

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 15, 2019

☒ Consent

☐ Regular

☐ Ordinance

☐ Public Hearing

Department: Palm Tran

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) Adopt a Resolution of the Board of County Commissioners (BCC), of Palm Beach County, Florida, approving a Public Transportation Grant Agreement (PTGA) (FM No. 407184-2-84-01) with the State of Florida Department of Transportation (FDOT), in the amount of \$647,014 to provide funding assistance for FY2019 to offset the operating costs of providing fixed route services to the public in the non-urbanized (Lake Region) areas of Palm Beach County;

B) Approve a downward Budget Amendment of \$313,379 in Palm Tran Capital Fund 1341; and

C) Approve an upward Budget Amendment of \$10,128 in Palm Tran Operating Fund.

Summary: Palm Tran will utilize this grant to offset the operational expenses of fixed route service on Routes 40 and 47 in the Lake Region. This PTGA in the amount of \$647,014 for FY2019 will provide funding in the amount of \$323,507 which requires a match of \$323,507. The PTGA will become effective upon FDOT Execution and has an expiration date of June 30, 2020. The match is included in Palm Tran's FY2019 budget. Countywide (DR)

Background and Justification: Operating assistance for mass transit is provided by Federal Transit Administration (FTA) funds passed through the State with a dollar-for-dollar match of local funding required. Title 49 U.S.C. 5311 authorizes the Formula Assistance Program for public transportation in non-urbanized areas. The Secretary of Transportation apportions the funds appropriated annually to the Chief Executive Officer of each State for public transportation projects in non-urbanized areas. FDOT has been designated by the Governor to administer the program. On December 16, 2014, the BCC approved a five (5) year Joint Participation Agreement (JPA) (R2014-1973) that provided funds for Fixed Route Services in the non-urbanized (Lake Region) areas of Palm Beach County effective FY2015. FDOT has issued three (3) annual subsequent supplemental JPAs to provide Palm Beach County its annual allocation of the Section 5311 Rural Grant Program. For the fifth and last year FDOT has issued Public Transportation Grant Agreement (PTGA).

Attachments:

1. Resolutions (3)
2. Public Transportation Grant Agreement (PTGA) (FM No. 407184-2-84-01)
3. Budget Amendments (2)

Recommended By: _____

Executive Director

12/26/18
Date

Approved By: _____

Assistant County Administrator

1/10/19
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs	\$647,014				
External Revenues	(\$323,507)				
Program Income(County)					
In-Kind Match(County					
NET FISCAL IMPACT	\$323,507				
#ADDITIONAL FTE	0				
POSITIONS (CUMULATIVE					

Is Item Included in Current Budget?	<u>Yes</u>	No
Does this item include the use of federal funds?	Yes	No

Budget Account No:

Fund	Agency	Organization	Object	RSRC
1340	542	5101		3449


B. Recommended Sources of Funds/Summary of Fiscal Impact:

The attached documentation reallocates grant funding from the ~~Grant~~ fund (\$313,379) to the operating fund (\$323,507). There is a net fiscal impact of \$10,128. Match expenses will be met from 1340-540-Various.

C. Departmental Fiscal Review: Carol Richmond 1/11/19
Carol Richmond, Interim Director Administrative Services

III. REVIEW COMMENTS:

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



OFMB (P2) 1/3/19
Legal Sufficiency

[Signature]
Contract Dev. & Control
1/19/19

B. Legal Sufficiency


Assistant County Attorney

C. Other Department Review

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

RESOLUTION NO. R -

ADOPT A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS (BCC), OF PALM BEACH COUNTY, FLORIDA, APPROVING A PUBLIC TRANSPORTATION GRANT AGREEMENT (PTGA) (FM NO. 407184-2-84-01) WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT), IN THE AMOUNT OF \$647,014 TO PROVIDE FUNDING ASSISTANCE FOR FY2019 TO OFFSET THE OPERATING COSTS OF PROVIDING FIXED ROUTE SERVICES TO THE PUBLIC IN THE NON-URBANIZED (LAKE REGION) AREAS OF PALM BEACH COUNTY; ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Transportation is authorized to provide funding for a mass transportation project; and

WHEREAS, the Public Transportation Grant Agreement for financial assistance will impose certain obligations upon the recipient, and may include the provision by it of the local share of the project cost; and

WHEREAS, it is required by the Florida Department of Transportation in accordance with the provisions of Title VI of the Civil Rights Act of 1964, as amended, that the recipient assures that it will comply with Title VI of the Civil Rights Act of 1964 and the Florida Department of Transportation requirements thereunder; and

WHEREAS, it is the goal of the recipient that disadvantaged business enterprises be utilized to the fullest extent possible in connection with this project and that specific procedures be established and administered to ensure that disadvantaged businesses have the maximum opportunity to participate in contracts for construction, supplies, equipment, or consultation and other services.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA:

1. That the Board of County Commissioners has the authority to approve this Public Transportation Grant Agreement, (referred to herein as "PTGA") in the amount of the grant by \$647,014.

2. That the County Administrator or Executive Director of Palm Tran, Palm Beach County, Florida, is authorized to furnish such additional information as the Florida Department of Transportation may require in connection with the project.

3. That the Mayor of the Board of County Commissioners is authorized to execute and file with the PTGA any assurances or other documents required by the Florida Department of Transportation effectuating the purposes of Title VI of the Civil Rights Act of 1964.

4. That Palm Beach County, through its Mayor, is authorized to set forth and execute affirmative disadvantaged business enterprise policies in connection with the project's procurement needs.

5. That the Board of County Commissioners authorizes its Mayor, on behalf of the Board of County Commissioners of Palm Beach County, Florida, to execute the PTGA with the Florida Department of Transportation in the amount of \$647,014.

This Resolution shall take effect immediately upon its adoption.

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 Mack Bernard, Mayor	_____
Commissioner Dave Kerner, Vice Mayor	_____
Commissioner Hal R. Valeche	_____
Commissioner Gregg K. Weiss	_____
Commissioner Robert S. Weinroth	_____
Commissioner Mary Lou Berger	_____
Commissioner Melissa McKinlay	_____

The Mayor thereupon declared the resolution duly passed and adopted this _____ day of _____, 2019.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COMMISSIONERS
Sharon R. Bock, Clerk and Comptroller

By: 
County Attorney

By: _____
Deputy Clerk

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Financial Project Number(s): (Item-segment-phase-sequence) 407184-2-84-01	Fund(s): Work Activity Code/Function: 215 Federal Number/Federal Award Identification Number (FAIN) – Transit only:	FLAIR Category: 088774 Object Code: 780000 Org. Code: 55042010429 Vendor Number: VF596000785153
Contract Number:	Federal Award Date:	
CFDA Number: 20.509	Agency DUNS Number:	
CFDA Title: Formula Grants for Rural Areas		
CSFA Number: N/A		
CSFA Title: N/A		

THIS PUBLIC TRANSPORTATION GRANT AGREEMENT ("Agreement") is entered into this ____ day of _____, by and between the State of Florida, Department of Transportation, ("Department"), and Palm Beach County Board of County Commissioners, ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. **Authority.** The Agency, by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D", Agency Resolution** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section(s) 341.000, Florida Statutes, to enter into this Agreement.
- 2. **Purpose of Agreement.** The purpose of this Agreement is to provide for the Department's participation in Operating Assistance up to 50%, as further described in **Exhibit "A", Project Description and Responsibilities**, attached and incorporated into this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
- 3. **Program Area.** For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- Aviation
- Seaports
- ☒ Transit
- Intermodal
- Rail Crossing Closure
- Match to Direct Federal Funding (Aviation or Transit)
- Other

- 4. **Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

- ☒ Exhibit A: Project Description and Responsibilities
- ☒ Exhibit B: Schedule of Financial Assistance
- *Exhibit B1: Deferred Reimbursement Financial Provisions
- *Exhibit B2: Advance Payment Financial Provisions
- *Exhibit C: Terms and Conditions of Construction
- ☒ Exhibit D: Agency Resolution
- ☒ Exhibit E: Program Specific Terms and Conditions
- ☒ Exhibit F: Contract Payment Requirements
- ☒ *Exhibit G: Financial Assistance (Single Audit Act)
- *Additional Exhibit(s):

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

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5. **Time.** Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. **Term of Agreement.** This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 30, 2020. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. ☐ If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the day of , or within days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. **Amendments, Extensions, and Assignment.** This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. **Termination or Suspension of Project.** The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

- a. If the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
- c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.
- e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

9. **Project Cost:**

- a. The estimated total cost of the Project is \$647,014. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated

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amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.

- b. The Department agrees to participate in the Project cost up to the maximum amount of \$323,507, and, additionally the Department's participation in the Project shall not exceed 50.00% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:
- ☒ Travel expenses are NOT eligible for reimbursement under this Agreement.
- ☐ Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.
- f. **Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the

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Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within sixty (60) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

- g. Invoice Processing.** An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- h. Records Retention.** The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Progress Reports.** Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
- j. Submission of Other Documents.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.
- k. Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement

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that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

- l. Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
- o. Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved in writing by the Department. Specific unallowable costs may be listed in **Exhibit "A", Project Description and Responsibilities**.

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11. General Requirements. The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. **Necessary Permits Certification.** The Agency shall certify to the Department that the Agency's design consultant and/or construction contractor has secured the necessary permits.
- b. **Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
- c. **Notification Requirements When Performing Construction on Department's Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department's right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i. Require the construction work of the Project that is on the Department's right-of-way to be performed by a Department prequalified contractor, or
 - ii. Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
- d. ☐ If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
- e. ☐ If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i. ☐ Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii. ☐ Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii. ☐ Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
- f. **Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
- g. **Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

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12. Contracts of the Agency:

- a. **Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. **Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. **Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. **Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

13. Maintenance Obligations. In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

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14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions "a" and "b" above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

15. Single Audit. The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

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- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
- i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “G”, Financial Assistance (Single Audit Act)**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing

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additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Financial Assistance (Single Audit Act)**, to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources

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of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.
- vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management

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letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.

viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

- c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. **Convicted Vendor List.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendor List.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

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- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify and hold harmless the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

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- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any

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policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency 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.
- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).
- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

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- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: Stacy Miller, P.E

Title: _____

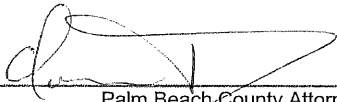
Title: Director of Transportation Development

Legal Review: _____

ATTEST:
SHARON R. BOCK, CLERK AND CONTROLLER

By _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Palm Beach County Attorney

APPROVED AS TO TERMS AND CONDITIONS



Executive Director
PALM TRAN

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EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): To provide 5311 funding for operating assistance to Palm Beach County BOCC for its non-urbanized area public transportation

B. Project Location (limits, city, county, map): Palm Beach County/West Palm Beach, FL/Palm Beach
____Illustration/graphic/map of project area is applicable and attached to this Exhibit A.

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): Transfer funding from the Federal Transit Administration's to Subrecipient for the activities listed in attached budget and in the approved Subrecipient grant application.

D. Deliverable(s): 1. Submit quarterly progress reports via TransCIP, the web-based state grant management software, by logging into <http://www2.transcip.com>

2. Submit an invoice on the project at least every quarter or they may specify in an email to the Department Project Manager. The email must be provided in the invoice packet provide to the department. The Agency shall upload a copy of invoice to TransCIP and email the original to D4OMDID@dot.state.fl.us for processing.

3. The Agency shall upload annual farebox report to TransCIP under the Library tab to the Agency's Fare Box Documents.

4. The Agency shall submit DBE report via TransCIP semiannually.

5. Funds shall be used for public transit service in non-urbanized areas. For agencies whose service areas include both urbanized and non-urbanized areas, special care shall be taken to ensure funding is not inappropriately applied to urbanized area service. Agencies must develop a method of allocation costs between urbanized and non-urbanized area service. This can be based on passengers, route maps or other records or methods.

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to): Examples of generally unallowable expenditures but not limited to Candy, Alcohol, Decorations, Greeting Cards, Lobbying, Personal Cell Phone, Office Patties, Entertainment, Food, Fans, Coffee Pots, Portable Heaters, Refrigerators, Microwave Ovens, Congratulatory Telegrams, Refreshments, Banquets, Catering, Gifts/Flowers, Promotional Items.

F. Transit Operating Grant Requirements:

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Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants.

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EXHIBIT B

Schedule of Financial Assistance
TRANSIT OPERATING ONLY

FUNDS AWARDED TO THE AGENCY PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Project Number	Fund Type	FLAIR Category	Federal Fiscal Year	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
407184-2-84-01		088774	NA	2019	780000	20.509	Formula Grants for Rural Areas	\$323,507
		Total Financial Assistance						\$323,507

B. Operations Phase - Estimate of Project Costs by Budget Category:

Budget Categories <i>Operations (Transit Only) *</i>	State	Local	Federal	Total
Salaries	\$0	\$250,267	\$250,267	\$500,534
Fringe Benefits	\$0	\$52,120	\$52,120	\$104,240
Contractual Services	\$0	\$21,120	\$21,120	\$42,240
Travel	\$0	\$0	\$0	\$0
Other Direct Costs	\$0	\$0	\$0	\$0
a.	\$0	\$0	\$0	\$0
b.	\$0	\$0	\$0	\$0
c.	\$0	\$0	\$0	\$0
d.	\$0	\$0	\$0	\$0
e.	\$0	\$0	\$0	\$0
f.	\$0	\$0	\$0	\$0
g.	\$0	\$0	\$0	\$0
h.	\$0	\$0	\$0	\$0
i.	\$0	\$0	\$0	\$0
j.	\$0	\$0	\$0	\$0
k.	\$0	\$0	\$0	\$0
l.	\$0	\$0	\$0	\$0
m.	\$0	\$0	\$0	\$0
n.	\$0	\$0	\$0	\$0
o.	\$0	\$0	\$0	\$0
p.	\$0	\$0	\$0	\$0
Totals	\$0	\$323,507	\$323,507	\$647,014

* Budget category amounts are estimates and can be shifted between items without amendment (because they are all within the Operations Phase), but the revised budget must be updated and reflected in Florida Accountability Contract Tracking System (FACTS).

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**BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA
STATUTES:**

I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Wibet Hay

Department Grant Manager Name

Signature Date

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DEVELOPMENT
OGC 10/18

EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
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**EXHIBIT E
PROGRAM SPECIFIC TERMS AND CONDITIONS – TRANSIT**

(Section 5311: Formula Grants for Rural Areas)

This exhibit forms an integral part of the Agreement between the Department and the Agency.

The Agency, as the “subrecipient”, shall comply with the following requirements:

- 1. Conformance with Enabling Legislation.** This Agreement is in conformance with Section 5311 of the Federal Transit Act of 1991, as amended (49 U.S.C. 5311) and Section 341.051(1)(a), F.S.
- 2. Prevention Programs.** The Section 5311 subrecipient shall establish and implement anti-drug and alcohol misuse prevention programs in accordance with the terms of 49 CFR 655, 49 U.S.C. 5331, and 49 CFR 40.
- 3. Adherence to Certifications and Assurances.** The Section 5311 subrecipient shall ensure adherence with all federally required certifications and assurances made in its application to the Department for Section 5311 funds.
- 4. FTA Compliance.** The Section 5311 subrecipient shall at all times comply with all applicable Federal Transit Administration (“FTA”) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Failure to comply shall constitute a material breach of this contract.
- 5. Charter Operation.** The Section 5311 subrecipient agrees to comply with 49 U.S.C. 5323(d), (r) and 49 CFR 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.
- 6. Exclusive Operation.** Pursuant to 49 U.S.C. 5323(f) and 49 CFR 605, the Section 5311 subrecipient of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, subrecipients may not use federally funded equipment, vehicles, or facilities.
- 7. Buy America.** The Section 5311 subrecipient agrees to comply with Buy America requirements outlined in 49 U.S.C. 5323(j) and 49 CFR 661, if using the funds granted under this Agreement for rolling stock purchases. The recipient also agrees to comply with the pre-award and post delivery requirements outlined in 49 CFR 661.12.
- 8. Water Pollution Control.** The Section 5311 subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, codified at 33 U.S.C. 1251 et seq., as amended, if the agreement exceeds \$100,000.
- 9. Anti-Lobbying.** The Section 5311 subrecipient agrees to comply with the requirements pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352(b)(5).
- 10. Bonding Requirements.** If this Agreement is for a construction Project over \$150,000 the recipient must adhere to FTA’s bonding requirements as outlined in the Best Practices Procurement Manual.
- 11. Clean Air Act.** The 5311 subrecipient agrees to comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., as amended, if this Agreement exceeds

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\$150,000.

- 12. Resource Conservation and Recovery Act (RCRA).** The 5311 subrecipient agrees to comply with all the requirement of Section 6002 of the Resource Conservation and Recovery Act (RCRA), 49 U.S.C. 6962, as amended, including but not limited to the regulatory provisions of 40 CFR 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR 247.
- 13. Davis-Bacon and Copeland Anti-kickback.** The 5311 subrecipient agrees to comply with the Davis-Bacon and Copeland Anti-kickback Acts as codified at 40 U.S.C. 3141 et seq. and 18 U.S.C. 874 for any agreement exceeding \$2,000.
- 14. Contract Work Hours and Safety Standards.** For any contract over \$2,000 the 5311 subrecipient agrees to comply with the Contract Work Hours and Safety Standards Act, codified at 40 U.S.C. 3701 et seq.
- 15. Transit Employee Protective Agreements.** The 5311 subrecipient agrees to comply with the Transit Employee Protective Agreements as codified in 49 U.S.C. 5333 and 29 CFR 215.
- 16. Compliance with FTA Terms and Conditions.** The 5311 subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any Department requests which would cause the 5311 subrecipient to be in violation of the FTA terms and conditions.
- 17. Annual Safety Certification.** In accordance with Section 341.061, F.S., and Rule 14-90, Florida Administrative Code, the Agency shall submit, and the Department shall have on file, an annual safety certification stating that the Agency has adopted and is complying with its adopted System Safety and Security Program Plan, and has performed annual safety inspections of all buses operated.
- 18. Budget/cost analysis.** The Agency will assist the Department by providing accurate information for the Department to create a budget/cost analysis in accordance with Section 216.3475, F.S.
- 19. Non-urbanized area.** The Agency will provide the methodology for determining the non-urbanized area portion of their service prior to submitting the first invoice. The agency will submit an updated methodology once per year.
- 20. Attorney certification.** The Agency will submit an attorney certification prior to submitting the first invoice and once yearly thereafter for goods or services procured under this Agreement in accordance with Chapter 287, F.S.

-- End of Exhibit E --

EXHIBIT F

Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address http://www.myfloridacfo.com/aadir/reference_guide/.

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EXHIBIT G

FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

CFDA No.: 20.509
CFDA Title: Formula Grants for Rural Areas

***Award Amount:** \$323,507
Awarding Agency: Florida Department of Transportation
Indirect Cost Rate:
****Award is for R&D:** No

*The federal award amount may change with amendments

**Research and Development as defined at §200.87, 2 CFR Part 200

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE SUBJECT TO THE FOLLOWING AUDIT REQUIREMENTS:

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards
www.ecfr.gov

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:

Title 23 – Highways, United States Code
<http://uscode.house.gov/browse.xhtml>

Title 49 – Transportation, United States Code
<http://uscode.house.gov/browse.xhtml>

MAP-21 – Moving Ahead for Progress in the 21st Century, P.L. 112-141
www.dot.gov/map21

Federal Highway Administration – Florida Division
www.fhwa.dot.gov/fldiv

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
www.fsrs.gov

19 - 0228

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET AMENDMENT

BGRV 111918*86
BGEX 111918*357

FUND 1340 Palm Tran Operations

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPEND/ENC 12/26/2018	REMAINING BALANCE
REVENUE								
<u>Non Departmental Revenue</u>								
800 5101 8064	Transfer from Grant Fund 1341	\$,651,334	\$,651,334	0	313,379	5,337,955		
542 5101 3148	Fed Grant Indirect Transportation	0	0	323,507	0	323,507		
Total Receipts & Balances		99,478,912	99,528,701	323,507	313,379	99,538,829		
EXPENDITURES								
<u>Palm Tran Operations</u>								
540 5140 5214	Diesel	5,560,000	5,547,460	10,128	0	5,557,588	740,766	4,816,822
Total Appropriations & Expenditures		99,478,912	99,528,701	10,128	0	99,538,829		

PALM TRAN

Initiating Department/Division
Administration/Budget Department Approval
OFMB Department - Posted

Signatures

Carol Richman 12/20/18
Paula Penn 1/4/19

Date

By Board of County Commissioners
At Meeting of January 15, 2019

Deputy Clerk to the
Board of County Commissioners

19 - 0229

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET AMENDMENT

BGRV 111918*84
BGEX 111918*356

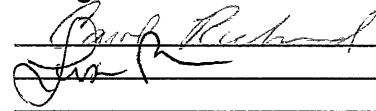
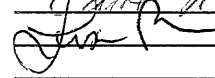
FUND 1341 Palm Tran Grants

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPEND/ENC 12/26/2018	REMAINING BALANCE
REVENUE								
Mass Trans Grants - JPA 407184-2 FDOT Rural Grant								
542 5101 3148	Fed Grant Indirect Transportation	313,379	313,379	0	313,379	0		
Total Receipts & Balances		149,356,957	146,409,746	0	313,379	146,096,367		
EXPENDITURES								
Non Oper Expenditures - JPA 407184-2 FDOT Rural Grant								
820 5101 9063	Transfer to Operating Fund 1340	5,651,334	5,651,334	0	313,379	5,337,955	0	0
Total Appropriations & Expenditures		149,356,957	146,409,746	0	313,379	146,096,367		

PALM TRAN

Initiating Department/Division
Administration/Budget Department Approval
OFMB Department - Posted

Signatures

Date

10/20/18
1/4/19

By Board of County Commissioners
At Meeting of January 15, 2019

Deputy Clerk to the
Board of County Commissioners