportation services through the Agency/Operator for the residents of the service area who are clients of the Agency/Operator; and

**WHEREAS**, the Agency/Operator agrees to consider a request by Coordinator that Agency/Operator provide additional transportation services; and

**WHEREAS**, to facilitate the coordination of resources, the Agency/Operator will make additional available transportation services available to the Coordinator; and

**WHEREAS**, this Contract requires that transportation services be provided by the Agency/Operator, in accordance with Chapter 427, F.S., Rule 41-2, F.A.C., and the most current



## Contract No. FY-XX-TD

Community Transportation Coordinator policies.

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

### PART I - THE AGENCY/OPERATOR SHALL:

- A. Provide services and vehicles according to the conditions specified in Attachment I and all other rules and regulations of the State of Florida Commission for the Transportation Disadvantaged ("Commission") and rules and policies of the Coordinator.
- B. Coordinate available resources and make available transportation services to the Coordinator. Such services shall be provided in accordance with Attachment I.
- C. Every three (3) months, submit to the Coordinator a Quarterly Year to Date Operating Report (from the Annual Operating Report) detailing demographic, operational and financial data regarding coordination activities in the designated service area. The report shall be prepared on forms provided by the Commission for the Transportation Disadvantaged, hereinafter Commission, and according to the instructions for the forms.
- D. Comply with audit and record keeping requirements by:
  1. Utilizing the Commission recognized Chart of Accounts defined in the Transportation Accounting Consortium Model Uniform Accounting System for Rural and Specialized Transportation Providers (uniform accounting system) for all transportation disadvantaged accounting and reporting purposes. Agencies/Operators with existing and equivalent accounting systems are not required to adopt the Chart of Accounts in lieu of their existing Chart of Accounts but shall prepare all reports, invoices, and fiscal documents relating to the transportation disadvantaged functions and activities using the chart of accounts and accounting definitions as outlined in the above referenced manual.
  2. Maintaining and filing with the Coordinator such progress, fiscal, inventory, certifications and other reports as the Coordinator may require during the period of this contract.
  3. By reserving to the Coordinator, the right to conduct finance and compliance audits at any time. Such audits conducted by the Coordinator will be at the expense of the Coordinator.
  4. The Agency/Operator shall permit the Coordinator's and Commission's representatives to inspect all work, materials, payrolls, records, drivers' manifests, capital equipment; and to audit the books, records and accounts pertaining to its

## Contract No. FY-XX-TD

performance of this Contract at all reasonable times including after expiration of the Contract.

5. Agency/Operator shall comply with Florida's Public Records Laws, to the extent such is applicable to the activities of the Agency/Operator. Agency/Operator acknowledges and agrees that Coordinator may unilaterally cancel this Contract for refusal by the Agency/Operator to allow public access to all documents, papers, letters, records, or other materials subject to the provisions of Chapter 119, F.S., and made or received in conjunction with this Contract.
- E. Retain all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a period of five (5) years after termination of this Agreement at a facility located within Palm Beach County. If an audit has been initiated and audit findings have not been resolved at the end of the five (5) years, the records shall be retained until resolution of the audit findings. The Agency/Operator shall assure that these records shall be subject to inspection, review, or audit, at all reasonable times, by persons duly authorized by the Coordinator, the Commission or under this Agreement, without cost to the Coordinator, Commission or such persons. The Commission, Coordinator, and representatives from the State of Florida, including but not limited to individuals representing the Department of Transportation, State Comptroller and Auditor General, shall have full access to and the right to examine, at any time, with or without prior notice to the Agency/Operator, any of the records and documents during the retention period. The Agency/Operator further agrees to cooperate with any inspections, review, investigations, or audits deemed necessary by the Coordinator, State Comptroller, Auditor General or the Department of Transportation.
- F. Comply with Safety Requirements by:
1. Complying with Section 341.061, F.S., and Rule 14-90, F.A.C., concerning System Safety or complying with Chapter 234.051, F.S., regarding school bus safety requirements for those services provided through a school board.
  2. Assuring compliance with local, state, and federal laws, and Commission policies relating to drug testing.
  3. Complying with Coordinator's System Safety Program Plan (SSPP) for designated service area.
- G. Comply with Commission insurance requirements by maintaining at least minimum liability insurance coverage in the amount of \$100,000 for any one person and \$200,000 per occurrence at all times during the existence of this Contract. Upon the execution of this Contract, the Agency/Operator shall add the Coordinator and Palm Tran, Inc. as additional insureds to all insurance policies covering vehicles transporting the

## Contract No. FY-XX-TD

transportation disadvantaged. In the event of any cancellation or changes in the limits of liability in the insurance policy, the insurance agent or broker shall notify the Coordinator. The Agency/Operator shall furnish the Coordinator written verification of the existence of such insurance coverage prior to the execution of this Contract. School board vehicle insurance coverage shall be in accordance with Section 234.03, F.S. and 234.211, F.S. Insurance coverage in excess of \$1 million per occurrence must be approved by the Coordinator and/or the local Coordinating Board before inclusion in this contract or in the justification of rates and fare structures in accordance with F.A.C. Rule 41-2.006(1).

- H. Safeguard information by not using or disclosing any information concerning a user of services under this Agreement, for any purpose not in conformity with the local, state and federal regulations, including but not limited to 45 CFR Part 205.50, except upon order of a court of competent jurisdiction, written consent of the recipient, or his/her responsible parent or guardian when authorized by law, and the requirements of the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations, as they may be amended from time to time.
- I. Protect Civil Rights by:
  - 1. Complying with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, as amended, and the implementing regulations of the Federal departments and agencies implementing these acts. The Agency/Operator gives this assurance in consideration of and for the purpose of obtaining federal grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, or other federal financial assistance to programs or activities receiving or benefiting from federal financial assistance and agreeing to complete a Civil Rights Compliance Questionnaire if so required by the Coordinator. Agency/Operator shall also assure compliance with:
    - a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving or benefiting from federal financial assistance, and with all rules and regulations of the U.S. Department of Transportation, the U.S. Department of Justice and with any assurance given by Coordinator.
    - b. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance.
    - c. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education

## Contract No. FY-XX-TD

programs and activities receiving or benefiting from federal financial assistance.

- d. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
- e. The Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
- f. All regulations, guidelines, and standards lawfully adopted under the above statutes.
- g. The Americans with Disabilities Act of 1990, as it may be amended from time to time, and its implementing regulations, as they may be amended from time to time.
- h. And, all other laws, rules and regulations applicable to the activities of the Agency/Operator.

2. Agreeing that compliance with this assurance constitutes a condition of continued receipt of or benefit from federal financial assistance, and that it is binding upon the Agency/Operator, its successors, subcontractors, transferees, and assignees for the period during which such assistance is provided. Assuring that operators, subcontractors, sub grantees, or others with whom the Coordinator arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of the above statutes, regulations, guidelines, and standards. In the event of failure to comply, the Agency/Operator agrees that the Coordinator may, at its discretion, seek a court order requiring compliance with the terms of this assurance or seek other appropriate judicial or administrative relief, to include assistance being terminated and further assistance being denied.

- J. Agree to indemnify and hold harmless the Coordinator and that it is an independent contractor and not an agent of the Coordinator as follows:

1. Agency/Operator agrees to protect, save, defend, reimburse, indemnify and hold harmless the Coordinator, Palm Tran, Inc., and their respective officers, servants, agents and employees, from and against any and all claims, suits, liability, expenses, losses, costs, fines, damages, attorney fees, (including the costs of all appeals), costs and expenses, and causes of action of every kind and character against Coordinator, Palm Tran, Inc., or their respective officers, servants, agents

## Contract No. FY-XX-TD

and employees by reason of any damage to person(s), including bodily injury and death, and property, incurred or sustained by any person whomsoever or any governmental entity, which arise out of, are incidental to, or related in any manner, to the Agency/Operator's performance of this Contract, the Agency/Operator's acts or omissions, the Agency/Operator's negligence, or the Agency/Operator's failure to perform any term or condition of this Contract. Agency/Operator's obligations hereunder shall encompass all negligent, intentional, reckless, malicious and wrongful acts of its employees, servants, agents and subcontractors, and shall include all injuries or damages suffered by any person or entity as a result of any negligent, intentional, reckless, deliberate or malicious act or omission of the Agency/Operator or its employees, servants, agents and subcontractors.

2. Nothing contained in this Contract shall be construed as a waiver of the Coordinator's sovereign immunity as set forth in Section 768.28, F.S.
3. Agency/Operator's obligation to indemnify, defend, and pay for the defense or at the Coordinator's option, to participate and associate with the Coordinator in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Coordinator's notice of claim for indemnification to the Agency/Operator. Agency/Operator's inability to evaluate liability or its evaluation of liability shall not excuse the Agency/Operator's duty to defend and indemnify within seven (7) days after such notice by the Coordinator is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Coordinator solely negligent shall excuse performance of this provision by the Agency/Operator. Agency/Operator shall pay all costs and fees related to this obligation and its enforcement by the Coordinator. The Coordinator's failure to notify Agency/Operator of a claim shall not release Agency/Operator of the above duty to defend.
4. Agency/Operator is an independent contractor and not an employee, servant or agent of the Coordinator. All persons engaged in the performance of this Contract or using, operating or maintaining the vehicle(s) used to perform this Contract shall at all times and in all places be subject to the Agency/Operator's sole direction, supervision and control. Agency/Operator shall exercise control over the means and manner in which it and its employees and volunteers use, operate and maintain the vehicle(s) or otherwise perform this Contract, and in all respects the Agency/Operator's relationship and the relationship of its employees and volunteers shall be that of an independent contractor.
5. Agency/Operator acknowledges that it has no authority, either express or implied, to hold itself out as a servant or agent of the Coordinator. Agency/Operator does not have the power or authority to bind the Coordinator in any promise,

## **Contract No. FY-XX-TD**

agreement, or representation. Agency/Operator shall not convey or suggest, in any manner whatsoever, that it has any authority, either real or apparent, to act for or on behalf of, or as an agent of the Coordinator.

6. Agency/Operator further agrees to protect, save, defend, reimburse, indemnify and hold harmless the Coordinator and its officers, servants, agents and employees from and against any and all claims, liabilities, expenses, losses, costs, fines, damages, and attorney fees (including all appellate costs and expenses) asserted against or incurred by Coordinator, that are related to or result from, in whole or in part, any claim, assertion, inference, suggestion or the like by Agency/Operator or any of Agency/Operator's employees, volunteers, servants, agents or contractors, that Agency/Operator, in the performance of this Contract or otherwise, is a servant or agent of the Coordinator.
7. This Contract is not intended to be a third party beneficiary contract and confers no rights on anyone other than the Coordinator or the Agency/Operator. Nothing herein will constitute the imposition or acceptance of any obligation or liability not otherwise imposed under this Contract or by law upon Coordinator.

**K** Comply with all standards and performance requirements of the:

1. The Commission for the Transportation Disadvantaged, including but not limited to those set forth in Attachment II.
2. The Palm Beach County Transportation Disadvantaged Local Coordinating Board ("Coordinating Board") approved Transportation Disadvantaged Service Plan.
3. The Coordinator's Trip & Equipment Grant Agreement with the Florida Commission for the Transportation Disadvantaged which the Coordinator is obligated to adhere to in the delivery of services to the transportation disadvantaged shall be similarly adhered to by the Agency/Operator.
4. Coordinator as required in this Contract or by any other rule, regulation, policy or procedure of the Coordinator or the Commission made applicable to the Agency/Operator by this Contract, or any Commission rule, regulation, policy or procedure.

Failure to meet the requirements or obligations set forth in this Contract and the performance requirements established and monitored by the Coordinating Board in the approved Transportation Disadvantaged Service Plan shall be due cause for non-payment of reimbursement invoices until such deficiencies have been addressed or corrected to the satisfaction of the Coordinator.

## **Contract No. FY-XX-TD**

- L. Provide Corrective Action. A corrective action notice is a written notice to the Agency/Operator that the Agency/Operator is in breach of certain provisions of this Contract and that correction is required. A corrective action notice may specify a reasonable time for corrective action to be completed or require immediate correction. The Agency/Operator agrees to implement the Corrective Action specified in the notice and provide written documentation to substantiate the implementation of the Corrective Action.
- M. All contracts, subcontracts, coordination contracts will be reviewed annually by the Coordinator and Coordinating Board for conformance with the requirements of this Contract.
- N. Return to the Coordinator any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to the Agency/Operator by the Coordinator. The Agency/Operator shall return any overpayment within thirty (30) calendar days after either discovery by the Agency/Operator, or notification of the Agency/Operator by the Coordinator or entity purchasing transportation, whichever is earlier. In the event that the Coordinator first discovers an overpayment has been made, the Coordinator will notify the Agency/Operator by letter of such a finding. Should repayment not be made in a timely manner, the Coordinator or purchasing entity will charge interest, at the amount established by law for judgments, after thirty (30) calendar days after the date of notification or discovery. The Coordinator may deduct or offset said amount, plus all interest owed, from future invoices for sums due Agency/Operator.
- O. In performing this Contract, the Agency/Operator shall not discriminate against any employee or applicant for employment because of race, age, disability, creed, color, sex or national origin. 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. The Agency/Operator shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the Contract, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in subcontracts relating to the performance of this Contract, except subcontracts for standard commercial supplies or raw materials. The Agency/Operator shall post, in conspicuous places available to employees and applicants for employment for Project work, notices setting forth the provisions of the nondiscrimination clause.
- P. By execution of this Contract, the Agency/Operator represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder. Funds disbursed to the Agency/Operator under this Contract shall not be expended for the purpose of lobbying

## **Contract No. FY-XX-TD**

the Legislature, the judicial branch, or a state agency.

### **PART II - THE COORDINATOR SHALL:**

- A. Recognize the Agency/Operator as described in Chapter 427, F.S., and Rule 41-2, F.A.C.
- B. Endeavor to insure that entities with transportation disadvantaged funds purchase transportation disadvantaged services through the coordinated system.
- C. Attempt to annually monitor the Agency/Operator for insurance, safety and reporting requirements, pursuant to Chapter 427, F.S., and Rule 41-2, F.A.C. The information contained in the Annual Operating Report must be collected, at a minimum, quarterly from the Agency/Operator.

### **PART III - THE OPERATOR AND COORDINATOR FURTHER AGREE:**

- A. Nothing in this Contract shall require the Coordinator to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law. If any provision of the Contract is found by a court of law to violate any applicable state law, the purchasing entity will at once notify the Coordinator in writing in order that appropriate changes and modification may be made by the Coordinator and the Agency/Operator to the end that the Agency/Operator may proceed as soon as possible with the provision of transportation services.
- B. If any part or provision of this Contract is held invalid, the remainder of this Contract shall be binding on the parties hereto.
- C. Termination Conditions:
  - 1. Termination at Will - This Contract may be terminated by the Coordinator, without cause, upon no less than ten (10) days notice to the Grantee. Said notice shall be delivered by certified mail, return receipt required, or in person with proof of delivery.
  - 2. Termination due to Lack of Designation - In the event that the Coordinator so designated by the Coordinating Board and approved by the Commission, loses its designation, this Contract is terminated immediately upon notification to the Agency/Operator. Notice shall be delivered by certified mail, return receipt requested, or in person, with proof of delivery. Notice shall be effective upon receipt.
  - 3. Termination due to Disapproval of Memorandum of Agreement - In the event that the Commission does not accept and approve any contracted transportation rates



## **Contract No. FY-XX-TD**

listed within the Memorandum of Agreement, this Contract shall be terminated immediately upon notification to the Agency/Operator. Notice shall be delivered by certified mail, return receipt requested, or in person, with proof of delivery. Notice shall be effective upon receipt.

4. Termination due to Lack of Funds - In the event funds to finance this Contract are not available, become unavailable or are not appropriated by the State or Coordinator for any reason or no reason at all, the Coordinator may terminate the contract with no less than twenty-four (24) hours written notice to the Agency/Operator. Notice shall be delivered by certified mail, return receipt requested, or in person, with proof of delivery. Notice shall be effective upon receipt. The Coordinator shall be the final authority as to the availability of funds.
  5. Termination for Breach - In the event the Agency/Operator is in breach of contract, the Coordinator may immediately terminate this Contract upon written notice of the termination to the Agency/Operator. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Waiver by the Coordinator of breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract, and shall not act as a waiver or estoppel to enforcement of any provision of this Contract. The provisions herein do not limit the Coordinator's right to remedies at law or to damages.
  6. Upon receipt of a notice of termination of this Contract for any reason, the Agency/Operator shall cease service and prepare all final reports and documents required by the terms of this Contract. A final invoice shall be sent to the Coordinator within thirty (30) days after the termination of this Contract.
- D. Renegotiations or Modifications of this Contract shall only be valid when they have been reduced to writing, duly approved by the Coordinator, and signed by both parties hereto.
- E. Agency/Operator shall assign no portion of this Contract without the prior written consent of the Coordinator.
- F. This Contract is the entire agreement between the parties.
- G. Attachments I, II and III are an integral part of the Contract and are hereby incorporated by reference into this Contract.
- H. The Coordinator's performance of its obligations under this Agreement is contingent upon an annual budgetary appropriation by the Coordinator's Board of County Commissioners for the purposes described in this Agreement.

## Contract No. FY-XX-TD

I. Notice and Contact:

The name and address of the contract manager for the Coordinator for this Contract is:

Executive Director  
Palm Tran, Inc.  
3201 Electronics Way  
West Palm Beach, FL 33407  
(561) 841-4200 FAX (561) 841-4290

The representative/position of the Agency/Operator responsible for administration of the program under this contract is:

Contact Name of Transportation Coordinator  
Transportation Coordinator's Name  
Street Address  
City, State and Zip Code  
Telephone Number

In the event that different representatives are designated by either party after execution of this Contract, notice of the name and address of a party's new representative must be made in writing, sent to the other party and said notification attached to originals of this Contract.

- J. This contract and its attachments contain all the terms and conditions agreed upon by the parties hereto.

(Remainder of Page Intentionally Left Blank)

# Contract No. FY-XX-TD

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the day and year first written above.

AGENCY/OPERATOR:

COMMUNITY TRANSPORTATION  
COORDINATOR:

\_\_\_\_\_  
(Type or Print Agency/Operator Name)

Palm Beach County, Florida, by and  
through its  
Executive Director of Palm Tran

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Chuck Cohen,

Executive Director, Palm Tran

\_\_\_\_\_  
Type or Print  
Name of Authorized Individual

\_\_\_\_\_  
Type or Print Title

Approved as to Form  
and Legal Sufficiency

Approved as to Terms  
and Conditions

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
Chuck Cohen, Executive Director  
Palm Tran

# Contract No. FY-XX-TD

## ATTACHMENT I AGENCY/OPERATOR CONTRACT

### SERVICE DESCRIPTION

1. The Agency/Operator will be able to provide:  
**Ambulatory and/or non-ambulatory door-to-door service**
2. The Agency/Operator will be available to provide transportation:  
**XX hours per day X days per week**  
Days Agency/Operator will not be able to provide services:  
**(Enter information as to non-availability)**
3. Vehicles Agency/Operator will use to transport all passengers:  
**Vehicle inventory is provided to the Coordinator as required by Federal, State and Local requirements.**
4. Vehicle/Equipment Standards (if any):  
**Vehicles/equipment will meet or exceed and be in compliance with all Federal, State and Local requirements.**
5. Driver Requirements: The Agency/Operator must ensure that all drivers utilized on this project meet all of the following requirements:
  - I. The driver must have a Class E or (where applicable) CDL Class B with Passenger Endorsement license to carry passengers.
  - II. Before their hire all drivers must pass a lifetime criminal background check with the Florida Department of Law Enforcement (FDLE).
    - A. Drivers will not be used in the performance of this contract if they have been convicted of a felony offense involving murder, attempted murder, assault, sexual abuse or battery, theft, fraud, burglary, grand theft auto, robbery, crimes against children and/or adults, or a felony offense including drug-related incidents, or other offense related to the performance of this contract.

## Contract No. FY-XX-TD

- B. For the purpose of the contract, a conviction includes a guilty verdict, a determination of guilt after trial to a judge, a guilty plea, deferred adjudication, or a plea of nolo contendere or no contest.
- III. The driver must not have been convicted of a serious traffic violation such as driving under the influence of alcohol or drugs, leaving the scene of an accident, using a vehicle in the commission of a felony, reckless driving and/or reckless endangerment within the last five years.
- IV. Each driver must undergo a commercial and personal driving record check with the Department of Highway Safety and Motor Vehicles.
  - A. The driver must not have accumulated more than five (5) points within the previous twelve (12) months or during any twelve (12) month period in this contract.
  - B. The driver must not have had a driver's license canceled for moving violations within the last three (3) years.
  - C. The driver must have possessed a Driver's License from any U.S. State for at least three (3) years.
- V. All drivers must be able to speak and understand English, and drivers must be proficient enough in written English to successfully complete all paperwork required for this contract, including, but not limited to, vehicle trip sheets, and incident and accident reports.
- VI. Drivers must pass a pre-employment physical and drug test in accordance with requirements. Drivers and all other employees performing safety – sensitive function(s) shall satisfy the requirements of the CTC Drug and Alcohol Testing Program, which shall be administered in conformance with the requirements of the FTA guidelines of 49 C.F.R. Parts 40 and 655, as they may be amended or superseded from time to time.
- VII. Drivers must be physically able to perform all duties which are essential to the transportation of passengers with disabilities, including, but not limited to:
  - A. Assisting passengers in getting to, on, off and from the paratransit vehicles.
  - B. Safely securing mobility devices within the paratransit vehicle.
  - C. Assisting passengers with the carrying of small packages - up to thirty-five

## Contract No. FY-XX-TD

(35) pounds onto and off of the vehicle.

VIII. Drivers are prohibited from lifting or carrying passengers or their children.

6. Prior to transporting riders under the Transportation Disadvantaged Program, drivers shall successfully complete all training requirements specified in this Contract. At a minimum, the training must include:

- I. Know, understand, follow and implement CTC policies and procedures that are provided to them.
  - A. Know, understand, follow and implement disability recognition and sensitivity.
  - B. Know, understand, follow and implement Passenger Assistance Training (PAT) or equivalent training. To ensure sensitivity to and safe transport of persons with disabilities, training shall include, but not be limited to the following:
    - (1) Basic professional courtesy, customer service and the elimination of attitudinal barriers.
    - (2) Passenger assistance techniques for passengers with: wheelchairs (including 4-point wheelchair tie down procedures), walkers, canes, crutches, speech impairments, vision impairments (including sighted guide techniques), hearing impairments, mental/cognitive impairments and Alzheimer's Disease, seizure disorders, and a basic explanation of dialysis treatment and its effect on the customer's stamina during transport.
    - (3) Dealing with all types of Service Animals.
    - (4) Securement of, use of, and requirements of child safety seats.
  - C. Know and understand local geography. Local geography training must include locations of public and private agencies, points of interest, and other locations to which Palm Beach County riders are likely to travel.
  - D. Drivers must also be trained and demonstrate proficiency in the following areas:
    - (1) The safe handling of assigned vehicles.
    - (2) The use of the Agency/Operator's two-way communication system

## Contract No. FY-XX-TD

and any other inter-connective device, mechanism or software used to perform the contract.

- (3) The securement and storage of mobility devices.
- (4) The use of child safety seats required under this contract.
- (5) The use of safety equipment on board the vehicle.
- (6) All other aspects which contribute to the safety, comfort and efficiency of the CTC service.
- (7) The training of all emergency accidents procedures.

7. Agency/Operator' fare structure (if applicable):

**The Agency/Operator will provide up to a maximum of \$\_\_\_\_\_ for an estimated \_\_\_\_\_ one-way trips at a rate of \$\_\_\_\_\_ per one-way trip plus all co-payments collected and retained by Operator from riders.**

**The Agency/Operator will collect and retain co-payments as required.**

8. Billing/Invoicing and Reimbursement procedure for Agency/Operator.

**The Agency/Operator does not require reimbursement nor will it receive reimbursement from the Coordinator.**

**The Coordinator will reimburse the Operator for eligible trips at the rate set forth in paragraph 7 above. The Operator shall bill the Coordinator for the eligible trips authorized by the Coordinator. When applicable, the Operator shall be required to collect the TD trip co-payment of Three Dollars (\$3.00) and to retain such collected co-payments; as such amount may be revised from time to time, in accordance with applicable Federal and State rules, regulations and laws, and the policies, rules and requirements of the Coordinator. The Operator shall submit to Coordinator, all billing information for each one-way trip provided, in the required TD format for submission to the TD Commission. The Operator shall be reimbursed for those trips for which it has provided the necessary billing information and documentation.**

9. Reporting Requirements.

All reporting requirements will be in compliance with Federal regulations, the Commission for the Transportation Disadvantaged and other State agencies, the Local

## **Contract No. FY-XX-TD**

Coordinating Board, the Community Transportation Coordinator and the Local Government.

Any accident involving a vehicle performing work under this Contract must be reported to the Coordinator. Accidents involving a fatality or fatalities must be reported to the Coordinator not more than 24 hours after the accident occurs. Any other accident, those not involving a fatality or fatalities, with over \$1,000 in property damages, must be reported to the Coordinator not more than 72 hours after the accident occurs.

(Remainder of Page Intentionally Left Blank)



# **Contract No. FY-XX-TD**

## **ATTACHMENT II**

### **The Commission for the Transportation Disadvantaged Standards and Performance Requirements**

Pursuant to Rule 41-2.006, Florida Administrative Code, the Community Transportation Coordinator and any Transportation Operator/Agency from whom service is purchased or arranged by the Community Transportation Coordinator shall adhere to Commission approved standards. These standards shall include:

- (a) Drug and alcohol testing for safety sensitive job positions within the coordinated system regarding pre-employment, randomization, post-accident, and reasonable suspicion as required by the Federal Transit Administration.
- (b) An escort of a passenger and dependent children are to be transported as locally negotiated and identified in the local Transportation Disadvantaged Service Plan.
- (c) Child restraint devices shall be determined locally as to their use, responsibility, and cost of such device in the local Transportation Disadvantaged Service Plan.
- (d) Passenger property that can be carried by the passenger and/or driver in one trip and can be safely be stowed on the vehicle, shall be allowed to be transported with the passenger at no additional charge. Additional requirements may be negotiated for carrying and loading rider property beyond this amount. Passenger property does not include wheelchairs, child seats, stretchers, secured oxygen, personal assistive devices, or intravenous devices.
- (e) Vehicle transfer points shall provide shelter, security, and safety of passengers.
- (f) The TD Helpline phone number: 1-800-983-2435 for complaints or grievances shall be posted inside each vehicle. In addition, interior vehicle signage shall also include: a sign stating that there is "No Smoking, Eating or Drinking" and all Emergency Exit Doors shall be clearly labeled.
- (g) Out of service area trips shall be provided when determined locally and approved by the local Coordinating Board, except in instances where local ordinances prohibit such trips.
- (h) Interior and Exterior of all vehicles shall be free from dirt, grime, oil, trash, torn upholstery, damaged or broken seats, protruding metal or other objects or materials which could soil items placed in the vehicle or provide discomfort for the passenger.
- (I) Billing requirements of the Community Transportation Coordinator to subcontractors shall be determined locally by the local Coordinating Board and provided in the local

## **Contract No. FY-XX-TD**

Transportation Disadvantaged Service Plan. All bills shall be paid within 15 calendar days to subcontractors, after receipt of said payment by the Community Transportation Coordinator, except in instances where the Community Transportation Coordinator is a non-governmental entity.

- (j) Passenger/trip data base must be maintained or accessible by the Community Transportation Coordinator on each rider being transported within the system.
- (k) Adequate seating for paratransit services shall be provided to each rider and escort, child, or personal care attendant, and no more passengers than the registered passenger seating capacity shall be scheduled or transported in a vehicle at any time. For transit services provided by transit vehicles, adequate seating or standing space will be provided to each rider and escort, child, or personal care attendant, and no more passengers than the registered passenger seating or standing capacity shall be scheduled or transported in a vehicle at any time.
- (l) Drivers for paratransit services, including coordination contractors, shall be required to announce and identify themselves by name and company in a manner that is conducive to communications with the specific passenger, upon pickup of each rider, group of riders, or representative, guardian, or associate of the rider, except in situations where the driver regularly transports the rider on a recurring basis. Each driver must have photo identification that is in view of the passenger. Name patches, inscriptions or badges that affix to driver clothing are acceptable. For transit services, the driver photo identification shall be in a conspicuous location in the vehicle.
- (m) The paratransit driver shall provide the passenger with boarding assistance, if necessary or requested, to the seating portion of the vehicle. The boarding assistance shall include opening the vehicle door, fastening the seat belt or utilization of wheel chair securement devices, storage of mobility assistive devices, and closing the vehicle door. In certain paratransit service categories, the driver may also be required to open and close doors to buildings, except in situations in which assistance in opening/closing building doors would not be safe for passengers remaining on the vehicle. Assisted access must be in a dignified manner. Drivers may not assist wheelchair up or down more than one step, unless it can be performed safely as determined by the passenger, guardian, and driver.
- (n) All vehicles ordered or put into service after adoption of this section of the Rule, and providing service within the coordinated system, shall be equipped with a two-way communication system or any other inter-connective device, mechanism or software used to perform the contract in good working order and be audible to the driver at all times to the base.
- (o) All vehicles ordered or put into service after the adoption of this section of the Rule, and providing service within the coordinated system, shall have working air conditioners

## Contract No. FY-XX-TD

and heaters in each vehicle. Vehicles that do not have a working air conditioner or heater will be scheduled for repair or replacement as soon as possible. All vehicles that are not equipped with an air conditioner and/or heater shall have two years to be in compliance after the adoption date of this section of the Rule.

- (p) First Aid shall be determined locally and provided in the local Transportation Disadvantaged Service Plan.
- (q) Cardiopulmonary Resuscitation (CPR) shall be determined locally and provided in the local Transportation Disadvantaged Service Plan.
- (r) Each vehicle will be equipped with:
  - A dry chemical, type A-B-C fire extinguisher with a minimum of a five pound capacity equipped with a pressure gauge, mounted and easily accessible to the driver.
  - A first aid kit with a minimum of twenty-four (24) items as specified by the Florida Department of Transportation, Public Transit Office, Technical Specifications for Modified Vans (Document FVPP00-01-MV), mounted at a location easily accessible to the driver.
  - Three safety triangles or three road flares secured in a convenient location which will not interfere with passengers.
  - Blood borne pathogen spill kits (Bio-Hazard Kit).
  - Emergency web-cutter.
  - Seatbelts for all occupants of the vehicle including the driver.
  - Any other equipment, agent, product or material required by federal, state or local law or which may be required by County from time to time.
  - All contractors' vehicles will be equipped with copies of emergency and accident procedures.
  - Each vehicle must have a permanent storage box to store wheelchair securement devices or any other loose items.
  - No vehicle will be operated without all required safety equipment being on board

## **Contract No. FY-XX-TD**

at all times.

- (s) Contractor must have on-site and readily available their following policies: Drug/Alcohol, System Safety Program Plan, Security Program Plan, Driver Training Program, and Fleet Maintenance Program.

(Remainder of Page Intentionally Left Blank)

### **ATTACHMENT III**

#### **BUSINESS ASSOCIATE AGREEMENT**

- A. As a business associate of the Coordinator, the Agency/Operator, including its agents, servants, subcontractors and employees, shall carry out its obligations under this Contract in compliance with the privacy regulations of the Health Insurance Portability and Accountability

## Contract No. FY-XX-TD

Act of 1996 (HIPAA) as amended from time to time, and the regulations promulgated thereunder, in order to protect the privacy of all individually identifiable protected health information (PHI) that is created, received, collected, processed or learned as a result of the services provided under this Contract. In conformity therewith, the Agency/Operator agrees that it and its agents, subcontractors, servants, and employees shall:

1. Not use or further disclose PHI except as permitted under this Contract or required by law.
2. Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this Contract and shall not use or further disclose PHI in a manner that would violate HIPAA's requirements if done by the Coordinator.
3. As soon as reasonably practical, report to the Coordinator any use or disclosure of PHI not provided for by this Contract of which the Agency/Operator becomes aware, and mitigate, to the extent possible, any harmful effect of such use or disclosure of PHI.
4. Ensure that any business associates, agents or subcontractors to whom the Agency/Operator provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to the Agency/Operator with respect to such PHI.
5. Make PHI available to the Coordinator and to individuals who have a right of access to information under HIPAA.
6. Incorporate any amendments to PHI in accordance with HIPAA, as it may be amended from time to time, when notified to do so by the Coordinator.
7. Provide an accounting of all uses or disclosures of PHI made by the Agency/Operator, in accordance with HIPAA, within sixty (60) days.
8. Make their internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining the Agency/Operator's and the Coordinator's compliance with HIPAA. The Agency/Operator shall immediately notify the Coordinator upon receipt or notice of any request by the Secretary of the Department of Health and Human Services to conduct an investigation with respect to PHI relating to services under this Contract.
9. At the termination or expiration of this Contract, the Agency/Operator shall return to the Coordinator all PHI received from, or created or received by the Agency/Operator on behalf of, the Coordinator that the Agency/Operator still maintains in any form and shall not retain copies of such information. If such return is not feasible, the Agency/Operator shall continue to protect such PHI in accordance with this Contract and HIPAA, and must limit further uses and disclosures of such PHI to those purposes

## Contract No. FY-XX-TD

that made the return of such PHI not feasible.

- B. The Agency/Operator may, if necessary, use and disclose PHI for the proper management and administration of the Agency/Operator or to carry out the legal responsibilities of the Agency/Operator. However, in order to disclose PHI:
1. The disclosure must be required by law; or
  2. The Agency/Operator must obtain reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and
  3. The person must notify the Agency/Operator of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. Notwithstanding any other provisions of this Contract, this Contract may be terminated by the Coordinator, in its sole discretion and without penalty to or recourse against the Coordinator, if it determines that the Agency/Operator has violated a term or provision of this Contract pertaining to the Agency/Operator's obligations under the HIPAA privacy rule, or if the Agency/Operator engages in conduct which would, if committed by the Coordinator, result in a violation of the HIPAA privacy rule by the Coordinator.
- D. The Coordinator and its representatives shall be entitled to audit the Agency/Operator from time-to-time to verify compliance with the terms of this Contract. The Coordinator shall be entitled and enabled to inspect the records and other information relevant to the Agency/Operator's compliance with the terms of this Contract during normal business hours and at the Agency/Operator's place of business.
- E. The Agency/Operator shall protect, defend, reimburse, indemnify, and hold the Coordinator, its agents, employees and elected officers, harmless from and against all claims, liability, expense, loss, cost, penalties, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising as a result of any disclosure of protected health information due to the actions or inactions of the Agency/Operator.
- F. In order to ensure that this Contract is consistent with HIPAA, the Agency/Operator agrees that this Attachment may, in the sole discretion of Coordinator, be revised from time to time upon written notice from the Coordinator to the Agency/Operator as to the revisions required to make this Contract consistent with HIPAA. Notwithstanding any provision of the Contract, a revised Attachment shall be valid and binding upon the Agency/Operator who agrees that it shall be so bound and that it will adhere to all of the requirements of any revised attachment.
- G. In order to ensure that this Contract is consistent with HIPAA and the terms and conditions of Coordinator's business associate agreements related to the provisions of services under this

## **Contract No. FY-XX-TD**

Contract, the Agency/Operator agrees that Agency/Operator's HIPAA obligations as set forth herein, shall from time to time be modified so as to come into conformity with law without further action of the Coordinator. Agency/Operator 's obligations may also be modified upon written notice from the Coordinator to the Agency/Operator identifying the modifications to Agency/Operator 's HIPAA obligations if such modifications are deemed necessary by Coordinator as a result of any Coordinator business associate agreement. Agency/Operator hereby agrees to comply with all such modifications made by Coordinator and with all applicable HIPAA provisions, as they may be amended from time to time.

(Remainder of Page Intentionally Left Blank)