

**METROPOLITAN PLANNING ORGANIZATION BOARD
EXECUTIVE COMMITTEE**

11 a.m., Wednesday, December 7, 2011
Southwest Florida Regional Planning Council
1926 Victoria Avenue
Fort Myers, Florida 33901



AGENDA

Call to Order

Roll Call

Approval of Minutes

1. Approval of Minutes from the November 15th Executive Committee Meeting

New Business

2. Public Comments on New Business Items
3. *Update on the Lease Agreement with the City of Cape Coral (Don Scott)
4. *Review and Approve the Policies and Procedures Document (Don Scott)
5. *Review and Approve the MPO Director Contract (Don Scott)
6. *Review and Approval of the Request for Proposal for Audit Services (Don Scott)
7. *Review and Comment on Language Revisions to the Staff Services Agreement with the RPC as Board gave Direction for MPO Designated Employees to Work during the RPC Furlough Days in December (Don Scott)
8. +MPO Staff Update on Administrative Issues (Don Scott)

Other Business

9. Public Comments on Items Not on the Agenda
10. Announcements
11. Topics for next meeting
12. Information and Distribution Items

Adjournment

* Action Items + May Require Action ^Requires a Public Hearing and a Roll Call Vote

All meetings of the Lee County Metropolitan Planning Organization (MPO) are open to the public. In accordance with the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting should contact Ms. Meghan Marion at the Lee MPO 48 hours prior to the meeting by calling (239) 338-2550 x 219; if you are hearing or speech impaired call (800) 955-8770 Voice / (800) 955-8771 TDD. Or, e-mail mmarion@swfipc.org.

The MPO's planning process is conducted in accordance with Title VI of the Civil Rights Act of 1964 and related statutes. Any person or beneficiary who believes he has been discriminated against because of race, color, religion, sex, age, national origin, disability, or familial status may file a complaint with the Florida Department of Transportation District One Title VI Coordinator Robin Parrish at (863) 519-2675 or by writing her at P.O. Box 1249, Bartow, Florida 33831.

**MINUTES OF THE LEE COUNTY METROPOLITAN PLANNING ORGANIZATION
BOARD'S EXECUTIVE COMMITTEE**

Held on November 15, 2011

The following members were present for the meeting of the Lee County Metropolitan Planning Organization Board's Executive Committee on November 15, 2011 at the offices of the Southwest Florida Regional Planning Council, 1926 Victoria Avenue, Fort Myers, Florida.

Councilman Kevin McGrail
Vice-Mayor Bob Raymond
Councilman John Spear
Mayor Kevin Ruane

City of Cape Coral
Town of Fort Myers Beach
City of Bonita Springs
City of Sanibel

Those also in attendance included: Trinity Scott and Russ Muller with FDOT; Liz Donley with the SWFRPC; Rick Williams with the CAC; Dawn Andrews with the City of Cape Coral; Don Scott and Meghan Marion of Lee County MPO.

CALL TO ORDER

The meeting was called to order at 10:05 a.m. by Mr. Scott.

Ms. Marion called the roll and announced that a quorum was present.

NEW BUSINESS

Agenda Item #3 – Review and Comment on the Draft Lease between the MPO and the City of Cape Coral

Mr. Scott stated that based on some discussions with FDOT and others we sent some preliminary comments back to the City of Cape Coral and they are shown in the underline and strikethrough version in front of you. He stated that they are preliminary comments because we have not heard from Federal Highway at this time. He reviewed the following items with comments:

- The term of the lease would be three years;
- Removal of the escalator clause;
- Under Repairs: change language to Normal maintenance and repairs;
- Under Taxes: we are a government agency leasing from another government agency so this section does not apply;
- Under the utilities section added language of what utilities the landlord would be responsible for.

Ms. Andrews stated that the City Attorney's office is reviewing your proposed changes. She stated that when they through the lease together it was just the typical language. She stated that they would also look into the escalator clause.

Mr. Williams asked if we will be doing some shared resources such as internet, telephone, and security.

Mr. Scott replied that when we spoke with the City of Cape Coral they stated that they would like us to remain independent from them and acquire our own internet and telephone services.

Mr. Williams stated that he would like to see everything black and white too.

Mr. Scott stated that one other change is to change the signature page from the Director to the MPO Chairman's signature.

Vice-Mayor Raymond stated that he was concerned about the newly elected Councilmember's for the City of Cape Coral and how they would feel about the lease agreement.

Councilman McGrail stated that the new Council was introduced yesterday and everyone is excited to have the MPO come to the City of Cape Coral.

Ms. Andrews stated that there is a briefing tomorrow with the new Council and they can add the lease to the agenda.

Mr. Scott stated that when Staff brings this through the MPO he will ask for approval to have the Executive Committee work out all the final details and approve the Lease Agreement so that we don't have to wait for the next MPO meeting. He asked FDOT if staff would need to ask for an extension on the lease agreement based on this time frame.

Ms. Scott replied yes.

Mr. Scott stated that is because our Certification stated that we would have the lease in place by November 30th.

Ms. Scott stated that she presumes that you will be asking for an extension through January since the City of Cape Coral will not be approving the lease until January.

Agenda Item #4 – MPO Staff Update on Administrative Issues

Mr. Scott stated that the draft Policies and Procedures were included in the agenda packet and Staff is looking for comments. He stated that he is also working with the Chair on a contract for the MPO Director and that will come back for review at the next meeting. Staff is also putting out an RFP for an Auditor and we are following State Statutes for that process and will be looking for the Executive Committee to sit as the selection committee for that item. He stated we have attained our Federal ID number, DUNS number, processed the paper work for our Tax Exempt Status, we are working on the line of credit. He stated that the bank is looking for a treasurer or secretary and a check signing process so we have been working on putting that information together as well.

Mr. Scott stated that on another note the RPC is closing the office on November 23rd and December 23rd through January 2nd, using a combination of holiday and vacation

days. He stated that two of the days are furlough days on December 27th and December 28th. He stated that MPO staff would like to work on those days. He understands the need to want to shut down the office and if there is any savings for them, obviously with us leaving they are trying to save some money during that time. We have discussed working from another location or from home on those days. He stated that he just wanted to let you know that it is on the agenda to go before the Board at their next meeting and we are looking for staff direction to either follow what the RPC is doing or a direction for an alternative. He stated that there is a lot going on with certification, the move, LRTP amendments, etc.

Ms. Scott stated that we have a JPA with the MPO Staff with expectation that they will meet specific deadlines and obligations. If staff feels that they can shut down for that time period and still meet those obligations than fine but if they will not be able to meet the obligations than arrangements need to be made.

Ms. Donley stated that on October 26th and November 3rd they held all staff meetings at the RPC at which time they discussed taking time off with the holidays. She stated that traditionally the RPC has two days off for the Christmas holiday, Christmas Eve and Christmas Day. She stated staff was given two options in order to shut down this building and save on infrastructure costs. She stated that the discussion ensued that we could switch the holidays to December 26th and December 27th and then also the New Year's Day holiday to December 30th and then staff could take two leave days on December 28th and December 29th, then we could shut down the building from December 24th through January 2nd. She stated that as discussion ensued and it was decided as a consensus that staff would take their holiday on December 23rd and December 26th, they would voluntarily take two leave days, and two furlough days the week of December 28th, 29th and 30th. She stated that she wasn't aware that MPO Staff would be bringing this forward until she saw it on the agenda. She stated that they could possibly make some accommodations such as remote access. She stated that the RPC Executive Committee approved shutting down the building during this time and that it would go before the entire RPC Board at their next meeting.

Councilman McGrail asked Mr. Scott if they have contacted the City Manager as to when the space will be available.

Mr. Scott replied February 1st.

APPROVAL OF MINUTES

Agenda Item #1 – Approval of Minutes from the October 18th Executive Committee Meeting

MOTION BY VICE-MAYOR RAYMOND TO APPROVE THE MINUTES FROM THE OCTOBER 18TH EXECUTIVE COMMITTEE MEETING. SECONDED BY MAYOR RUANE. MOTION CARRIED UNANIMOUSLY.

Agenda Item #2 – Public Comments on New Business Items

Mayor Ruane stated that the structure change on adding a Treasurer is a good idea based on what this MPO has just gone through with the finances. He stated that he would also volunteer to sit as the Treasurer since he has an accounting background.

Other Business

Agenda Item #14 – Public Comments on Items not on the Agenda

None.

Agenda Item #18 – Announcements

None.

Agenda Item #19 – Topics for next meeting

None.

Agenda Item #20 – Information & Distribution Items

Distributed in agenda packet.

ADJOURNMENT

Meeting adjourned at 10:33 a.m.

UPDATE ON LEASE AGREEMENT BETWEEN THE MPO AND THE CITY OF CAPE CORAL

RECOMMENDED ACTION: Update on the lease agreement between the MPO and the City of Cape Coral.

At the November 18th MPO Board meeting, the Board, approved the Lease Agreement between the MPO and the City of Cape Coral (**attached**) with the understanding that there may be some changes pending Federal Highway review. The Board voted to authorize the MPO Executive Committee to work out any changes if there are any changes from Federal Highway and approve the final Lease Agreement.

As of December 2nd, Staff has not received any comments back from Federal Highway regarding the Lease Agreement and the Board approved lease will be going before the City of Cape Coral Council on December 12th meeting for their approval.

LEASE AGREEMENT

This Lease Agreement (Lease) is entered into on this 12th day of December, 2011, by and between **CITY OF CAPE CORAL**, a Florida municipal corporation organized and operating pursuant to the laws of the State of Florida (hereinafter Landlord) and **LEE COUNTY METROPOLITAN PLANNING ORGANIZATION**, an entity created pursuant to section 339.175, Florida Statutes (hereinafter Tenant). Landlord is the owner of land and improvements whose address is: 815 Nicholas Parkway, Cape Coral, Florida. Landlord desires to lease the below described Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental rate and upon the provisions set forth herein.

Premises

Landlord makes available for lease a portion of the City of Cape Coral's City Complex, 815 Nicholas Parkway, Cape Coral, Florida, consisting of approximately 900 square feet of space for general office and administrative purposes (hereinafter "Leased Premises"). In addition, conference rooms and the City Hall Council Chambers are available through a shared scheduling system. However, Council Chambers shall not be available when City Council holds its regularly scheduled weekly meetings, any Special Meeting, or at the times of the various Boards or Committees of the City of Cape Coral (i.e. Planning and Zoning; Code Enforcement; FAC, etc.)

Lease Term

The Initial Term of the Lease shall begin on the 1st day of January, 2012, and end on the 31st day of December, 2015.

At the expiration of the term, the Lease will automatically renew for one (1) year terms. Either party may terminate this Lease with at least six (6) months notice in writing at any time during the Lease Term.

Rent

The rent is \$300.00 per month ($\$4.00/\text{sq ft} \times 900 \div 12$ months). Rent shall be paid on or before the first day of each and every month during the term of this lease.

Sublease and Assignment

Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

Repairs

During the Lease term, Tenant shall make, at Tenant's expense, all necessary normal maintenance and repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems, for example air conditioning, heating, plumbing, electrical, or the roof.

Alterations and Improvements

Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease or at the expiration of this Lease provided that Tenant shall repair, at Tenant's expense, all damage to the Leased Premises caused by such removal.

Property Taxes

Tenant shall be responsible for the payment of its proportionate share of any and all real property taxes imposed against the Leased Premises, if any, and its proportionate share of the common areas. Landlord shall pay, prior to delinquency, installments of special assessments coming due during the Lease term on property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes, if any, with respect to Tenant's personal property at the Leased Premises.

Insurance

Tenant shall, at its own expense and cost, maintain or cause to be maintained (i) commercial general liability insurance with respect to the Leased Premises in amounts no less than One Million Dollars (\$1,000,000.00) per occurrence, (ii) statutorily required workers compensation insurance covering its employees, and (iii) all risk (fire and extended coverage) insurance with vandalism and malicious mischief endorsements on Tenants property and tenants leasehold improvements, if any, for the replacement value thereof less applicable deductibles. Tenant shall name Landlord as an additional insured on Tenant's commercial general liability policy, and shall provide to Landlord a certificate of insurance evidencing these coverages. The proceeds from any "all risk" insurance shall belong to and be paid to Tenant, without any claim thereto by Landlord. Tenant shall not be required to carry any plate glass insurance, and may act as a self-insured with respect to plate glass, provided that all damage to all plate and window glass in the building shall be repaired or replaced promptly by Tenant at Tenant's own expense, except to the extent such damage was caused by the acts or omissions of Landlord, its agents, employees, or contractors, in which event Landlord shall pay for such repair or replacement.

Tenant shall promptly notify the Landlord of any cancellation of or reduction in coverage of the insurance policies required to be carried by them under this Article. The commercial general liability and all risk policies of Tenant shall contain a provision that the policies will not be cancelled nor materially altered without first providing the Landlord thirty (30) days written notice thereof.

Utilities

Tenant shall pay all charges for local and long distance telephone service, internet service, and other services, included but not limited to all costs and expenses for installation of such services,

for the extension of any and all lines necessary to provide such services and connections, installed by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. The Landlord shall pay electricity, water, sewer, property and building maintenance, pest control, and janitorial services.

Signs

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

Entry

Landlord shall have the right to enter upon the Leased Premises at reasonable hours with at least twenty-four (24) hours written notice to Tenant to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises. Tenant shall have access to the Leased Premises during normal business hours (8 am – 5 pm). Tenant's access to the Leased Premises after hours is via an electronic swipe card system.

Parking and Common Areas

During the term of this Lease, Tenant shall have the use of common automobile parking areas, all drives, walkways, sidewalks, landscaping and other green space, and all other publically accessible onsite facilities provided by the Landlord within the City Complex.

Damage and Destruction

If the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, rent shall be abated and then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that he Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

Default

In the event of a default made by Tenant in the payment of rent when due to Landlord, Tenant shall have fifteen (15) days after receipt of written notice thereof to cure such default. In the event of a default made by Tenant in any of the other covenants or conditions to be kept, observed and performed by Tenant, Tenant shall have fifteen (15) days after receipt of written notice thereof to cure such default.

Upon the occurrence of any such event of default, Landlord or Tenant shall have all rights and remedies available at law and in equity, including, without limitation, the right to terminate this Lease.

Quiet Possession

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease and any renewal period thereafter. Tenant acknowledges the building is currently under renovations.

Condemnation

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation.

Notice

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt request, addressed as follows:

Landlord:	City of Cape Coral Attn: Property Broker P.O. Box 150027 Cape Coral, Florida 33915-0027 Phone: 239-574-0735 Facsimile: 239-574-0419
Tenant:	Lee County Metropolitan Planning Organization Donald Scott, Director 815 Nicholas Parkway Cape Coral, Florida 33990 Phone: _____ Facsimile: _____

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

Headings

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

Successors

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

Consent

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

Waiver

Forbearance by Landlord or Tenant to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The receipt by Landlord of rent, with knowledge of the breach of any covenant or agreement hereof shall not be deemed a waiver of such breach, and no waiver by Landlord or Tenant of any provision hereto shall be deemed to have been made unless expressed in writing and signed by Landlord or Tenant, as the case may be.

Compliance with Law

Tenant and Landlord each shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

Radon Gas

In 1988, the Florida legislature passed a provision that requires the following notification to be provided on at least one document, form, or application executed at the time of or prior to the Contract for Sale and Purchase of any building or execution of a rental agreement for any building:

”RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.”

Surrender

Upon the expiration or earlier termination of the Lease Term, Tenant shall surrender the Premises to Landlord in as good order and condition as they were in at the commencement of the Lease Term, ordinary wear and tear, casualty, and acts or omissions by Landlord accepted.

Indemnification

To the extent permitted by law, Tenant agrees to indemnify, defend, and hold Landlord harmless from all suits, actions, claims, damages, liabilities, costs, and expenses, including without limitation, reasonable attorney's fees, incurred by or alleged against Landlord in connection with Tenant's use and occupancy of the Premises (except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors), or the negligent or other wrongful acts or omissions of Tenant, its agents, employees or contractors with respect to the performance or non-performance of this Lease.

Binding Effect

The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, assigns and legal representatives, except as otherwise expressly provided herein.

Final Agreement

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

(REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

WITNESSES:

LANDLORD:

CITY OF CAPE CORAL

John J. Sullivan, Mayor

WITNESSES:

TENANT:

LEE COUNTY METROPOLITAN
PLANNING ORGANIZATION

Bob Raymond, MPO Chairman

**REVIEW AND APPROVE THE
POLICIES AND PROCEDURES DOCUMENT**

RECOMMENDED ACTION: Review and Approve the Policies and Procedures document that Staff has drafted.

A draft of the Policies and Procedures document was distributed last month and comments that we have received to date have been addressed in this version for review and approval by the Executive Committee.

Lee County Metropolitan Planning Organization (MPO)

Personnel Manual

November 2011

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SECTION 1: ADMINISTRATION OF THE POLICIES

1.1 Authority

1.2 Purpose

The purpose of the Personnel Manual is to document the terms and benefits of employment with the Lee County MPO to be accomplished in a consistent manner.

1.3 Applicability

These personnel rules and policies are applicable to all employees of the Lee County MPO. If any policy herein is in conflict with an Employment contract between the MPO and the MPO employee, the contract will take precedent. It shall not apply to non-employees, such as MPO Board members, advisory committee members or individuals retained or employed by the Lee County MPO in a contractual or vendor arrangement. However, the Rules of Work and Travel Policy shall apply to all employees, the Director, Board members, Advisory committee members, Interns and Temporary employees. The term "MPO" and "organization" shall be used interchangeably with Lee County MPO in this document. This document is not to be construed as creating a contract or expectation of employment for a definite term and an employee is free to terminate employment at any time, with or without notice for any reason, and the MPO retains the same right.

1.4 Implementation

The responsibility for implementing the provisions of this Manual is hereby vested in the Director, who shall report directly to the Board, or their designee, except as specifically designated within the rules. Policy direction is the responsibility of the MPO Board.

1.5 Amendments

Amendments to these procedures will be reviewed and approved by the MPO Board on an as-needed basis.

SECTION 2: EMPLOYMENT

2.1 At-Will Employment Status

All MPO employees are employed at-will, meaning that either the MPO or the employee may terminate the employment relationship at any time for any reason, with or without cause. Moreover, this personnel Manual for MPO employees is not intended to create either an expressed or implied contract for employment.

2.2 Disclaimer Statement

This Manual is only intended to be used as a reference guide during your employment with the MPO. It is the employee's responsibility to become familiar with and to follow the MPO's policies and

procedures and to contact the Director if you are uncertain about any information contained in this Manual.

Recognition of these rights and prerogatives is a term and condition of employment and continued employment. To the extent that there is a conflict between this Manual and any previous handbooks, procedures, policies or rules, this Manual controls. It is further understood that this “at will” employment relationship may not be changed by any written document or by conduct unless such change is specifically acknowledged in writing by the MPO Board.

2.3 Equal Employment Opportunity

It is the policy of the MPO to promote and assure equal employment opportunity for all current and prospective employees without regard to race, color, age, sex, national origin, religion, marital status, sexual orientation, disability or other legally protected class. This policy governs all matters related to recruitment, advertising, and initial selection of employment. It shall also apply to all other aspects of employment, including, but not limited to, aspects of compensation, promotion, demotion, transfer, lay-offs, terminations, leave of absence, and training opportunities.

2.4 Loyalty

MPO employees are expected to be loyal to the MPO and not take positions, whether publicly or privately, that would be detrimental to the MPO or its interests.

2.5 Restriction on Employment of Relatives

A. Scope

It is the policy of the Lee County MPO to assure that all appointments and promotions by the MPO are made solely on an objective evaluation of ability, merit and/or fitness and are conducted in a non-discriminatory manner without regard to other factors, such as familial status. This policy applies to all MPO applicants for regular, temporary and part-time employment and present employees.

B. Authority

The MPO’s policy regarding the restriction on employment of relatives is based upon Section 112.3135 of the Florida Statutes which prohibits appointment, employment, promotion or advancement, of specified relatives by any public official who is vested with or delegated the authority to appoint, employ, promote or advance, or is in a position to recommend an individual for appointment, employment, promotion or advancement.

C. MPO Policy

The employment of relatives at certain levels of the MPO or in positions where one might have influence over the other’s status or job security is regarded as a potential violation of this policy. No family member (i.e., spouse, child, parent, brother, sister, aunt, uncle, niece, nephew, first cousin, son/daughter-in-law, brother/sister-in-law, mother/father-in-law, step father/mother, step

son/daughter, step brother/sister, half brother/sister) of a MPO employee or elected official shall be employed by the MPO in a position in which they are directly supervised by a family member. No person shall be employed as an employee in the same department as a member of his or her family. Any employee who falls within the scope of this section by their relationship with another employee after they were hired is exempt from the provisions of this section provided the Director and MPO Board reviews the circumstance and determines that no conflict exists.

The Board may waive the provision of this section in the case of unforeseen and unusual circumstances that is in the best interest of the MPO. This section applies to all natural, adoptive, or step relationships.

2.6 Agreements and Contracts

Employees shall not enter into agreements or contracts on behalf of the MPO without the authorization of the Director.

2.7 Salary

Salary for MPO employees shall be set by the Director. Periodic salary reviews and adjustments are at the sole discretion of the Director. Salary is subject to funding being appropriated by the MPO Board within the MPO's budget(s).

2.8 Work Hours

The Director shall establish a work week consisting of forty (40) hours per week, excluding meal times. MPO employees are generally expected to be at work during the regularly established work week for their respective positions (which may vary depending on position, assignment and/or work location). However, MPO employees that are exempt from coverage under the Fair Labor Standards Act are expected to work as many hours in a given week as are necessary to complete that employee's assigned duties and responsibilities, regardless of the specific work hours assigned to that position by the Director.

SECTION 3: RULES OF WORK

3.1 Work Attire

MPO employees should dress in a professional manner consistent with good hygiene, safety and good taste. Employees whose jobs require them to come in contact with vendors, government officials or the public are expected to wear apparel consistent with that worn by persons dealing with the public in similar capacities. The MPO follows a business casual dress code Monday – Thursday unless circumstances dictate otherwise. Casual dress is permissible Friday, but must be governed by good personal judgment based on the individual employee's duties for the day.

3.2 Attendance and Tardiness

Regular attendance and punctuality by employees are considered essential ingredients in the continuing success of the MPO. Therefore, in order to insure fair, impartial, equitable and consistent treatment for

all employees, the MPO has instituted this attendance and tardiness policy. It is intended to reduce absenteeism and tardiness and thereby decrease unnecessary costs, increase efficiency and contribute to higher standards of quality in MPO customer service.

Employees are expected and required to be in attendance and prepared to work at their scheduled starting time and designated work locations during their assigned hours. Employees are also expected to remain at work for the entire work period excluding rest and meal periods. Late arrival, early departure, and other personal absences are disruptive and should be avoided.

An employee who is not at work when required or during scheduled hours shall be considered unexcused, unless such absence is approved by the Director or designee. Any unexcused absence is cause for discipline, up to and including termination. An employee who is absent without authorization for more than three (3) consecutive working days shall automatically be deemed to have resigned his or her position with the MPO without notice and shall forfeit his or her rights to any benefit.

The MPO recognizes that some absences may be unavoidable due to bona fide sickness or emergencies beyond the control of the employee, and the MPO has made reasonable provision for such occasions in this policy.

In cases of excessive tardiness, absences, failure to report to work as scheduled or abuse of leave policies, it may be necessary to correct such problems by counseling and other disciplinary action up to and including termination.

In the event an employee cannot report to work as scheduled or assigned, the employee must so notify his or her supervisor as early as possible but no later than one (1) hour before the start of his or her shift. It is the responsibility of the employee to make the call. Supervisors shall not accept calls from an employee's friends, family or co-workers unless an employee is physically unable to make the call, in which case such condition shall be medically documented.

In all cases of an employee's absence or tardiness, the employee shall provide management personnel with the truthful reason for the absence or tardiness and, if applicable, the probable duration of absence. If the duration of the absence cannot be readily ascertained, the absent employee will be required to call his or her supervisor daily to report on the status of his or her absence.

3.3. Professional Development

MPO employees are encouraged to participate in professional development activities of their respective disciplines. Payment or reimbursement for attendance of conferences, seminars, executive education, degree education, and the like shall require the prior written approval of the Director.

3.4 Travel

A. General Information

The Lee County MPO travel policy applies to all MPO employees and interns traveling on official business paid for by the Lee County MPO.

Employees and interns traveling on official business for the Lee County MPO are expected to use reasonably priced lodging accommodations with every effort being made to use a DEP designated Green Lodging hotel (or one under application for designation and they can be found at www.dep.state.fl.us/mainpage/programs/green_lodging.htm) and are required to use economy or tourist class air travel fares. Travelers must indicate on the Travel Form, No. 300-000-01 when a Green lodging hotel is used. If a traveler does not use a Green Lodging hotel, or one under application for designation, then justification explaining the reasons another facility was used must be included on the travel form. Justification should consider cost, location and other applicable factors. Under no circumstances are travelers on Lee County MPO business permitted to accept gratuitous upgrades to first class if the situation would conflict with the Code of Conduct Policy.

Pre-planning by management to obtain advance registration discount rates and minimizing the number of staff who will attend the same training session will contribute toward cost control.

Travel, whether by public transportation, privately owned automobile or a for-hire conveyance, shall be over the most direct, practical route. Any deviations from a direct route must be explained on the voucher and approved by the Director or designee.

B. Travel and Training Guidelines

All travel covered by this policy must be for the direct benefit of the Lee County MPO. All employees and interns are required to attend applicable training sessions offered during normal business hours and adhere to all travel and rules of conduct policies. Employees whose travel expenses will be reimbursed by an outside agency must so indicate on the appropriate FDOT Travel Form.

C. Travel Authorization

Travel during work hours for employees at the MPO's expense (except the Director) must be authorized in advance of travel by the MPO Director. The Director's overnight travel shall be approved by the Chair of the MPO. Specific expenses and/or conditions of travel must be pre-authorized by the designated official as described below:

- Car rental.
- Training to maintain professional certification or license, i.e., Continuing
- Professionals Education (CPE).
- Travel to meetings for positions held in a professional organization.
- Technical training necessary to complete the job assignment.
- General training for job performance enhancement.

In an emergency situation when the employee cannot obtain prior written authorization, verbal approval will be obtained, and travel documents shall be completed immediately upon the employee's return to work.

D. Pre and Post-Travel Accountability

Although travel costs have been included in the Lee County MPO budget, employees shall obtain written approval to travel, attend meetings, etc., before making any commitment to pay registration fees, to purchase a transportation ticket or to incur any other cost. Each employee shall complete a FDOT Travel Form (Form 300-000-01; Page One) for estimated individual expenses and submit it to the appropriate authorizing official. A meeting program or brochure shall be attached to the travel authorization request. In no event shall a travel form be submitted for approval unless funds to pay the proposed travel are available in the applicable UPWP Task.

When the travel form has been approved and funds certified as available, the employee or intern is then authorized to be absent from work, to incur expense and to be reimbursed, (but not in excess of travel request form), and to initiate invoices to prepay room deposits, registration or tuition fees, and tickets on common carriers.

Within ten (10) business days of completing travel the employee will submit the FDOT Travel Form (DFS-C1-500). Receipts for hotels, public transportation, convention registration fees, car rental, tolls, and similar items must be attached to the appropriate reimbursement form. All items for which a receipt cannot or was not obtained must be explained in writing. Any item without a receipt, other than straight per diem for meals at the FDOT rates, is subject to denial. Miscellaneous expenses must be itemized. Completed forms should be submitted to the Director or the Board Chairman or Vice Chairman as the authorizing official.

S/he should review the forms before approving and obtain explanation on any questionable item. If costs exceed the amount of expense authorized by the appropriate official, and the traveler requests reimbursement for the additional amount, the authorizing official should provide a complete explanation and a recommendation to the Director or designee. All forms must be submitted to the Director or designee, within ten (10) working days of completing travel. The Director, or his/her designee, will review the expenses for acceptability. If additional information is needed for approval, the form shall be returned to the traveler for revision.

E. Transportation

Travelers are expected to use the travel mode that is most advantageous to the MPO. This would include using bus or airport van service to and from terminals or extended parking at terminals versus use of a common carrier. The traveler is permitted mileage from point of departure (home or work location) whichever one is the shorter distance.

F. Private Vehicles

Whenever travel is by a privately owned vehicle, the traveler shall be entitled to a mileage allowance at the prevailing FDOT rate. Where two or more authorized persons travel in one private vehicle, only the person supplying the vehicle shall receive transportation reimbursement. For travel, mileage shall be allowed per the DOT's Official Highway Mileage. Vicinity mileage necessary for the conduct of official business is allowable, but must be shown as a separate item on the expense voucher. Employees deviating from the most direct route will have to bear the extra cost. By order of the Governor, no employee will drive a vehicle without first fastening his/her seat belt and ensure that the other occupants also comply.

G. Taxicabs

Reimbursement for taxicabs to and from airports, train stations, etc., will be made only when receipts are provided.

H. Car Rentals

Prior approval must be received from the appropriate official if the traveler must rent a car. Car rentals must be mid-size or smaller. Any upgrades must be paid by the traveler and will not be reimbursed by the MPO. Individuals on MPO business who rent vehicles shall purchase rental insurance.

I. Airline

Airline reservations may be acquired if approved by the appropriate official and should be made with at least a 14 day advance purchase for better pricing. Air travelers shall attach their boarding passes and ticket stub to the appropriate reimbursement form for final accountability.

J. Reimbursable Local Travel

Travelers within a distance of eighty miles shall not be reimbursed for lodging unless extenuating circumstances exist and then only when justifiable cause is documented in writing and pre-approved by the Director. Employees must complete the FDOT Travel Form (Form 300-000-01; Page Two A) to be reimbursed for local travel mileage. Reimbursement shall be at the prevailing FDOT rate if the expense is reimbursable to FDOT.

K. Lodging

Expenses may vary in different areas traveled to, but all expenditures must be reasonable. The approving official is responsible for the reasonableness of amounts authorized. Any excessive charges will be subject to denial at the Director's discretion.

When traveling in the State of Florida, the advance check should be made payable to the hotel, motel, lodge, etc., to ensure exemption of sales tax. When lodging is not paid in advance, the traveler must seek exemption from tax on hotel room rentals. All travelers will be provided a Tax Exempt Certificate. If the hotel does not honor the tax exemption, please indicate on your travel form that the certificate

was presented to the hotel but was denied. Sales tax reimbursement may be denied to the employee if exemption was available.

L. Meals

Employees who engage in daily, routine travel are not reimbursed for meals. Reimbursement for meals and tips without receipts is based on FDOT guidelines that follow F.S. 112.061. Alcoholic beverages are not reimbursable. Same day travel by employees or interns allows reimbursement for reasonable meal expenses. There are also time guidelines for meal allowances, that is, travel must start or finish by certain times for a meal allowance; a traveler is not allowed to be reimbursed on a per diem basis for same day travel. Current rates and time guidelines are based on FDOT guidelines that follow F.S. 112.061

A daily per diem rate based on FDOT guidelines that follow F.S. 112.061, in lieu of the meals and tips may be authorized by the Director provided that the per diem rate per day does not exceed the amount permitted for meals and tips. If breakfast, lunch or dinner is provided by the airline, hotel, seminar, etc., then the daily per diem rate will not be an option. If meals are provided, such as those included as part of hotel registration, by an airline or as part of a seminar, it should be noted on the reimbursement form as meals furnished. No one shall be reimbursed for any meal, lodging or other expense included in a fee paid by the MPO.

M. Other

Registration fees for functions related to Lee County MPO business may be reimbursed when an employee is expected to attend due to the nature of the position. Any travel over eighty miles by personal or rental vehicle requires prior written approval by the Director. Approval to use a personal or rented vehicle provides the traveler(s) a substitute for an airline ticket; therefore, "en-route" expenses other than gasoline/vehicle expense will not be reimbursed, and mileage cost beyond the cost of economy or coach airfare will not be reimbursed. Travel time in excess of the most advantageous mode of travel to the Lee County MPO will be chargeable as personal time off to the employee(s).

Unallowable expenses include dry cleaning, laundry, toiletries, newspapers, movies, etc.

3.5 Personal Property

The MPO shall not be responsible for the personal property of MPO employees.

3.6 Reporting Contact Changes

MPO employees shall notify the Director of changes of home address, home and cellular telephone numbers immediately upon such changes occurring.

3.7 Conflicting Outside Employment or Enterprise

MPO employees shall not engage in any outside employment or enterprise without the prior written approval of the Director. Such approval is at the sole discretion of the Director, and if given, may be withdrawn at any time with or without cause.

3.8 Political Participation

While on duty, MPO employees shall refrain from all political activities which undermine public confidence in professional administrators.

3.9 Financial Disclosure

MPO employees shall comply with financial disclosure as provided in Florida Statute(s) when and where applicable.

3.10 Gifts

MPO employees shall not accept gifts, either monetary or non-monetary, as consideration for the performance of their duties or that are intended to influence them in the performance of their duties (gifts shall be returned to sender).

3.11 Discounts

MPO employees shall not solicit discounts for goods or services as a result of their position with the MPO other than those discounts that are available to the general public. In addition, MPO employees shall not accept discounts for goods or services as consideration of the performance of their duties or that are intended to influence them in the performance of their duties.

3.12 Fundraising

MPO Employees shall not raise funds for any purpose from those who have contracts with the MPO, or others as a result of their position with the MPO.

3.13 Disclosure of Information

MPO employees shall not furnish or use MPO information that is not available to the general public for personal advantage. This does not limit, hinder or prevent disclosure of such information in performing official duties by those employees specifically charged with such responsibilities or so designated.

3.14. Solicitations

The MPO may limit solicitation in the office by any organization or individuals, whether or not members of our staff, unless prior approval is given by the Director. The MPO recognizes that employees have interests in events and organizations outside the workplace. Employees may not solicit or distribute literature related to these activities during working hours. The MPO bulletin boards and website are for

displaying MPO business information and other organization data. Posting written solicitations is restricted.

3.15. Media

All inquiries should be directed to the Director or designee. If unavailable, take the party's name, affiliation and phone number and assure him/her that the call will be returned as soon as possible.

3.16 Communications

The organization is responsible for transportation planning and prioritizing in Lee County. The organization interfaces with the Federal Transit Administration; the Federal Highway Administration; the Florida Department of Transportation; many federal, state and local representatives; and the residents of the aforementioned counties. Effective communication is necessary for the organization to be successful in its mission.

3.17 Conduct Unbecoming of MPO Employees

MPO employees shall refrain from conduct that is unbecoming of their association with the MPO. Such conduct includes, but is not limited to, conduct that would damage the reputation of the MPO or be detrimental to the interests of the MPO.

3.18 Drugs and Alcohol

MPO employees are prohibited from using or being under the influence of alcohol and nonprescription drugs during their regular working hours. The use of prescription drugs by Employees shall be limited to the named individual, the prescribed dosage, and the strict observance of all precautions on the container's label.

3.19 Drug Free Workplace

A. Policy

It is the MPO's intent to maintain a "drug free" workplace pursuant to Fla. Stat. Ann. § 112.0455. The MPO prohibits the consumption, possession, manufacture, distribution, dispensing or being under the influence of alcoholic beverages or controlled substances, as described in Florida Statute Chapter 893, during working hours.

The purposes of this policy are as follows:

- (a) To establish and maintain a safe, healthy working environment for all employees;
- (b) To ensure the reputation of the MPO and its employees as good, responsible citizens worthy of the responsibilities entrusted to them;
- (c) To reduce the incidence of accidental injury; and

(d) To provide assistance in rehabilitating any employee who seeks the MPO's help in overcoming an addiction to, dependence upon, or problem with alcohol or drugs.

Any employee, who feels that he or she has developed an addiction to, dependence upon, or problem with alcohol or drugs, legal or illegal, is encouraged to seek assistance. Rehabilitation and the cost thereof is the responsibility of the employee. Any employee seeking medical attention for alcoholism or drug addiction may use any accrued Paid Time Off for rehabilitation. The employee must provide certification that he or she is continuously enrolled and actively participating in a treatment program. Upon successful completion of treatment, the employee will be returned to active status without reduction in pay.

Any employee suffering from an alcohol or drug problem who rejects treatment or who leaves a treatment program prior to being properly discharged will be immediately terminated. No employee will be eligible for an assistance program more than once. Any subsequent abuse of alcohol or illegal use of controlled substances will result in the immediate termination of the employee. Controlled substances are defined by regulation 21 CFR 1308.11 through 1308.15. Any employee believed to be under the influence of alcohol, illegal drugs, or controlled substances on the basis of reasonable suspicion will be suspended from work and be required to submit to a drug/alcohol screening and evaluation. If the screening reveals positive results, the employee shall seek an appropriate facility for treatment. The costs of such treatment shall be borne by the employee. A positive drug/alcohol screening result is considered a major infraction of MPO regulations. Refusal to submit to a drug/alcohol screening will result in dismissal.

No alcoholic beverages, illegal drugs, or controlled substances will be used while on the job. Violation will result in immediate termination of employment. Possession of illegal drugs or unlawful possession of controlled substances will also result in immediate termination of employment.

The illegal use of a controlled substance or possession of illegal drugs while off-duty will result in disciplinary action up to and including termination. The illegal sale, trade or delivery of controlled substances by an employee to another person is cause for termination and referral to law enforcement authorities. The "occasional" or "recreational" use of controlled substances will not be excused.

Applicants for employment will be required to submit to a pre-employment drug screen to detect possible current illegal use of controlled substances. Applicants whose examinations indicate current illegal use of controlled substances will not be hired. In addition, it is the MPO's desire to improve worker compensation cost control, increase productivity and safety, decrease absenteeism, decrease health care costs, and increase overall employee morale. The MPO is also a Drug and Alcohol Free Workplace pursuant to Chapter 440, Florida Statutes. As part of the Drug and Alcohol Free Workplace program, the MPO will reserve the right to require employees to submit to a drug and alcohol test when reasonable suspicion exists to believe that the employee may be using and/or abusing controlled substances, narcotic drugs or alcohol.

All current and/or future employees must notify the MPO in writing of his/her conviction for violating a criminal drug statute no later than five (5) calendar days after that conviction.

3.20 Firearms and Weapons

A. General

With the exception of sworn law enforcement officers, MPO employees while on official work duty for the MPO are prohibited from possessing, and/or carrying firearms or weapons on their persons, concealed or otherwise, unless authorized by the Director. A threat to use a weapon or possession thereof, including any type of firearm, is not permitted in the workplace at any time.

B. Definition

For purposes of this section the following definitions shall apply:

(a) Official work duty shall mean the period which includes the time the employee enters the work area at the beginning of the work period to the time the employee leaves the work area at the end of the work period.

(b) Weapons and firearms shall mean all objects capable of being used to kill or inflict bodily harm when used for such purpose including, but not limited to any firearm, gun, pistol, rifle, sword, flammable agent, explosive device, or electric weapon. This definition includes any unsheathed knife that is used in a threatening manner or in any manner other than for official work duty.

C. Employee Responsibility

Any employee who becomes aware of another employee possessing an unauthorized weapon at the workplace should notify a supervisor immediately. The supervisor should contact the Director or the local Police Department, where appropriate. The local Police Department should determine the proper response to the situation and advise the supervisor and the Director of the appropriate action. Unauthorized possession of a firearm or weapon by an employee on duty is an offense of the most serious nature and will result in disciplinary action, up to and including termination of employment.

3.21 Smoking

Smoking is not allowed inside the Lee County MPO office and is only permitted at the designated areas of our lease space. Employees who violate this policy will be subject to disciplinary action, up to and including dismissal.

3.22 Criminal Background Check and Driving History

The MPO reserves the right to perform or cause to have performed a criminal background check and a driving history investigation of any MPO employee at any time.

3.23 Criminal Arrest or Conviction

MPO employees shall immediately notify the Director of their arrest or conviction of a criminal offense, whether a felony or misdemeanor no later than five (5) calendar days after that arrest or conviction.

3.24 Communication Devices

Communications devices, to include but not limited to computers, cell phones, Blackberry's or the like, that are assigned to MPO Employees are for the primary use of MPO business and de minimis personal use, and such devices shall not be used for outside employment or enterprise. Personal use is defined as all use which is not for the business of the MPO. If an MPO employee wishes to use their personal computing devices for conducting MPO business they must understand their responsibilities for using personally-owned devices and be aware of restrictions on use for those who are eligible for overtime pay. In order to receive approval for use of personal/mobile computing devices, employees must follow the guidelines below:

1. The employee must sign the document titled "Request to Use Personally Owned Computer or Mobile Computing Device". This document can be attained from the MPO Director or designee. The document covers employee responsibilities for using personal devices, including restrictions on use for employees who are eligible for overtime pay.
2. The MPO Director must approve the "Request to Use Personally Owned Computer or Mobile Computing Device" document via signature.

3.25 Electronic Mail

E-mail is a system of communication whereby written messages are electronically transmitted from one computer station to other computer stations. MPO personnel shall use the e-mail system primarily for work-related purposes. The MPO reserves the right to review and monitor employee e-mail to insure compliance with this policy. Employees found in violation of this policy shall be subject to disciplinary action.

3.26 Internet Use

A. Policy

Use of the internet on MPO computers on MPO time for non-MPO business should be kept to a minimum. Employees are further required to comply with the provisions set forth below:

1. Performance of Job Responsibilities

Employees should use the Internet to accomplish job responsibilities more effectively and for business and work-related communication only. Examples of job related responsibilities are: accessing external databases, searching online public access information, disseminating documents to individuals or groups, and gaining access to software user support information.

2. Professional Development

The Internet may be used to pursue professional and career development goals. Examples of appropriate use include: communicating with members of work related professional organizations, reviewing information on professional or career development topics.

3. Privacy and Confidential Information

Internet accounts are to be accessed only by the authorized user of the account. Confidentiality of passwords and user accounts must be protected. Employees must discontinue their Internet connection when leaving their PC. Individual users can be held accountable for use of an internet account by others. Employees will have no expectation of privacy in both sending and receiving electronic messages and information on the Internet. Employees on the Internet will respect the privacy of other users and will not intentionally seek information on, obtain copies of, or modify files, other data or passwords belonging to other users, or represent themselves as another user.

4. Copyright Laws

Employees must comply with copyright, licensing, contract, local, state, and federal licensing laws for materials, software and other media. In addition, employees should obtain appropriate approval prior to making information available via Internet services.

5. Security

Employees are prohibited from developing programs that harass other users or infiltrate a computer or computing system or that damage or alter software components of a computer or computing system.

6. Lawfulness

Transmitting any material in violation of any U.S., State or local law, ordinance, regulation or policy is prohibited. This policy prohibits unlawful or inappropriate communications, including but not limited to sexually, racially, or ethnically offensive comments, jokes, slurs, disparagement of, or threats to others.

B. Prohibited Uses of the Internet

(a) Illegal Activities

(b) Threats

(c) Harassment

(d) Slander

(e) Defamation

(f) Obscene, pornographic or suggestive images or offensive graphical images

(g) Political endorsements

(h) Commercial activities

(i) Using non-business software including games or entertainment software

(j) Downloading and installing programs without proper authorization

(k) Activities resulting in, or relating to, personal gain or for profit enterprise

(l) Using internet resources for personal use (for example MYSPACE, FACEBOOK, CRAIGSLIST, TWITTER AND ONLINE CHATTING)

C. Right to Monitor

The MPO reserves the right to monitor Internet communication and activity at any time, without prior notice, and to access and examine information in an employee's computer at any time to ensure that system is being used in accordance with these policies. Employees are hereby notified that their individual online or Internet activities may be automatically logged by a network surveillance system and later reviewed by authorized MPO personnel for compliance review purposes.

D. Violation of Policy

Violations of this policy may result in termination of access to the Internet, and may also result in disciplinary or legal action up to and including termination of employment, and/or criminal or civil penalties or other legal action against the employees.

3.27 MPO Equipment

Circumstances will be reviewed on a case-by-case event if MPO equipment is lost, damaged or stolen to determine if the employee will be held liable for its replacement or repair. If equipment is lost, damaged or stolen due to negligence or intentional destruction the employee will be held liable up to an amount which equals the applicable insurance coverage deductible or the equipment value, whichever is less.

3.28 Computer Software

The Lee County MPO purchases and licenses certain computer software for business purposes, does not own the copyright to the software and follows the authorized use. Employees shall not load any software not purchased by the Lee MPO on their computers. This includes downloading files from the Internet such as screen savers, games, music, etc. The screen saver password must be enabled at all time and set to less than thirty (30) minutes. Employees should not share their user ID's or their passwords.

3.29 Compliance with Law

MPO employees are expected to comply with any and all federal, state and local law while on and off duty. If any provision herein conflicts with any federal, state and/or local law, the conflicting policy provision shall be superseded by such law.

3.30 Compliance with and Enforcement of Policies of the MPO

MPO employees shall comply with and enforce any and all policies of the MPO while on and off duty. If any policy of the MPO conflicts with any federal, state and/or local law, the conflicting policy provision shall be superseded by such law.

3.31 Discipline The Director may discipline MPO employees for such reasons to include, but not limited to, violation of established policies, violation of law, failure to perform duties, failure to follow directives, damage to MPO property. Discipline may include, but not be limited to, counseling, written reprimand, suspension without pay, and termination of employment.

First Offense: MPO Director will speak with the employee about this issue raised and notify them of the situation at hand.

Second Offense: MPO Director will hold a formal conference with the employee and the current MPO Chairman or designee to address the situation at hand. This meeting will require formal written documentation to be signed by the employee and MPO Director with the consequences of the actions taken included in the documentation. Once the documentation is signed by both parties it shall be filed in the employee's personnel file.

Third Offense: The MPO Director will set a formal hearing with the MPO Chairman or designee and the employee to discuss options of administrative leave without pay or termination.

3.32 Americans with Disabilities Act of 1990

The MPO is committed to complying with all applicable provisions of the Americans with Disabilities Act (the "ADA"). It is the MPO's policy not to discriminate against any qualified employee or applicant with regard to any terms or conditions of employment because of such individual's disability. Consistent with this policy of non-discrimination, the MPO will provide reasonable accommodations to a qualified individual with a disability, as defined in the ADA, who has made the MPO aware of his or her disability, provided such accommodation does not constitute an undue hardship to the MPO. The MPO is also committed to not discriminating against any person who is related to or associated with a person with a disability. This policy is neither exhaustive nor exclusive. The MPO will take all other actions necessary, to ensure equal opportunity for persons with disabilities in accordance with the ADA and all other applicable federal, state, and local laws.

Any employee or job applicant who has questions regarding this policy or believes that he/she has been discriminated against based on a disability may notify the ADA contact. All such inquiries or complaints will be treated as confidential, and will only be disclosed on a need-to-know basis.

3.33 Discrimination and Harassment

A. Generally

It is the policy of the MPO that all employees enjoy a work environment free from discrimination and/or harassment. Discrimination and harassment are forms of misconduct which undermine the integrity of the employment relationship, lower morale, and interfere with work effectiveness. This directive applies equally to any discrimination or harassment based on race, gender, national origin, religion, age, disability, marital status, or any other legally protected status. Discrimination and harassment are illegal and will not be tolerated.

It is expected that all employees act responsibly in fulfilling the MPO's commitment to working in an environment totally free of discrimination and/or harassment. To that end, it is also expected that employees will prudently avail themselves of the mechanisms provided by this directive. To the extent any provision of this directive is inconsistent with any other MPO personnel policy or directive, the provisions of this directive will control with respect to claims of discrimination and/or harassment.

It is the responsibility of all staff to insure that discrimination and/or harassment does not take place. At a minimum, the Director is required to immediately correct any problems that may arise. The Director is responsible for maintaining a work environment that is free from discrimination and/or harassment, as well as any other conduct which creates a hostile work environment for any individual.

The MPO recognizes that invalid, unfounded or false accusations of discrimination and/or harassment can have serious effects on innocent individuals. Therefore, the MPO shall thoroughly, and as confidentially as possible, investigate any and all complaints of discrimination and/or harassment to determine the most appropriate disposition.

Harassment and discrimination participants fall into three categories: the alleged offender, the alleged victim and any witnesses. Any of the three can be found in violation of this directive. Violation of this directive includes participating in discriminatory and/or harassing practices, permitting subordinate employees to engage in such practices, filing false charges or malicious complaints, or retaliating against employees who report instances of discrimination and/or harassment. This directive constitutes a "zero tolerance" policy. Appropriate disciplinary action shall be taken against any and all individuals who violate this directive. In accordance with the MPO's existing progressive discipline policy, any violation of this policy shall constitute an offense for which disciplinary action may include immediate termination from employment.

B. Unlawful Harassment-Generally

MPO employees shall not commit acts of sexual or other unlawful harassment and shall not create, or cause to be created, a hostile work environment in the performance of their work for the MPO.

The MPO does not and will not tolerate harassment of MPO employees. The term "harassment" includes but is not limited to, slurs, jokes, and other verbal, graphic, or physical conduct relating to an individual's race, color, sex, religion, national origin, citizenship, age, or disability. "Harassment" also includes sexual advances, requests for sexual favors, unwelcome or offensive touching, unnecessary comments as to another's sexual preferences or behavior, and other verbal, graphic, written (e.g., e-mails or text messages) or physical conduct of a sexual nature.

No employee should be subjected to derogatory verbal or nonverbal references regarding his or her race, gender, national origin, religion, age, disability, or any other legally protected status. No employee, male or female, should be subjected to unsolicited, offensive and unwelcome sexual overtures or conduct (verbal or physical). Such conduct, whether committed by supervisors or non-supervisory personnel, is specifically prohibited by state and federal law, as well as by this directive.

C. Sexual Harassment

Sexual harassment refers to unwelcome behavior of a sexual nature that is personally offensive, deliberate and repeated. It includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Such harassment may be verbal, nonverbal or physical, and is illegal when:

- (a) Submission to such conduct is made implicitly either a term or condition of employment;
- (b) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting the individual; and/or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior which is not welcome, which is personally offensive, which debilitates morale, and which interferes with work effectiveness. Some behavior that may be acceptable in social settings is not appropriate in the work place and is considered insulting and demeaning to the victim. In addition, no one should imply, joke about, or threaten that an applicant or individual's employment, assignment, compensation, advancement, career development or any other term or condition of employment is subject to submission or acquiescence to sexual harassment.

Acts of sexual or other unlawful harassment or that give rise to a hostile work environment shall be immediately reported to the Director by anyone who has knowledge of such activities. Complaints of harassment will be investigated promptly and in as confidential a manner as permitted by law.

Any MPO employee bringing a complaint of harassment or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment. Nor shall any employee take any action against a complainant that is intended to discourage the complaint. Retaliation by any MPO employee against the complainant could result in disciplinary action, up to, and including, termination.

D. Complaint Procedure

The following procedures should be followed when an employee thinks he or she is the victim of discrimination and/or harassment:

(a) Step One

Anyone who believes that he or she may have been subjected to discrimination and/or harassment should, whenever reasonably possible, first inform the offending party that such behavior is offensive and will not be tolerated.

(b) Step Two

An employee who believes that he or she is the victim of sexual harassment or that he/she is being unreasonably interfered with by such conduct is required to promptly report the conduct to the Director, without fear of reprisal. "Promptly" means within five (5) business days of the event giving rise to the employee's complaint.

(c) Step Three

The employee may file a formal, written complaint to the Director. A form for the filing of such complaints, which should be used in all but the most exceptional circumstances, is available from the Director.

If the Director is the offending party, the employee may file the written complaint directly with the Board Chair.

(d) Step Four

If an employee notifies the Director of such a problem, the Director shall notify shall provide a copy of the complaint form submitted by the employee to the MPO Attorney and Human Resources representative.

E. Investigation of Complaints

Complaints will be investigated in as confidential and timely a manner as possible and in accordance with the Public Records Law, 119.07, Florida Statutes. Information concerning an active complaint will not be released by the MPO to third parties or to anyone within the MPO who is not directly involved in the investigation, except as may otherwise be required by law or by a court of competent jurisdiction. The purpose of this provision is to protect the confidentiality of an employee who files a complaint, to encourage the reporting of all instances, and to protect the reputation of any employee charged with discrimination and/or harassment. All participants involved in an investigation are expected to maintain their involvement in or discussion of the investigation confidential, except insofar as disclosure is required in obtaining or being represented by legal counsel. The failure to abide by this confidentiality requirement constitutes a violation of this directive.

Disciplinary action taken as a result of discrimination or harassment will become part of the personnel file of the offending employee and is subject to disclosure pursuant to Public Records Law.

The investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. Tape recorded statements may be taken of any or all of the individuals involved. All employees will be guaranteed fair and impartial treatment, and shall be protected from coercion, intimidation, interference or discrimination for filing a complaint or participating in an investigation.

A determination will be made as to whether a complaint is sustained, not sustained or unsubstantiated. A complaint is sustained when there is sufficient evidence presented to reasonably establish that the allegations or charges made are true. A complaint is not sustained when there is sufficient evidence

presented to reasonably determine that the allegations or charges made are not true. Finally, a complaint is unsubstantiated when there is insufficient evidence presented to reasonably determine whether the allegations or charges are true or false.

If a complaint is sustained, the offender will be subject to disciplinary action which may include termination from employment. Any supervisor is under a continuing duty to take immediate

Remedial action to stop or prevent discrimination and/or harassment. If the supervisor fails to take such action, and the misconduct was known, or should have been known, to him or her, the supervisor in question shall be terminated from employment. Even if the investigation fails to disclose the existence of any discrimination or harassment, the MPO reserves the right to nonetheless take action. Such action may include counseling, a reminder of the MPO's directive, or a written warning. Additional mandatory training will be provided if, in the MPO's discretion, such training is necessary.

F. Follow Up

Once an investigation has been concluded, the MPO will continue to monitor the employees involved in discrimination or harassment complaints to ensure that no future incidents of discrimination or harassment occur.

G. Retaliation

The Policy prohibits retaliation against employees who bring complaints of discrimination and/or harassment or who assist in investigating such complaints. Any employee bringing a complaint of discrimination or harassment or assisting in the investigation will not be adversely affected in terms and conditions of employment. Nor shall any employee take any action against a complainant that is intended to discourage the complaint. Retaliation by any employee against the complainant could result in disciplinary action, up to, and including, termination.

SECTION 4: BENEFITS

4.1 Holidays

The MPO Board approves holidays and determines when they will be observed. At the present time the organization will observe the following holidays:

The days listed below are designated as official Lee County MPO holidays:

New Year's Day

Martin Luther King Day

Presidents Day

Memorial Day

Independence Day

Labor Day

Veterans Day

Thanksgiving Day

Day After Thanksgiving

Christmas Eve Day (half day; holiday will commence at 1:00 p.m.)

Christmas Day

If one of the above holidays falls on a Saturday, it shall be observed on the preceding Friday. If one of the above holidays falls on a Sunday, it shall be observed on the following Monday. If Christmas Eve Day falls on a Friday, it shall be observed on that day and the corresponding Christmas Day holiday shall be observed on the following Monday.

4.2 Medical Insurance

The MPO will pay a portion of coverage for the employee and dependent coverage. The percentage paid by the MPO is evaluated annually and is subject to change.

4.3 Disability Insurance

The MPO will provide to each MPO employee, at the MPO's expense, long-term disability insurance in an amount equal to the MPO employee's salary, to the extent permitted by law, during any disability which the Employee may incur. Where a waiting period is provided within a policy, the MPO employee may use accrued Paid Time Off (see section 5.1) during the waiting period.

4.4 Life Insurance

The MPO will provide to each MPO employee, at the MPO's expense, life insurance equal to their base annual earnings. The value of employer provided group term life up to \$50,000 is excluded from an employee's income. The value of coverage exceeding \$50,000 must be included in an employee's income and is subject to social security and Medicare taxes, but is not subject to federal income tax withholding. The employee must pay the federal income tax owed with his or her personal income tax return. Included in the Group life Insurance is an Accidental Death and Dismemberment policy. The Lee County MPO pays the total cost of this benefit.

4.5 Continuation of Group Health Insurance Coverage

Employees and their dependents ("qualifying beneficiary") who would otherwise lose insurance coverage in any MPO's sponsored group health plan because of a "qualifying event" are eligible for continuation coverage under the MPO's group policy pursuant to the Florida Health Insurance Coverage Continuation Act ("Mini-COBRA"). Mini-COBRA applies to employers employing fewer than 20 eligible employees.

The law provides continuation coverage equal to the coverage applicable to active employees for a limited time period. However, under the law, employees must pay the full premium amount plus an administrative fee (which may be up to 115% of the group rate).

“Qualified beneficiary” includes:

- (a) A covered employee, except if the employee is terminated for gross misconduct;
- (b) The spouse of the covered employee;
- (c) The dependent child of the covered employee.

“Qualifying events” include the following:

- (a) A covered employee’s termination of employment for any reason other than gross misconduct;
- (b) A covered employee’s hours are reduced to fewer than the number of hours required for coverage under the plans;
- (c) A covered employee’s death;
- (d) A covered employee’s legal separation or divorce from their spouse;
- (e) A covered employee becomes entitled to Medicare; or
- (f) A covered dependent child ceases to qualify as dependent under the terms of the plan.

If either the employee or their dependent children elect to continue coverage through the MPO’s Group Insurance Plan, the continuation coverage will be identical to the coverage provided all other employees and dependents covered by the plans for whom a qualifying event has not occurred. No evidence of insurability will be required in order to continue coverage.

The maximum continuation period for a qualified beneficiary is 18 months, except in the event of total disability; in which case, up to 29 months can be granted. Continuation coverage will be terminated before the end of the maximum period of continuation coverage and cannot be reinstated for any covered person if the following occur:

- (a) Payment for the coverage is not received on a timely basis;
- (b) The maximum continuation period ends;
- (c) They become covered by another group plan through employment;
- (d) They become entitled to Medicare benefits; or
- (e) The MPO ceases to provide the coverage for any employee.

The qualified beneficiary must give written notice to the insurance carrier within 63 days after the occurrence of a qualifying event.

The insurer, not the MPO, is responsible for complying with the laws notice requirements. Concerned employees and retirees should contact the Executive Director or designee for additional detailed information concerning cost, election, conversion and notice provisions.

Continuation of benefit provisions are subject to changes in state or federal law.

4.6 Pension Plan

Employees are members of the Florida Retirement System (FRS) pension plan. For plan benefits employees are directed to review the information available on the FRS web site or to contact the FRS Pension Plan Administrator. Should FRS be amended to authorize mandatory or permissive employee contributions, the MPO intends to require and/or permit its employees to make such contributions to the FRS pension plan.

4.7. Employee Assistance Program

The MPO does not offer an employee assistance program at this time.

4.8 Professional Organizations

The MPO will pay the cost of membership in professional organizations if that membership is necessary to achieve MPO tasks and goals, at the discretion of the Director.

4.9 Workers' Compensation

All MPO employees are covered under Workers' Compensation. Such coverage begins immediately upon employment. All injuries, no matter how minor they appear, must be reported to the employee's immediate supervisor.

If an on-the-job injury requires medical treatment, it must be reported immediately to the Director, or designee, who will complete the necessary paperwork to be submitted to the designated insurance company who will process it with the State Bureau of Workers' Compensation.

If the work related injury requires the employee to miss work for an extended period of time, Workers Compensation benefits are available to the affected employee. Florida Statute 440.12(1) provides that no Workers' Compensation payments are allowed for the first seven (7) days of a disability claim; however, if the injury results in disability of more than twenty-one (21) days, compensation shall be allowed from the commencement of the disability. Florida Statute 440.12(2) defines the claim benefit available. Employees do not earn PTO while on Workers' Compensation. In addition, payroll deductions are not allowed while on Workers' Compensation. Employees should make arrangements to pay for benefits normally provided through payroll deductions or these benefits may be lost (health insurance, etc.).

Employees returning to work from an industrial disability must present written evidence from their physician which gives the medical diagnosis of the industrial disability and certifies their ability to resume their duties.

SECTION 5: LEAVES OF ABSENCE

5.1 Paid Time Off (PTO)

Regular full-time and regular part-time employees earn Paid Time Off (“PTO”). Temporary employees, contract employees, interns and part-time employees are not eligible to earn personal leave. PTO is intended for vacations, illnesses other than those covered by long-term disability and other needs. PTO leave shall be accrued on an hourly basis per bi-weekly pay period based on the number of years in the FRS without a break in service. The following accrual rates apply:

Continuous and Credible Service Paid Time Off per Bi-Weekly Pay Period

Up to five (5) years Eight (8) hours

Five (5) years to ten (10) years Nine (9) hours

Over ten (10) years Ten (10) hours

PTO off is earned based on hours worked, as leave must be fully earned and posted to the employee’s account before it can be taken. Thus, employees cannot take leave in the same pay period in which the leave is earned.

1) MPO Employees may use credited PTO for any purpose (i.e., vacation, hospitalization, illness, family emergency, personal business, etc.). Employees may take only that amount of leave that has been credited to them. Use of uncredited personal time off will not be authorized even though the leave would have posted by the end of the pay period. Leave will be accrued per pay period.

2) MPO employees shall notify the Director of their absence due to illness within the first 30 minutes of the scheduled work day.

3) MPO employees who have been absent for an extended period of time due to illness may be required to present correspondence from a physician stating that they are able to return to work and under what conditions/limitations, if any.

4) Precedence in choosing a vacation period should be governed normally by job seniority but must be at a period approved by the Director in keeping with the needs of the Lee County MPO.

5) Normally vacation is limited to no more than two (2) consecutive weeks. Special approval of the Director is needed for PTO that will exceed two (2) consecutive weeks and must be coordinated to ensure the efficient operation of the Lee County MPO.

6) Holidays occurring while an employee is on PTO are to be counted as holidays, not personal leave.

8) Employees retiring from the Lee County MPO shall be paid for his/her credited leave that has accrued up to their last day of employment up to a cap of 200 hours.

10) Inclement weather conditions, fires or power failures that result in the employee being late or absent from work will result in use of PTO unless the entire office is closed or opening late. When the office is officially closed due to emergency conditions, the time off from scheduled work will be paid without requiring the use of PTO.

11) Religious Holidays may be observed by employees if the PTO is approved by the Director.

12) In case of death of an employee, payment for unused personal time off up to a cap of 200 hours shall be made to the employee's beneficiary, estate or as provided by law.

13) It shall be the Office Manager's responsibility to keep accurate and up-to-date personal leave records on each employee. Annotations for personal leave used must also be made by the employee on their timesheets.

14) Employees may accrue up to 200 PTO hours by the end of the fiscal year (June 30). Any PTO over 200 hours will be lost if not used by the end of the fiscal year (June 30).

Employees who terminate prior to completing six (6) months will not be paid for any accrued personal time off. An employee does not accrue personal time off for any period in which said employee is on any unpaid status. Employees start to accrue PTO after the first 30 days of employment.

5.2 Jury Duty

MPO employees called for jury duty shall notify the MPO Director of same, and shall be paid their regular earnings while serving on jury duty.

5.3 Family and Medical Leave

The MPO recognizes that a MPO employee may need to be absent from work for family and/or medical reasons. Although the MPO does not employ the requisite number of employees (i.e., 50 employees) necessary for its employees to be entitled to protected leave under the federal Family and Medical Leave Act (FMLA), the MPO intends to grant unpaid leaves in accordance with the requirements of applicable state and federal laws including FMLA in effect at the time the leave is granted.

A. Eligibility

To be eligible for a leave of absence under the FMLA, a MPO employee must: (a) have been employed by the MPO for at least 12 months; and (b) have worked at least 1,250 hours in the previous 12 months.

Only hours actually worked are counted towards the 1,250-hour requirement. Paid leave of any kind does not constitute "hours worked."

B. Reasons for Taking Leave

A MPO employee may request FMLA leave for any of the following reasons:

- (a) to care for your child after birth or after a child is placed with you for adoption or foster care within the 12 months following birth or placement;
- (b) to care for your spouse, son or daughter, or parent, who has a serious health condition; or
- (c) for your own serious health condition which makes you unable to perform your job duties.

C. Serious Health Condition

“Serious health condition” is defined by law and includes, but is not limited to:

- (a) Any period of incapacitation or treatment connected with inpatient care i.e., an overnight stay in a hospital, hospice or residential medical care facility, and any period of incapacitation or subsequent treatment in connection with such inpatient care;
- (b) “Continuing treatment” by a healthcare provider, which includes a period of incapacitation (i.e., inability to work, attend school or perform other regular daily activities of four or more consecutive calendar days); or
- (c) Any period of incapacitation due to pregnancy or for prenatal care.

Conditions such as the common cold, the flu, ear aches, upset stomachs, minor ulcers, muscle strains or soreness, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions which generally do not satisfy the definition of “serious health condition” absent additional medical complications.

D. Length of Leave Allowed

The maximum time a MPO employee is allowed to take leave, if eligible, is 12 workweeks in a 12-month period. The MPO will use a “rolling” 12-month period measured backward from the date the Employee begins a leave to determine how much leave time is available to such Employee, unless another calculation is required by law. Under some circumstances, MPO employees may take family/medical leave intermittently, which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule. For purposes of record keeping, FMLA leave requests shall be for a period of not less than one (1) hour increments, and additional increments shall be in not less than one (1) hour.

E. Medical Certification

The MPO requires medical certification if a MPO employee requests leave because of his/her own or a family member’s serious medical condition. The MPO may also require a second or third medical opinion regarding the Employee’s own serious health condition at the MPO’s expense.

F. Job Benefits and Protection

During an approved leave under this section, a MPO employee must continue to pay his/her portion of any premium payments for medical, vision, dental, life and long-term disability insurance for his/herself or his/her dependents on the same terms as if the Employee had continued working. If a MPO employee does not return to work from a leave allowed by this policy, such MPO employee will be required to repay to the MPO the premium amounts that the MPO paid during the MPO employee's leave and the MPO is entitled to take legal action to recover such payments if necessary.

G. Reinstatement

Under most circumstances, upon submitting an acceptable healthcare provider release to return to work from family/medical leave, a MPO employee will be reinstated to the same job, or to an equivalent job with equivalent pay, benefits and other employment terms and conditions. However, a MPO employee has no greater right to continued employment or reinstatement than if the MPO employee had been continuously employed. For example, employment may be terminated in conjunction with layoff or job elimination during a leave the same as if the MPO employee was not on a leave.

Leave granted under any of the reasons provided by state and federal law will be counted as family/medical leave and will be considered part of the 12 workweek leave entitlement.

A MPO employee taking leave under this section shall notify the Executive Director at least two weeks prior to the end of such leave of his/her availability to return to work. A MPO employee's failure to return from a leave or to contact the Executive Director on the scheduled date of return may be considered an employee-initiated termination.

H. Pay Status During Leave

Leave under the FMLA is unpaid. MPO employees shall be required to exhaust available accrued paid leave as part of the 12 weeks provided by the FMLA. The MPO has the right to inquire of any MPO employee the purpose underlying use of paid leave in order to determine if the leave is being used for an FMLA qualifying purpose. A MPO employee must make a reasonable effort to schedule foreseeable FMLA leave so as to avoid unduly disrupting the MPO's operations. Any leave taken under a disability plan (whether present or future) for an FMLA qualifying reason shall also be counted against the MPO employee's 12-week entitlement under the FMLA. It is the MPO's responsibility in most circumstances to designate leave, whether paid or unpaid, as FMLA-qualifying leave based on information provided by the Employee before or during the leave period. Consequently, the MPO Executive Director, or designee, may request substantiating documentation from the Employee in order to determine whether the employee qualifies for FMLA leave. Under limited circumstances, the MPO may designate paid leave as FMLA leave shortly after an Employee's return to work.

I. Requesting Family and Medical Leave

MPO employees should contact the Executive Director as soon as they become aware of the need for family/medical leave.

The following procedure will apply when requests for family/medical leave are made:

(a) If the event necessitating the leave becomes known to the Employee more than 30 calendar days before the need for leave, the MPO employee must provide notice as soon as they learn of the need for leave, and the leave request must be submitted in writing at least 30 days before the time the leave is needed.

If the need for leave is not foreseeable, the MPO employee must provide as much advance notice as possible, with a written notice no later than five working days after learning of the need for leave.

If the leave is needed for a planned medical treatment or supervision, the MPO employee must make a reasonable effort to schedule the treatment or supervision to avoid disruption to the MPO's operations, subject to the approval of the healthcare provider of the individual requiring the treatment or supervision.

Failure to provide reasonable notice when need for leave is foreseeable may result in the denial of leave for a reasonable period.

(b) If the leave is needed to care for a sick child, spouse, or parent, or if leave is needed because of your serious health condition, the Employee must return a completed certification of Health Care Provider form within 15 calendar days. If a completed form is not returned within 15 days, then the leave will be denied.

(c) In cases where both spouses are employed by the MPO and the leave requested is for the birth, adoption or foster care of a child, the MPO will not grant more than 12 workweeks total of family/medical leave.

The MPO may require recertification from the healthcare provider in certain circumstances.

The MPO will require certification by the MPO employee's healthcare provider that the MPO employee is fit to return to their job. Failure by the MPO employee to provide certification by the healthcare provider of the Employee's fitness to return to work will result in the Employee's being denied reinstatement until such time as the certification is obtained.

The MPO will review the request for approval. Decisions will take into account staffing, seasonal deadlines, economic conditions, scheduling, as well as other operational considerations.

J. Additional Military Leave Entitlement (Injured Service member Leave)

In addition to the basic FMLA leave entitlement discussed above, an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member is entitled to take up to 26 weeks of leave during a single 12 month period to care for the service member with a serious injury or illness. Leave to care for a service member shall only be available during a single 12 month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12 month period. The single 12 month period begins on the first day an eligible employee takes leave to care for the injured service member.

A “covered service member” means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary retired list, for a serious injury or illness as defined in the FMLA regulations.

5.4 Leave for Victims of Domestic Violence

An employee who is a victim of domestic violence or has a family or household member who is a victim of domestic violence may take up to three working days of paid leave time within a 12- month period. Family or household member is defined as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married.

Employees may use the leave time to:

- (a) seek an injunction for protection against domestic violence or an injunction for the protection in cases of repeat violence, dating violence, or sexual violence;
- (b) obtain medical care and/or medical health counseling for the employee, a family member, or household member to address physical or psychological injuries resulting from domestic violence;
- (c) obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence; and/or
- (d) make the employee's home secure from the perpetrator or seek new housing or escape the perpetrator.

5.5 Military Leave

Leave for active military service or for active state duty (“Active Military Leave”) shall be granted in accordance with Chapter 115, Florida Statutes, and the Uniformed Services Employment and Reemployment Rights Act (the “USERRA”). Active military service as used herein shall signify active duty with any branch of the Florida defense force or federal service in training or on active duty with any branch of the Armed Forces or Reservists of the Armed Forces, the Florida National Guard, the Coast

Guard of the United States, or other services as provided in Sections 115.08, 115.09 and 115.14, Florida Statutes.

MPO employees who are ordered to active military service shall be granted leave beginning with the date they are ordered to active military service, and ending on the date they are required under the USERRA to apply for re-employment.

Active Military Leave shall be with full pay and benefits for the first thirty (30) calendar days.

The MPO shall continue to provide all health insurance and other existing benefits to employees on Active Military Leave as required by the USERRA.

An eligible employee who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or member of the National Guard is entitled to leaves of absence from his/her respective duties, without loss of pay, for the first seventeen (17) working days of that training period in a calendar year in accordance with section 115.07, Florida Statutes. Any absence for training purposes in excess of seventeen (17) working days shall be charged to appropriate accrued paid leave, or to leave without pay if an employee has no such leave accumulated.

LEE COUNTY MPO

ACKNOWLEDGEMENT/RECEIPT OF PERSONNEL POLICY MANUAL

I have this day received a copy of the Lee County MPO Personnel Manual and I understand that I am responsible for reading the policies and practices described within. I understand that this Personnel Manual replaces any and all prior policies and practices of the MPO.

I agree to abide by the policies and procedures contained therein. I understand that the policies and benefits contained in this Policy Manual may be added to, deleted, or changed by the Lee County MPO at any time. I understand that neither this Personnel Manual nor any other written or verbal communication by a management representative is intended to in any way create a contract of employment, and that this Policy Manual is for informational purposes only.

I also understand that the MPO abides by employment-at-will, which permits the MPO or the employee to terminate the employment relationship at any time, for any reason, with or without notice. The MPO will not modify their policy of employment-at-will in any case.

I understand that I am responsible for reading and following these procedures.

If I have any questions regarding the content or interpretation of this Personnel Manual, I will bring them to the attention of the Director.

NAME (Print)_____

DATE_____

EMPLOYEE SIGNATURE_____

REVIEW AND APPROVE THE MPO DIRECTOR CONTRACT

RECOMMENDED ACTION: Review and Approve the contract for the MPO Director.

The MPO Director has been working with the MPO Chair in the creation of the MPO Director's contract between the MPO Director and the MPO Board. Currently the MPO Director is an RPC employee per the Staff Services Agreement but reports to the MPO Board. Once the Staff Services Agreement is severed the MPO Executive Director will report to the MPO Board. The MPO Director will e-mail a draft contract for the Executive Committee's review and input prior to the Executive Committee meeting.

REVIEW AND APPROVAL OF THE REQUEST FOR PROPOSALS (RFP) FOR AUDIT SERVICES

RECOMMENDED ACTION: Review and Approve the RFP for Audit Services for the separation of the MPO from the RPC.

The attached RFP is for an Auditor to assist the MPO in the separation of the MPO from the RPC. The RFP is currently being reviewed by FDOT and FHWA but we are seeking any input that the Executive Committee may have on the scope and the selection criteria to be followed (the Executive Committee will serve as the selection committee).

**LEE METROPOLITAN PLANNING ORGANIZATION
REQUEST FOR PROPOSALS (RFP No. MPO-2011-02)**

The Lee County Metropolitan Planning Organization (MPO) is accepting proposals from qualified certified public accounting firms to perform an audit in support of the separation of the MPO from the Southwest Florida Regional Planning Council (RPC) and for support services related to establishing the MPO's separated financial accounting system. This audit shall be done in accordance with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 et. seq., OMB Circular A-133 [49 CFR 18.26], "Audits of State, Local Government, and Non-Profit Organizations," Section 215.97, F.S. "Florida Single Audit Act" and Rules 10.550 and 10.650. Information concerning this RFP, including the proposed contract and scope of services is attached or can be found viewed at www.mpo-swfl.org.

EQUAL OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM STATEMENT:

The MPO does not discriminate on any basis, as required by 49 USC 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex or age in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended 42 USC 2000d to 2000d-4, and Title 49 CFR, Part 21. The MPO ensures, in accordance with 49 CFR Part 26 that certified FDOT Disadvantaged Business Enterprise Program (DBE) participants have an equal opportunity to receive and participate in FDOT assisted contracts.

TO RESPOND: Firms, qualified to conduct business in the State of Florida, are required to submit a Technical proposal to the MPO office by 3:00 p.m. EST. Proposals must be marked "RESPONSE FOR MPO AUDIT SERVICES". Proposals received after the deadline will not be considered. Questions concerning the RFP must be submitted to: Meghan Marion at mmarion@swfrpc.org.

MPO Mailing Address:
Attention: Meghan Marion
Lee County Metropolitan Planning Organization
1926 Victoria Avenue
Fort Myers, FL 33901
Telephone: (239) 338-2550 Ext. 219

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LEGAL NOTICE

SEALED PROPOSALS TO PROVIDE AUDIT SERVICES WILL BE RECEIVED BY THE LEE COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO), 1926 VICTORIA AVENUE, FORT MYERS, FLORIDA 33901, UNTIL 3 P.M. (LOCAL TIME), JANUARY 4, 2012. THE LEE MPO RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS.

RFP # MPO 2011-02

“RESPONSE FOR MPO AUDIT SERVICES” SHALL BE MADE UPON THE OFFICIAL PROPOSERS QUALIFICATION FORM THAT MAY BE HAD BY QUALIFIED CONSULTANTS AND OBTAINED FROM MS. MEGHAN MARION, DESIGNEE FOR THE LEE COUNTY MPO, 1926 VICTORIA AVENUE, FORT MYERS, FLORIDA 33901.

INVITATION TO PROPOSE: THE MPO HEREBY SOLICITS OFFERS FOR PROFESSIONAL SERVICES FOR AUDIT SERVICES.

REQUESTS FOR RFP INFORMATION AND INSTRUCTION: ALL REQUESTS FOR INFORMATION AND INSTRUCTIONS FOR SUBMITTING A PROPOSAL MUST BE DIRECTED TO MS. MEGHAN MARION, LEE COUNTY MPO DESIGNEE. MATERIALS WILL BE SENT BY REGULAR MAIL TO THE REQUESTOR WITHIN TWO BUSINESS DAYS. MATERIALS WILL BE SENT BY FEDERAL EXPRESS OR CERTIFIED MAIL IF REQUESTED, AT THE EXPENSE OF THE REQUESTOR.

HOW TO APPLY: REQUESTS FOR PROPOSALS (RFP) MAY BE OBTAINED BY CONTACTING: MS. MEGHAN MARION, LEE MPO DESIGNEE, 1926 VICTORIA

AVENUE, FORT MYERS, FLORIDA 33901; TELEPHONE NUMBER (239) 338-2550
EXT. 219.

THIS PUBLIC NOTICE WAS POSTED IN THE LOBBY OF THE SOUTHWEST
FLORIDA REGIONAL PLANNING COUNCIL AND LEE COUNTY MPO, 1926
VICTORIA AVENUE, LEE COUNTY ON WEDNESDAY, DECEMBER 14, 2011. THE
LEE COUNTY MPO DOES NOT DISCRIMINATE BASED ON AGE, RACE, COLOR,
SEX, RELIGION, NATIONAL ORIGIN, DISABILITY OR MARITAL STATUS.

I. PURPOSE:

The purpose and intent of this Request for Proposal (RFP) is to enter into a contract with a qualified independent certified public accountant (hereinafter called the "Auditor") to perform a financial audit for the Lee County MPO for the separation of the finances from our current staff services provider, the Southwest Florida Regional Planning Council, and assistance with the start up of separate financial services.

II. SCOPE OF WORK TO BE PERFORMED:

- A. The MPO separation audit shall be done consistent with provisions outlined in OMB Circular A-133 and Section 215.97 of the Florida Statutes and Chapters 10.550 (local governmental entities) or 10.650 (non-profit organizations). The separation audit is needed to determine the balance of funds that the MPO will receive for MPO local funds, Lee County Transportation Disadvantaged funds, MPO Planning funds along with fringe benefits paid in advance (such as employee leave time) that have been accumulated over the years. In addition, the audit shall determine what, if any, funds shall be reimbursed to the MPO's programs based on the depreciated value for items that have been purchased using indirect funds and who those funds need to be reimbursed to. As part of this analysis, the Auditor shall determine the appropriateness of expenditures charged to Federal Funds as guided by OMB A-87.

The MPO has been attached to the Regional Planning Council since 1977 under a staff services agreement, as amended, which is being severed with an ending date of March 16, 2012. The MPO funding is primarily federal funds and the MPO expends funding and then is reimbursed on a monthly basis. The MPO is in the process of becoming a fully independent agency which will be housed in a different location.

- B. Meetings and Conferences between the Auditor, MPO staff and/or it's representatives should be scheduled by the selected Auditor before the preliminary work and at the end of the data collection. The purpose of the meetings is to keep the MPO fully informed on the scope and progress of the

audit. A draft of the final report shall be furnished to representatives of the MPO for comments.

- C. **Submission of Reports:** The firm shall provide, at regular intervals, reports on results of the separation audit along with recommendations on setting up the financial services at the new office. In addition, the auditor shall provide the Lee MPO Executive Board 8 copies of the financial statements and Auditor's report therein and management letter including management responses no later than June 8, 2012.
- D. The Auditor should submit a management letter including management's response with the result of the separation audit. The letter should offer recommendations and suggestions for improvement in financial management and internal controls that can be used to help the MPO guide its operations as an independent entity.
- E. As guided by AICPA Auditing Standards Board Statement on Auditing Standard No. 68, the Auditor should exercise due professional care in understanding the type of engagement and also requiring that if during the audit, the auditor becomes aware that the MPO is subject to audit requirements which may not be encompassed in the terms of the engagement he or she should communicate to the MPO's Executive Committee that the audit may not satisfy the requirements.

III. ASSISTANCE TO BE PROVIDED TO THE AUDITOR:

- A. The audits of the RPC (that have included the MPO funding) for the last five years shall be provided to the auditor as well as a breakdown of what the MPO has spent over that time period.
- B. The MPO will provide trial balances of MPO funds, the MPO's budgets for the last five years, a breakdown of the indirect expenses for the last five years, the indirect and fringe rates for the last five years, MPO employee information and MPO equipment list along with funding used.
- C. **Other Assistance:** The staff of the MPO and responsible management personnel will be available during the audit to assist the Auditor by providing information and explanation.

GENERAL CONDITIONS AND INSTRUCTIONS TO PROPOSERS

PROPOSAL SUBMISSION: The proposal shall be deemed an offer to provide services to the MPO. In submitting a proposal, the proposer declares that he understands and agrees to abide by all specifications, provisions, terms and conditions of same. The proposer agrees that if the contract is awarded to him, he will perform the work in accordance with the provisions, terms and conditions of the contract.

The proposer shall submit the original properly signed in blue ink and clearly marked "**Original**", and seven (7) copies of the proposal to the MPO in a sealed envelope on

which shall be shown the proposal due date **January 4, 2012** and the name of the proposal (Response for MPO Audit Services) and number assigned to the proposal (*RFP # MPO 2011-02*).

The proposal format shall be 20 single sided, letter-sized pages, exclusive of resumes, staffing charts and required forms. Font size will be restricted to Ariel, 10 pitch or larger. The length of the resumes should also be limited to a maximum of two pages per person.

By submitting a proposal, the proposer declares that he understands and agrees that this proposal, and the specifications, provisions, terms and conditions of same, shall become a valid contract between the MPO and the undersigned upon notice of award of contract in writing and /or issuance of a purchase order by the MPO.

The MPO assumes no responsibility for proposals received after the due date and time, or at any office or location other than that specified herein, whether due to mail delays, courier mistakes, mishandling, inclement weather or any other reason. Late proposals will be returned, unopened, and will not be considered for award.

PRINCIPAL/COLLUSION: By submission of this Proposal, the undersigned, as proposer, does declare that the only person or persons interested in this Proposal as principal or principals is/are named therein and that no person other than therein mentioned has any interest in this Proposal or in the contract to be entered into; that this Proposal is made without connection with any person, company or parties making a Proposal, and that it is in all respects fair and in good faith without collusion or fraud.

PROPOSAL WITHDRAWAL: No Proposal can be withdrawn after it is filed unless the proposer makes his request in writing to the MPO Designee **prior** to the time set for the opening of Proposals (3:00 p.m., January 4, 2012) or unless the MPO fails to accept it within thirty (30) days after the date fixed for opening.

PROPOSER'S CERTIFICATION: Submission of a signed Proposal is proposer's certification that the proposer will accept any awards made to him as a result of said submission of the terms contained therein.

EXCEPTIONS TO INSTRUCTIONS OR CONDITIONS: Proposers taking exception to any part or section of these instructions or conditions shall indicate such exceptions on their Proposal. Failure to indicate any exceptions shall be interpreted as the proposer's intent to fully comply with the specifications as written.

LAWS AND REGULATIONS: It shall be understood and agreed that any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

RELATION OF COUNTY: It is the intent of the parties hereto that the successful proposer shall be legally considered as an independent contractor, and that neither he nor his employees shall, under any circumstances, be considered servants or agents of the Southwest Florida Regional Planning Council, Lee County or the MPO, and that the Council, County and the MPO shall be at no time legally responsible for any negligence on the part of said successful proposer, his servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

TERMS: All terms, conditions, and provisions of the contract must be strictly observed in addition to the general conditions herein described.

INVOICES: Payments will be made for articles furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within a reasonable time thereafter. The number of the Purchase Order by which authority services have been made, shall appear on all invoices. Invoices shall be submitted in duplicate and with an attached progress report detailed by task.

EXPENSES INCURRED IN PREPARING PROPOSAL: The MPO does not accept responsibility for any expenses incurred in the Proposal, preparation, or presentation; such expenses to be borne exclusively by the proposer.

DEFAULT: Failure or refusal of a proposer to execute a contract upon award, or withdrawal of a Proposal before such award is made, shall be grounds for removal of the Auditor's name from the MPO's vendor file.

TERM CONTRACTS: If funds are not appropriated for continuance of a term contract to completion, cancellation will be accepted by this successful proposer on thirty (30) days prior written notice.

TERMINATION: Should the contractor be found to have failed to perform his services in a manner satisfactory to the MPO as per Specification, the MPO may terminate this Agreement immediately for cause; further the MPO may terminate this Agreement for convenience with a seven (7) day written notice. The MPO shall be sole judge of non-performance.

LIABILITY: Successful proposer will not be held responsible for failure to complete contract due to causes beyond its control, including, but not limited to, work stoppage, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences making performance impossible or illegal.

QUALIFICATION OF PROPOSERS: Before the award of any contract, each proposer may be required to show (to the complete satisfaction of the MPO Staff Director, or his designee), that he has the necessary facilities, ability, and financial resources, to furnish the service as specified herein in a satisfactory manner, and he may also be required to show past history and references which will enable the MPO Staff Director, or his designee, to satisfy themselves as to the qualifications. Failure to qualify according to the foregoing requirements will justify the MPO in rejection of a Proposal.

ASSIGNMENT: The successful proposer(s) shall not assign, transfer, convey, sublet or otherwise dispose of this contract, or of any or all of its rights, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the MPO.

AWARD CHALLENGE: All costs accruing from a Proposal or an award challenged as to quality, etc. (tests, etc.) shall be assumed by the challenger.

LOBBYING: All firms are hereby placed on **NOTICE** that the MPO does not wish to be lobbied, either individually or collectively, about a project for which a firm has submitted

a Proposal. Firms and their agents are not to contact members of the MPO for such purposes as meeting or introduction, luncheons, dinners, etc. During the process, **from Proposal closing to final approval**, no firm or its agent shall contact any employee of the MPO in reference to this Proposal, with the exception of the designee(s). Failure to abide by this provision may serve as grounds for disqualification for award of this contract to the firm.

PROPOSAL FORM: Each proposer must submit the Proposers Qualification Form included in this Request for Proposal.

SINGLE PROPOSAL: Only **one** proposal from a legal entity will be considered. If it is found that a proposer is interested in more than one proposal, all proposals in which such a proposer is interested will be rejected.

SIGNATURE OF PROPOSER: The proposer must sign the proposal in the spaces provided for signatures. If the proposer is an individual, the words "Sole Owner" shall appear after his signature. If the proposer is a partnership, the word "Partner" shall appear after the signature of one of the partners. If the proposer is a corporation, the signature required is the Officer, Officers or Individual duly authorized by its by-laws or the Board of Directors to bind the corporation with official corporate seal affixed thereto.

INTERPRETATION OF PROPOSAL DOCUMENTS AND INVESTIGATION OF PROJECT: Each proposer shall thoroughly examine the Proposal Documents, and judge for himself all matters relating to the location and the character of the services he agrees to perform. If the proposer should be of the opinion that the meaning of any part of the Proposal Document is doubtful, obscure or contains errors or omissions, he should report such opinion or opinions to the MPO Designee.

Neither the MPO Director nor his staff shall be responsible for oral interpretation given either by himself or members of his staff. The issuance of a written addendum shall be the only official method whereby such interpretation will be given.

REJECTION OR ACCEPTANCE OF PROPOSALS: The right is reserved by the MPO to waive any irregularities in any proposal, to reject any or all proposals, to re-solicit for proposals, if desired, and upon recommendation and justification by the MPO to accept the proposal(s) which in the judgment of the MPO is/are deemed the most advantageous for the public.

Any proposal which is incomplete, conditional, obscure or which contains irregularities of any kind, may be cause for rejection of the proposal. In the event of default of the successful proposer, or his refusal to enter into contract with the MPO, the MPO reserves the right to accept the proposal of any other proposer or to re-advertise using the same or revised documentation, at its sole discretion.

PROTEST PROCEDURES: Any actual or prospective respondent to a Request for Proposal who is aggrieved with respect to the former, shall file a written protest with the Purchasing Agent prior to the opening of the Bid or the due date for acceptance of Proposals. All such protests must be filed with the MPO Designee no later than 11:00 a.m. local time on the advertised date of the acceptance date for the Request for Proposals.

Award recommendations will be posted in the lobby of the MPO and the Southwest Florida Regional Planning Council. Any actual or prospective respondent who desires formally to protest the recommended contract award must file a notice of intent to protest with the MPO Designee within two (2) calendar days (excluding weekends and Council holiday) of the date that the recommended award is posted. Upon filing of said notice, the protesting party will have five (5) days to file a formal protest and will be given instructions as to the form and content requirements of the formal protest.

PUBLIC ENTITY CRIME: A person or affiliate who has been placed on the convicted vendor list following a conviction for 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, or subcontractor under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

REQUESTS FOR ALTERNATIVE FORMAT: The Request for Proposal is available in alternative formats upon request. It can be provided on CD in MS Word for Windows. If a Proposer elects to obtain the proposal in an alternative format, he must still obtain a paper copy of the proposal document through the MPO Designee, so that there are no debates about how much time there was to prepare the response. Contact Ms. Meghan Marion at (239) 338-2550 ext. 219 for details.

REQUESTS FOR CLARIFICATION: Written questions must be received no later than seven (7) working days prior to proposal acceptance date. Should any questions or responses require revisions to the Request for Proposal as originally published, such revisions will be by formal amendment only. Other than minor procedural matters, questions regarding this proposal must be in writing and submitted to:

Ms. Meghan Marion, MPO Designee
Lee County MPO
1926 Victoria Avenue
Fort Myers, Florida 33901
(239) 338-2550 ext. 219

GENERAL INFORMATION: Competitive sealed proposals differ from competitive sealed bidding in several areas:

- a.) The criteria for evaluation of proposals are given under the paragraph titled Grading Criteria. Only these criteria will be used to determine the best response.
- b.) Awards shall be made to the Proposer whose qualifications and responses are determined to be in the best interest of the Lee County MPO.

EVALUATION AND SELECTION PROCEDURE

The Lee County MPO procedure for selecting Consultants through the RFP process is as follows:

1. The MPO's Executive Committee will serve as the Selection Committee.
2. Request for Proposals issued.
3. Receipt of Proposals.
4. Subsequent to the closing of proposals, the MPO Designee and the Project Manager shall review the proposals received and verify whether each proposal appears to be minimally responsive to the requirements of the published RFP.
5. Prior to the first meeting of the selection committee, the MPO Designee will post a notice announcing the date, time, and place of the first committee meeting. Said notice shall be posted in the lobby of the Southwest Florida Regional Planning and the Lee County MPO offices no less than three (3) working days prior to the meeting. The MPO shall also post prior notice of all subsequent committee meetings and shall endeavor to post such notices at least one (1) day in advance of all subsequent meetings.
6. The committee members shall review each Proposal individually and score each proposal based on the evaluation criteria in Section 5.
7. The MPO Designee will compile individual rankings for each proposal to determine committee recommendations. The committee may at their discretion, schedule presentations or interviews from the top ranked firm(s). Once the final ranking has been compiled, the Selection Committee will choose the short listed firms based on consensus and not necessarily by the final ranking order of the firms. The final recommendation will be decided based on review of scores and rankings, discussion, and consensus of the committee.
8. Subsequent to a consensus decision, a contract shall be negotiated with the top ranked firm(s). Award of the contract is dependent upon successful and full execution of a mutually agreed contract.

GRADING CRITERIA

Each member of the Selection Committee must base their evaluation on the same criteria so that value uniformity can be established.

The following guidelines will be used for the evaluations.

1. **Firm's Credentials (Maximum 19 Points)** - Proposer shall include a description of the proposer's business history and number of years in operation. Proposer shall include number of employees, when firm was established, principals of firm, and any other related information.
2. **Qualifications of Person(s) Assigned to Project and Understanding of the Work to be Performed (Maximum 25 Points)** - Rating will be based on the ability of individuals on the proposed firm team to perform the scope of services. Provide a narrative describing the role of and introducing each key individual in your firm's organization.

Should other firms be listed as a part of the proposer's team, the proposer shall provide a letter from each of those firms that indicates their intent to be a part of the team. Proposals submitted without the referenced letter(s) may result in those qualifications being eliminated from the review process

Provide a description of your understanding of the work that needs to be done and the approach that will be taken to provide the audit services requested.

The typical rating for a proposer with personnel dedicated to the specific type of work proposed will receive a rating of 15 points. Additional points will be given up to the maximum allotted for this item for previous work connecting to, or directly related to, the proposed audit services; unparalleled experience and expertise of key personnel that are proposed to be working on the project .

3. **Previous Performance on Similar Jobs (Maximum 20 Points)** - Ratings will be based on the firm's experience and performance on similar projects and reference checks.

The firm shall have a minimum of five (5) years acceptable professional experience with audits of similar size and scope. The proposer shall describe experience on these audits including tasks performed, and related information.

The typical rating for a firm with significant experience and satisfactory performance on related audits is 10 points. Additional points will be given up to the maximum allotted for this item for substantial experience on the same type of audit and outstanding performance on previous audits. Little or no experience on this type of audit will receive fewer points.

4. **Ability to Complete on Time and Within Budget (Maximum 25 Points):** Rating will be based on the proposer's approach to schedule control, proposer's current and projected workload, and available labor resources. Describe the firm's approach to ensuring that the audits are completed on time and within the allotted budget. Evidence of final project cost versus budget shall be presented.

The typical rating for this item is 15 points. Additional points will be given up to the maximum allotted for this item for proposer's extraordinary ability to allocate necessary resources, the priority that Lee MPO work will receive, and a superior approach to schedule and cost control. Information from previous projects may be submitted. Reference checks on previous projects may be reviewed, with points added for completing work on time, and points deleted for failure to complete work on time.

5. **References (6 points):** Furnish at least three (3) project references with contact names, titles, telephone numbers, email and mailing addresses.
6. **Minority Business Enterprise (MBE) (5 points):** It is a goal of the Lee County MPO to award (8) percent of the contracts to Minority or Women Owned Business Enterprises. To achieve this goal, the MPO will always give consideration in selection DBE/MBE firms.

Total Maximum Available Points 100

ADDITIONAL SUBMITTALS

1. Provide the Insurance Requirements Certification
2. Proposer's Qualification Form
3. Proposer Checklist
4. Proposer Declaration Statement
5. Conflict of Interest Statement
6. Project Proposal Transmittal Letter

The proposer may provide information in addition to the information requested. However, the additional information shall be placed at the end of the proposer's submittal in a section separated from the remainder of the proposal. For additional detail, exhibits may be referenced when completing the Proposers Qualification Form.

CONTRACTUAL CONDITIONS

All respondents to the RFP will be required, if selected to perform the work, to execute a service agreement within fifteen (15) days of Notice of Selection Award.

PROPOSER'S QUALIFICATIONS

All proposers must be primarily engaged in providing the services as outlined in the Scope of Services.

All proposers must have a demonstrated comprehensive understanding in areas listed in this proposal. Understanding and previous experience are a very essential criteria in the qualifying process.

The MPO reserves the right to check all references furnished and consider the responses received in evaluating the proposals.

The proposer's personnel and management to be utilized in this service requirement shall be knowledgeable in their areas of expertise. The MPO reserves the right to perform investigations as may be deemed necessary to ensure that competent persons will be utilized in the performance of the contract.

REQUIRED SUBMITTALS

Qualified firms interested in providing the services described are invited to submit a complete Proposal for consideration. The proposal shall address the items listed below. Failure to provide all requested items might be sufficient cause for non-acceptance of the Proposal.

The proposer shall submit the following additional forms:

State Certification Forms: *Bid Opportunity List, Form No. 275-030-10 and Truth in Negotiation Certificate, Form No. 375-030-30.*

Federal Certification Forms: *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion* as required by *49 CFR, Section 29.510*; and *Certification for Disclosure of Lobbying Activities, Form No. 375-030-33* as required by *49 CFR, Section 20.100(b)*.

PROPOSAL CONTENTS

The proposer may provide information in addition to the information requested; however, the additional information shall be placed at the end of the proposer's submittal in a section separated from the remainder of the proposal. For additional detail, exhibits may be referenced when completing the Proposers Qualification Form.

- 1.) Proposer shall include a description of the proposer's business history and number of years in operation. Proposer shall include number of employees, when firm was established, principals of firm, and any other related information.
- 2.) Provide a narrative describing the role of and introducing each key individual in your firm's organization. Provide a resume for each individual discussed in the submittal. Provide a description of your understanding in the audit services needed and the approach that will be taken to complete the project.
- 3.) Proposer shall provide any information which documents successful and reliable experience in past performance, especially those performances related to the requirements of this Request for Proposal. Provide any information that documents total fees for work done on audits done for similar governmental agencies. Related project experience shall be restricted to those assignments undertaken within the last five (5) years.
- 4.) Describe the firm's approach to ensuring that the projects are completed on time and within budget.
- 5.) Provide a statement of litigation that firm or staff of the firm is currently involved in, or has been involved in over the past five (5) years, stating points of contention and results, if available.
- 6.) Provide at least three (3) references (name, address, and telephone number) where Audit Services have been provided. Provide a description of the project and the role of the firm and key individuals in performing services.
- 7.) Provide the Insurance Requirements Certification

- 8.) Proposer's Checklist
- 9.) Proposer Declaration Statement
- 11.) State Certification Forms: Bid Opportunity List, Form No. 275-030-10 and Truth in Negotiation Certificate, Form No. 375-030-30.
- 12.) Federal Certification Forms: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion as required by 49 CFR, Section 29.510; and Certification for Disclosure of Lobbying Activities, Form No. 375-030-33 as required by 49 CFR, Section 20.100(b).

PROPOSERS QUALIFICATION FORM

1. DESCRIBE THE PROPOSER'S BUSINESS HISTORY, NUMBER OF YEARS IN OPERATION, NUMBER OF EMPLOYEES, WHEN FIRM WAS ESTABLISHED, PRINCIPALS OF FIRM AND RELATED INFORMATION.

2. PROVIDE A NARRATIVE DESCRIBING THE ROLE OF AND INTRODUCING EACH KEY INDIVIDUAL IN YOUR FIRM'S ORGANIZATION.

3. PROVIDE A NARRATIVE DESCRIBING YOUR UNDERSTANDING OF THE AUDIT SERVICES TO BE PROVIDED AND THE APPROACH THAT WILL BE TAKEN TO COMPLETE THE SERVICES. .

4. PROVIDE INFORMATION THAT DOCUMENTS SUCCESSFUL AND RELIABLE EXPERIENCE IN PAST PERFORMANCE.

LIST MAJOR WORK PRESENTLY UNDER CONTRACT:

<u>Project Amount</u>	<u>% Completed</u>	<u>Contract</u>
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	

LIST MAJOR WORK DONE PREVIOUSLY FOR SIMILAR AGENCIES WITHIN THE LAST FIVE YEARS:

<u>Project Amount</u>	<u>% Completed</u>	<u>Contract</u>
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	

LIST CURRENT PROJECTS ON WHICH YOUR FIRM IS THE CANDIDATE FOR AWARD:

OTHER INFORMATION ABOUT AUDITS CONDUCTED:

5. DESCRIBE THE FIRM'S APPROACH TO TIME AND BUDGET MANAGEMENT:

Have you, at any time, failed to complete a project? Yes No

If the answer to the question above is yes, submit details on a separate sheet.

6. PROVIDE A STATEMENT OF LITIGATION THAT THE FIRM OR STAFF IS CURRENTLY INVOLVED IN, OR HAVE BEEN INVOLVED IN OVER THE PAST FIVE (5) YEARS:

Are there any judgments, claims or suits pending or outstanding by or against you? Yes No

If the answer to the question above is yes, submit details on a separate sheet.

LIST ALL LAWSUITS THAT HAVE BEEN FILED BY OR AGAINST YOUR FIRM IN THE LAST FIVE (5) YEARS:

7. PROVIDE AT LEAST THREE (3) REFERENCES WHERE AUDIT SERVICES FOR SIMILAR AGENCIES HAVE BEEN PROVIDED:

OTHER REFERENCES:

Bank(s) Maintaining Account(s):

Surety/Underwriter: (if required)

8. PROVIDE INSURANCE REQUIREMENTS CERTIFICATION:

9. PROVIDE PROPOSERS CHECKLIST:

10. PROVIDE PROPOSER DECLARATION STATEMENT

Pursuant to information for prospective bidders/proposers for the above-mentioned proposed project, the undersigned is submitting the information as required with the understanding that it is only to assist in determining the qualifications of the organization to perform the type and magnitude of work intended, and further, guarantee the truth and accuracy of all statements herein made. We will accept your determination of qualification without prejudice.

Name of Organization: _____

By: _____

Title: _____

Date: _____

Attested By: _____

Title: _____

Date: _____

INSURANCE COVERAGE REQUIREMENTS

(1) The amounts and types of insurance coverage shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If FIRM has any self-insured retentions or deductibles under any of the below listed minimum required coverages, FIRM must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be FIRM'S sole responsibility.

(2) The insurance required by this Agreement shall be written for not less than the limits specified herein or required by law, whichever is greater.

(3) Coverages shall be maintained without interruption from the date of commencement of the Services until the date of completion of all Services required hereunder or as specified in this Agreement, whichever is longer.

(4) Simultaneously with the execution and delivery of this Agreement by FIRM, FIRM has delivered properly executed Certificates of insurance (3 copies) acceptable to the OWNER evidencing the fact that FIRM has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to OWNER, on a timely basis, if requested by OWNER. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the OWNER. FIRM shall also notify OWNER, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits

received by FIRM from its insurer, and nothing contained herein shall relieve FIRM of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by FIRM hereunder, FIRM shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

(5) All insurance coverages of the FIRM shall be primary to any insurance or self insurance program carried by the OWNER applicable to this Agreement.

(6) The acceptance by OWNER of any Certificate of Insurance pursuant to the terms of this Agreement does not constitute approval or agreement by the OWNER that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.

(7) FIRM shall require each of its sub-firms to procure and maintain, until the completion of the sub-firm's services, insurance of the types and to the limits specified in this Section except to the extent such insurance requirements for the sub-firm are expressly waived in writing by the OWNER.

(8) Should at any time the FIRM not maintain the insurance coverages required herein, the OWNER may terminate the Agreement and any Work Orders issued pursuant to the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the FIRM for such coverages purchased. If FIRM fails to reimburse OWNER for such costs within thirty (30) days after demand, OWNER has the right to offset these costs from any amount due FIRM under this Agreement or any other agreement between OWNER and FIRM. The OWNER shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the OWNER to purchase such

insurance coverages shall in no way be construed to be a waiver of any of its rights under the Agreement.

(9) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Services required hereunder or termination of the Agreement or any Work Order, the FIRM shall furnish to the OWNER, in triplicate, renewal or replacement Certificate(s) of Insurance not later than three (3) business days after the renewal of the policy(ies). Failure of the Contractor to provide the OWNER with such renewal certificate(s) shall be deemed a material breach by FIRM and OWNER may terminate the Agreement or any subsequently issued Work Order for cause.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Required by this Agreement? Yes No

(1) Workers' Compensation and Employers' Liability Insurance shall be maintained by the FIRM during the term of this Agreement for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. The amounts of such insurance shall not be less than:

- a. Worker's Compensation - Florida Statutory Requirements
- b. Employers' Liability (check one)

\$500,000 Each Accident
\$500,000 Disease Aggregate
\$500,000 Disease Each Employee

\$1,000,000 Each Accident
\$1,000,000 Disease Aggregate
\$1,000,000 Disease Each Employee

(2) The insurance company shall waive all claims rights against the OWNER and the policy shall be so endorsed.

(3) United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work.

Applicable Not Applicable

(4) Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work.

Applicable Not Applicable

COMMERCIAL GENERAL LIABILITY

Required by this Agreement? X Yes No

(5) Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by the FIRM. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, Contractual Liability for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be maintained for a period of not less than five (5) years following the completion and acceptance by the OWNER of the work under this Agreement. Limits of Liability shall not be less than the following:

<u> </u>	General Aggregate	\$300,000
	Products/Completed Operations Aggregate	\$300,000
	Personal and Advertising Injury	\$300,000
	Each Occurrence	\$300,000
	Fire Damage	\$ 50,000
<u> </u>	General Aggregate	\$500,000
	Products/Completed Operations Aggregate	\$500,000
	Personal and Advertising Injury	\$500,000
	Each Occurrence	\$500,000
	Fire Damage	\$ 50,000
<u> X </u>	General Aggregate	\$1,000,000
	Products/Completed Operations Aggregate	\$1,000,000
	Personal and Advertising Injury	\$1,000,000
	Each Occurrence	\$1,000,000
	Fire Damage	\$ 50,000

(6) The General Aggregate Limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies separately to each of your projects away from premises owned by or rented to you." Applicable

deductibles or self-insured retentions shall be the sole responsibility of FIRM. Deductibles or self-insured retentions carried by the FIRM shall be subject to the approval of the Risk Management Director or its designee.

(7) The OWNER shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the OWNER.

(8) Coverage shall be included for explosion, collapse or underground property damage claims.

(9) Watercraft Liability coverage shall be carried by the FIRM or the SUB-FIRM in limits of not less than the Commercial General Liability limit shown in subparagraph (1) above if applicable to the completion of the Services under this Agreement.

Applicable Not Applicable

(10) Aircraft Liability coverage shall be carried by the FIRM or the SUB-FIRM in limits of not less than \$5,000,000 each occurrence if applicable to the completion of the Services under this Agreement.

Applicable Not Applicable

AUTOMOBILE LIABILITY INSURANCE

Required by this Agreement? Yes No

(11) Automobile Liability Insurance shall be maintained by the CONSULTANT for the ownership, maintenance or use of any owned, non-owned or hired vehicle with limits of not less than:

Bodily Injury & Property Damage - \$ 500,000

Bodily Injury & Property Damage - \$1,000,000

UMBRELLA LIABILITY

(12) Umbrella Liability may be maintained as part of the liability insurance of the CONSULTANT and, if so, such policy shall be excess of the Employers' Liability, Commercial General Liability, and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

(13) The policy shall contain wording to the effect that, in the event of the exhaustion of any underlying limit due to the payment of claims, the Umbrella policy will "drop down" to apply as primary insurance.

PROFESSIONAL LIABILITY INSURANCE

Required by this Agreement? Yes No

(14) Professional Liability Insurance shall be maintained by the CONSULTANT to insure its legal liability for claims arising out of the performance of professional services under this Agreement. CONSULTANT waives its right of recover against OWNER as to any claims under this insurance. Such insurance shall have limits of not less than:

- \$ 500,000 each claim and in the aggregate
- \$1,000,000 each claim and in the aggregate
- \$2,000,000 each claim and in the aggregate
- \$5,000,000 each claim and in the aggregate

(15) Any deductible applicable to any claim shall be the sole responsibility of the CONSULTANT. Deductible amounts are subject to the approval of the OWNER.

(16) The CONSULTANT shall continue this coverage for a period of not less than five (5) years following completion of all Services authorized under this Agreement.

(17) The policy retroactive date will always be prior to the date services were first performed by CONSULTANT or OWNER under this Agreement, and the date will not be moved forward during the term of this Agreement and for five years thereafter. CONSULTANT shall promptly submit Certificates of Insurance providing for an unqualified written notice to OWNER of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In addition, CONSULTANT shall also notify OWNER by certified mail, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in

coverages or limits received by CONSULTANT from its insurer. In the event of more than a twenty percent (20%) reduction in the aggregate limit of any policy, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. CONSULTANT shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by OWNER.

VALUABLE PAPERS INSURANCE

(18) In the sole discretion of the County, on a work order by work order basis, CONSULTANT may be required to purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

PROJECT PROFESSIONAL LIABILITY

(19) If OWNER notifies CONSULTANT that a project professional liability policy will be purchased, then CONSULTANT agrees to use its best efforts in cooperation with OWNER and OWNER'S insurance representative, to pursue the maximum credit available from the professional liability carrier for a reduction in the premium of CONSULTANT'S professional liability policy. If no credit is available from CONSULTANT'S current professional policy underwriter, then CONSULTANT agrees to pursue the maximum credit available on the next renewal policy, if a renewal occurs during the term of the project policy (and on any subsequent professional liability policies that renew during the term of the project policy). CONSULTANT agrees that any such credit will fully accrue to OWNER. Should no credit accrue to OWNER, OWNER and CONSULTANT, agree to negotiate in good faith a credit on behalf of OWNER for the

provision of project-specific professional liability insurance policy in consideration for a reduction in CONSULTANT'S self-insured retention and the risk of uninsured or underinsured consultants.

(20) CONSULTANT agrees to provide the following information when requested by OWNER or OWNER'S Project Manager:

- a. The date the professional liability insurance renews.
- b. Current policy limits.
- c. Current deductibles/self-insured retention.
- d. Current underwriter.
- e. Amount (in both dollars and percent) the underwriter will give as a credit if the policy is replaced by an individual project policy.
- f. Cost of professional insurance as a percent of revenue.
- g. Affirmation that the design firm will complete a timely project errors and omissions application.

(21) If OWNER elects to purchase a project professional liability policy, CONSULTANT to be insured will be notified and OWNER will provide professional liability insurance, naming CONSULTANT and its professional subconsultants as named insureds.

LEE COUNTY METROPOLITAN PLANNING ORGAIZATION
LEE COUNTY, FLORIDA
MPO Designee

PROPOSER CHECK LIST

IMPORTANT: Please read carefully, sign in the spaces indicated and return with your Proposal.

Proposer should check off each of the following items as the necessary action is completed:

- [] 1. The Proposal has been signed.
- [] 2. All information as requested in the Proposal Questionnaire is included.
- [] 3. Any addenda have been signed and included.
- [] 4. The mailing envelope/postal container has been addressed to:

Ms. Meghan Marion, MPO Designee
Lee County Metropolitan Planning Organization
1926 Victoria Avenue
Fort Myers, Florida 33901

- [] 5. The **mailing envelope/postal container must be sealed and marked** with Proposal Number, Proposal Title and Due Date.
- [] 6. The Proposal will be mailed or delivered in time to be received no later than 3:00 p.m. (local time), **January 4, 2012**. (Otherwise Proposal cannot be considered.)

ALL COURIER-DELIVERED PROPOSALS MUST HAVE THE RFP NUMBER AND TITLE ON THE OUTSIDE OF THE COURIER PACKET

Company Name _____

Signature and Title _____

Date _____

PROJECT PROPOSAL TRANSMITTAL LETTER

Lee County Metropolitan Planning Organization
1926 Victoria Avenue
Fort Myers, Florida 33901

Dear Metropolitan Planning Organization:

The undersigned, as proposer (herein used in the masculine, singular, irrespective of actual gender and number) declares that he/she is the only person interested in this proposal or in the contract to which this proposal pertains, and that this proposal is made without connection or arrangement with any other person and this proposal is in every respect fair and made in good faith, without collusion or fraud.

The proposer further declares that he/she has complied in every respect with all the Instruction to Proposers issued prior to the opening of proposals, and that he /she has satisfied themselves fully relative to all matters and conditions with respect to the general condition of the contract to which the proposal pertains.

The proposer puts forth and agrees, if this proposal is accepted, to execute an appropriate document for the purpose of establishing a formal contractual relationship between him/her, and the MPO, for the performance of all requirements to which the proposal pertains.

The proposer states that the proposal is based upon the proposal documents listed by RFP #MPO-2011-02.

IN WITNESS WHEREOF, WE have hereunto subscribed our names on this

_____ day of _____, 2012.

In the County of _____, in the state of _____.

Proposer's Firm or Trade Name

Corporation, Sole Proprietorship, Partnership (Circle One)

BY: _____
Typed and Written Signature

Title

Contract 2011-002

Consultant Services for Audit Services

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the Lee County Metropolitan Planning Organization, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "MPO" or "OWNER") and **CONSULTANT**, authorized to do business in the State of Florida, whose business address is **CONSULTANT ADDRESS** (hereinafter referred to as the "CONSULTANT").

WITNESSETH:

WHEREAS, Section 287.055, Florida Statutes (Consultant's Competitive Negotiation Act), makes provisions for a fixed term contract with a firm to provide professional services to a legal entity, such as the Lee County MPO; and

WHEREAS, **OWNER** has selected **CONSULTANT** in accordance with the provisions of Section 287.055, Florida Statutes, to provide professional **CONSULTANT** services to develop the Rail Feasibility Study as directed by **OWNER**.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1

CONSULTANT'S RESPONSIBILITY

1.1 The CONSULTANT shall provide to OWNER professional **Planning** services (hereinafter the "Services") as herein set forth. The term "Services" includes all Additional Services authorized by written Amendment as hereafter provided.

1.2 All Services to be performed by CONSULTANT pursuant to this Agreement shall be in conformance with the Exhibit A, Scope of Services. The total compensation to be paid to CONSULTANT by OWNER for all Basic Services is set forth in Article Five and Schedule B, "Basis of Compensation", which is attached hereto and incorporated herein.

1.3 The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional Services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.4 The CONSULTANT agrees that, when the Services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such Services, it shall employ and/or retain only qualified personnel to provide such Services to OWNER.

1.5 CONSULTANT hereby designates **PRINCIPAL IN CHARGE** as its Principal in Charge (hereinafter referred to as the "Principal in Charge") with full authority to bind and obligate CONSULTANT on all matters arising out of or relating to this Agreement. The Principal in Charge is

authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the Services to be provided and performed under the CONTRACT. Further, the Principle in Charge has full authority to bind and obligate the CONSULTANT on all matters arising out of or relating to this agreement. The CONSULTANT agrees that the Principal in Charge shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the CONSULTANT under this agreement. CONSULTANT further agrees that the Principal in Charge shall not be removed by CONSULTANT without OWNER'S prior written approval, and if so removed must be immediately replaced with a person acceptable to OWNER.

1.6 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from OWNER to promptly remove and replace the Principal in Charge, or any other key personnel employed or retained by the CONSULTANT, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by the CONSULTANT to provide and perform any of the Services pursuant to the requirements of this Agreement, said request may be made with or without cause. Any personnel so removed must be immediately replaced with a person acceptable to OWNER.

1.7 The CONSULTANT represents to the OWNER that it has expertise and experience in the type of professional **Planning** services that will be required under this Agreement. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the OWNER'S review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies, including the Florida Building Code where applicable, which regulate or have jurisdiction over the

Services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding resolution of each such conflict. OWNER'S approval of any design documents in no way relieves CONSULTANT of its obligation to deliver complete and accurate documents necessary for successful completion of the Services required under this agreement.

1.8 CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER'S prior written consent, or unless incident to the proper performance of the CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the Services to be rendered by CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph. CONSULTANT shall provide OWNER prompt written notice of any such subpoenas.

ARTICLE 2

ADDITIONAL SERVICES OF CONSULTANT

2.1 If authorized in writing by Owner through an Amendment or Change Order to this Agreement, CONSULTANT shall furnish or obtain from others Additional Services beyond those Services originally authorized in the Agreement. The agreed upon scope, compensation and schedule for Additional Services shall be set forth in the Amendment or Change Order authorizing those Additional Services. With respect to the individuals with authority to authorize Additional Services under this Agreement, such authority will be as established in OWNER'S Administrative Procedures in effect at the time such services are authorized. Except in an emergency endangering life or property, any

Additional Services must be approved in writing via an Amendment or Change Order to the subject Work Order prior to starting such services. OWNER will not be responsible for the costs of Additional Services commenced without such express prior written approval. Failure to obtain such prior written approval for Additional Services will be deemed: (i) a waiver of any claim by CONSULTANT for such Additional Services and (ii) an admission by CONSULTANT that such Work is not additional but rather a part of the Services originally required of CONSULTANT under the subject Work Order. If OWNER determines that a change in a Work Order is required because of the action taken by CONSULTANT in response to an emergency, an Amendment or Change Order shall be issued to document the consequences of the changes or variations, provided that CONSULTANT has delivered written notice to OWNER of the emergency within forty-eight (48) hours from when CONSULTANT knew or should have known of its occurrence. Failure to provide the forty-eight (48) hour written notice noted above, waives CONSULTANT'S right it otherwise may have had to seek an adjustment to its compensation or time of performance under the subject Work Order.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 OWNER shall designate in writing a project manager to act as OWNER'S representative with respect to the Services to be rendered under the Agreement (hereinafter referred to as the "Project Manager"). The Project Manager shall have authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to CONSULTANT'S Services under the Agreement. However, the Project Manager is not authorized to issue any verbal or written orders or instructions to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of Services to be provided and performed by the CONSULTANT as set forth in this Agreement;
- (b) The time the CONSULTANT is obligated to commence and complete all such Services as set forth in this Agreement;
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONSULTANT as set forth in this Agreement.

3.2 The Project Manager shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;
- (b) Provide all criteria and information requested by CONSULTANT as to OWNER'S requirements for the Services specified in the Work Order, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
- (c) Upon request from CONSULTANT, assist CONSULTANT by placing at CONSULTANT'S disposal all available information in the OWNER'S possession pertinent to the Services specified in the Work Order, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to the subject Work Order;
- (d) Arrange for access to and make all provisions for CONSULTANT to enter the site (if any) set forth in the Work Order to perform the Services to be provided by CONSULTANT under the subject Work Order; and

- (e) Provide notice to CONSULTANT of any deficiencies or defects discovered by the OWNER with respect to the Services to be rendered by CONSULTANT hereunder.

ARTICLE 4

TIME

4.1 Attached to each agreement shall be a computer generated bar graph time schedule ("Schedule") for the performance of the Services required. Said Schedule shall be in a form and content satisfactory to OWNER. Services to be rendered by CONSULTANT shall be commenced, performed and completed in accordance with the Scope of Services and the Schedule. Time is of the essence with respect to the performance of the Services under this Agreement.

4.2 Should CONSULTANT be obstructed or delayed in the prosecution or completion of the Services as a result of unforeseeable causes beyond the control of CONSULTANT, and not due to its own fault or neglect, including but not restricted to acts of nature or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONSULTANT shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the specific cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension for that specific delay.

4.3 Unless otherwise expressly provided in the Agreement, no interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONSULTANT'S Services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONSULTANT'S sole remedy against OWNER will be the right to seek an extension of time to the Schedule; provided, however, the granting of any such time

extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

4.4 Should the CONSULTANT fail to commence, provide, perform or complete any of the Services to be provided hereunder in a timely manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT under this Agreement (including any and all Work Orders) until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER'S satisfaction that the CONSULTANT'S performance is or will shortly be back on schedule.

4.5 In no event shall any approval by OWNER authorizing CONSULTANT to continue performing Work under any particular Work Order or any payment issued by OWNER to CONSULTANT be deemed a waiver of any right or claim OWNER may have against CONSULTANT for delay or any other damages hereunder.

4.6 The period of service shall be from the date of execution of this Agreement through **October 31, 2012**. Any such annual renewal shall be agreed to, in writing, by both parties.

ARTICLE 5

COMPENSATION

5.1 Compensation and the manner of payment of such compensation by the OWNER for Services rendered hereunder by CONSULTANT shall be as prescribed in the Agreement. CONSULTANT agrees to furnish to OWNER, after the end of each calendar month, a comprehensive and itemized

statement of charges for the Services performed and rendered by CONSULTANT during that time period, and for any OWNER authorized reimbursable expenses as herein below defined, incurred and/or paid by CONSULTANT during that time period. The monthly statement shall be in such form and supported by such documentation as may be required by OWNER. All such statements shall be on CONSULTANT'S letterhead and shall indicate the Agreement Number, Work Order Number, and Purchase Order Number.

5.2 The compensation shall be based on the hourly rates as set forth and identified in Schedule A which is attached hereto, for the time reasonably expended by CONSULTANT'S personnel in performing the Services.

5.3 OWNER agrees to reimburse CONSULTANT for all necessary and reasonable reimbursable expenses incurred or paid by CONSULTANT in connection with CONSULTANT'S performance of the Services, at its direct cost with no markup; to the extent such reimbursement is permitted in the Work Order and in accordance with Section 112.061, F.S., or as set forth below.

5.4 CONSULTANT shall obtain the prior written approval of OWNER before incurring any of the aforesaid reimbursable expenses, and absent such prior approval, no expenses incurred by CONSULTANT will be deemed to be a reimbursable expense.

5.5 CONSULTANT shall bear and pay all overhead and other expenses, except for authorized reimbursable expenses, incurred by CONSULTANT in the performance of the Services.

5.6 Payments for Basic Services and Additional Basic Services as set forth herein shall be made upon presentation of the CONSULTANT'S itemized invoice approved by OWNER.

5.7 Records of Reimbursable Expenses shall be kept on a generally recognized accounting basis.

ARTICLE 6

OWNERSHIP OF DOCUMENTS

6.1 Upon the completion or termination of the Agreement, as directed by OWNER, CONSULTANT shall deliver to OWNER copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CADD files, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by or for CONSULTANT under the applicable Work Order ("Project Documents"). OWNER shall specify whether the originals or copies of such Project Documents are to be delivered by CONSULTANT. CONSULTANT shall be solely responsible for all costs associated with delivering to OWNER the Project Documents. CONSULTANT, at its own expense, may retain copies of the Project Documents for its files and internal use.

6.2 Notwithstanding anything in this Agreement to the contrary and without requiring OWNER to pay any additional compensation, CONSULTANT hereby grants to OWNER a nonexclusive, irrevocable license in all of the Project Documents for OWNER'S use with respect to the applicable authorized project or task. CONSULTANT warrants to OWNER that it has full right and authority to grant this license to OWNER. Further, CONSULTANT consents to OWNER'S use of the Project Documents to complete the subject project or task following CONSULTANT'S termination for any reason or to perform additions to or remodeling, replacement or renovations of the subject project or task. CONSULTANT also acknowledges OWNER may be making Project Documents available for review and information to various third parties and hereby consents to such use by OWNER.

ARTICLE 7

MAINTENANCE OF RECORDS

7.1 CONSULTANT will keep adequate records and supporting documentation which concern or reflect the Services hereunder. The records and documentation will be retained by CONSULTANT for a minimum of five (5) years from (a) the date of termination of this Agreement or (b) the date the Work Order is completed, whichever is later, or such later date as may be required by law. OWNER, or any duly authorized agents or representatives of OWNER, shall, free of charge, have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above, or such later date as may be required by law; provided, however, such activity shall be conducted only during normal business hours.

7.2 The records specified above in paragraph 7.1 include accurate time records, which CONSULTANT agrees to keep and maintain, from day to day, showing the time expended by each principal and employee of CONSULTANT in performing the Services and therein specifying the services performed by each, with all such time records to be kept within one-half of an hour. At the request of OWNER, or as specified in the Work Order, CONSULTANT shall furnish to OWNER any of the aforesaid time records, as well as invoices or proofs showing CONSULTANT'S incurrence and/or payment of any reimbursable expenses.

ARTICLE 8

INDEMNIFICATION

8.1 To the maximum extent permitted by law, CONSULTANT shall indemnify and hold harmless OWNER, its officers and employees from any and all liabilities, damages, losses and costs, including,

but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONSULTANT or anyone employed or utilized by the CONSULTANT in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph 8.1.

ARTICLE 9

INSURANCE

9.1 CONSULTANT shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts described herein and further set forth in Schedule B to this Agreement.

9.2 All insurance shall be from responsible companies duly authorized to do business in the State of Florida.

9.3 All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:

9.3.1 All insurance policies, other than the Business Automobile policy, Professional Liability policy, and the Workers Compensation policy, provided by CONSULTANT to meet the requirements of this Agreement shall name the Lee County Metropolitan Planning Organization, Lee County, Florida, as an additional insured as to the operations of CONSULTANT under this Agreement and shall contain a severability of interests provisions.

9.3.2 Companies issuing the insurance policy or policies shall have no recourse against OWNER for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of CONSULTANT.

9.3.3 All insurance coverage's of CONSULTANT shall be primary to any insurance or self-insurance program carried by OWNER, and the "Other Insurance" provisions of any policies obtained by CONSULTANT shall not apply to any insurance or self-insurance program carried by OWNER.

9.3.4 The Certificates of Insurance, which are to be provided in an Occurrence Form patterned after the current I.S.O. form with no limiting endorsements, must reference and identify this Agreement.

9.3.5 All insurance policies shall be fully performable in Lee County, Florida, and shall be construed in accordance with the laws of the State of Florida.

9.4 CONSULTANT, its subconsultants and OWNER shall waive all rights against each other for damages covered by insurance to the extent insurance proceeds are paid and received by OWNER, except such rights as they may have to the proceeds of such insurance held by any of them.

9.5 All insurance companies from whom CONSULTANT obtains the insurance policies required hereunder must meet the following minimum requirements:

9.5.1 The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida.

9.5.2 The insurance company must have a current A. M. Best financial rating of "Class VI" or higher.

ARTICLE 10

SERVICES BY CONSULTANT'S OWN STAFF

10.1 The Services to be performed hereunder shall be performed by CONSULTANT'S own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as independent consultant or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything in this Agreement be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may then otherwise exist without regard to this Agreement.

10.2 Attached to this Agreement shall be a Schedule that lists all of the key personnel CONSULTANT intends to assign to perform the Services required under that Work Order. Such personnel shall be committed to the project or task specified in the Work Order in accordance with the percentages noted in the attached Schedule. CONSULTANT shall also identify in that Schedule each subconsultant and subcontractor it intends to utilize with respect to the subject Work Order. All personnel, subconsultants and subcontractors identified in the Schedule shall not be removed or replaced without OWNER'S prior written consent.

10.3 CONSULTANT is liable for all the acts or omissions of its subconsultants or subcontractors. By appropriate written agreement, the CONSULTANT shall require each subconsultant or subcontractor, to the extent of the Services to be performed by the subconsultant or subcontractor, to be bound to the CONSULTANT by the terms of this Agreement and any subsequently issued Work Order, and to assume toward the CONSULTANT all the obligations and responsibilities which the

CONSULTANT, by this Agreement and any subsequently issued Work Order, assumes toward the OWNER. Each subconsultant or subcontract agreement shall preserve and protect the rights of the OWNER under this Agreement, and any subsequently issued Work Order, with respect to the Services to be performed by the subconsultant or subcontractor so that the subconsulting or subcontracting thereof will not prejudice such rights. Where appropriate, the CONSULTANT shall require each subconsultant or subcontractor to enter into similar agreements with its sub-subconsultants or sub-subcontractors.

10.4 CONSULTANT acknowledges and agrees that OWNER is a third party beneficiary of each contract entered into between CONSULTANT and each subconsultant or subcontractor, however nothing in this Agreement shall be construed to create any contractual relationship between OWNER and any subconsultant or subcontractor.

10.5 E-VERIFY. Vendor/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

- (1) All persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
- (2) All persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Department.

ARTICLE 11

WAIVER OF CLAIMS

11.1 CONSULTANT'S acceptance of final payment for Services provide under any Work Order shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against OWNER arising out of the Work Order or otherwise related to those Services, and except those previously made in writing in accordance with the terms of this Agreement and identified by CONSULTANT in its final invoice for the subject Work Order as unsettled. Neither the acceptance of CONSULTANT'S Services nor payment by OWNER shall be deemed to be a waiver of any of OWNER'S rights against CONSULTANT.

ARTICLE 12

TERMINATION OR SUSPENSION

12.1 This Agreement is a fixed term contract from **execution to October 31, 2012** for the professional services of CONSULTANT. It is agreed that either party hereto shall at any and all times have the right and option to terminate this Agreement by giving to the other party not less than thirty (30) days prior written notice of such termination. Upon this Agreement being so terminated by either party hereto, neither party hereto shall have any further rights or obligations under this Agreement subsequent to the date of termination, except that Services specified to be performed under a previously issued Work Order, shall proceed to completion under the terms of this Agreement.

12.2 CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement and any Work Orders in effect, in whole or in part, as further set forth in this section, for any of the following reasons: (a) CONSULTANT'S failure to begin Services within the times specified, or (b) CONSULTANT'S failure to

properly and timely perform the Services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT'S principals, officers or directors, or (d) CONSULTANT'S failure to obey any law, ordinance, regulation or other code of conduct, or (e) CONSULTANT'S failure to perform or abide by the terms and conditions of this Agreement and any Work Orders in effect, or (f) for any other just cause. The OWNER may so terminate this Agreement and any Work Orders in effect, in whole or in part, by giving the CONSULTANT seven (7) calendar days written notice of the material default.

12.3 If, after notice of termination of this Agreement as provided for in paragraph 12.1 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 12.2, then the notice of termination given pursuant to paragraph 12.2 shall be deemed to be the notice of termination provided for in paragraph 12.4, below, and CONSULTANT'S remedies against OWNER shall be the same as and be limited to those afforded CONSULTANT under paragraph 12.4 below.

12.4 Notwithstanding anything herein to the contrary (including the provisions of paragraph 12.1 above), OWNER shall have the right to terminate this Agreement and any Work Orders in effect, in whole or in part, without cause upon seven (7) calendar days written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT'S recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, for any Work Orders so cancelled, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on Services

not required to be performed. CONSULTANT must mitigate all such costs to the greatest extent reasonably possible.

12.5 Upon termination and as directed by OWNER, the CONSULTANT shall deliver to the OWNER all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement, including those described in Section 6, that are in CONSULTANT'S possession or under its control arising out of or relating to this Agreement or any Work Orders.

12.6 The OWNER shall have the power to suspend all or any portions of the Services to be provided by CONSULTANT hereunder upon giving CONSULTANT two (2) calendar days prior written notice of such suspension. If all or any portion of the Services to be rendered hereunder are so suspended, the CONSULTANT'S sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

12.7 In the event (i) OWNER fails to make any undisputed payment to CONSULTANT within forty-five (45) days after such payment is due as set forth in the Work Order or such other time as required by Florida's Prompt Payment Act or (ii) OWNER otherwise persistently fails to fulfill some material obligation owed by OWNER to CONSULTANT under this Agreement or subsequently issued Work Order, and (ii) OWNER has failed to cure such default within fourteen (14) days of receiving written notice of same from CONSULTANT, then CONSULTANT may stop its performance under the subject Work Order until such default is cured, after giving OWNER a second fourteen (14) days written notice of CONSULTANT'S intention to stop performance under the applicable Work Order. If the Services are so stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the CONSULTANT or its subconsultant or subcontractor or their agents or employees or any other persons performing portions of the Services under contract with the CONSULTANT, the

CONSULTANT may terminate the subject Work Order by giving written notice to OWNER of CONSULTANT'S intent to terminate that Work Order. If OWNER does not cure its default within fourteen (14) days after receipt of CONSULTANT'S written notice, CONSULTANT may, upon fourteen (14) additional days' written notice to the OWNER, terminate the subject Work Order and recover from the Owner payment for Services performed through the termination date, but in no event shall CONSULTANT be entitled to payment for Services not performed or any other damages from Owner.

ARTICLE 13

TRUTH IN NEGOTIATION REPRESENTATIONS

13.1 CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement or any subsequent Work Order.

13.2 In accordance with provisions of Section 287.055, (5)(a), Florida Statutes, the CONSULTANT agrees to execute the required Truth-In-Negotiation Certificate, attached hereto and incorporated herein as Exhibit F, certifying that wage rates and other factual unit costs supporting the compensation for CONSULTANT'S services to be provided under this Agreement and each subsequent Work Order issued hereafter, if any, are accurate, complete and current at the time of the Agreement or such subsequent Work Order. The CONSULTANT agrees that the original price as set forth in each subsequent issued Work Order, if any, and any additions thereto shall be adjusted to

exclude any significant sums by which the OWNER determines the price as set forth in this Agreement was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 14

CONFLICT OF INTEREST

14.1 CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder. CONSULTANT further represents that no persons having any such interest shall be employed to perform those Services.

ARTICLE 15

MODIFICATION

15.1 No modification or change in this Agreement shall be valid or binding upon either party unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE 16

NOTICES AND ADDRESS OF RECORD

16.1 All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the OWNER shall be in writing and shall be delivered by hand, by fax, or by United States Postal Service Department, first class mail service, postage prepaid, addressed to the following OWNER'S address of record:

Lee County Metropolitan Planning Organization
815 Nicholas Parkway
Cape Coral, Florida 33991
Fax: 239-338-2560

16.2 All notices required or made pursuant to this Agreement to be given by the OWNER to the CONSULTANT shall be made in writing and shall be delivered by hand, by fax or by the United States Postal Service Department, first class mail service, postage prepaid, addressed to the following CONSULTANT'S address of record:

CONSULTANT NAME & ADDRESS

Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 17

MISCELLANEOUS

17.1 CONSULTANT, in representing OWNER, shall promote the best interests of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

17.2 No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

17.3 This Agreement is not assignable, or otherwise transferable in whole or in part, by CONSULTANT without the prior written consent of OWNER.

17.4 Waivers by either party of a breach of any provision of this Agreement 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 Agreement.

17.5 The headings of the Articles, Schedules, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Schedules, Parts and Attachments.

17.6 This Agreement, including the referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

17.7 Unless otherwise expressly noted herein, all representations and covenants of the parties shall survive the expiration or termination of this Agreement.

17.8 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

17.9 The terms and conditions of the following Schedules attached hereto are by this reference incorporated herein:

- | | |
|-----------|--|
| Exhibit A | SCOPE OF SERVICES |
| Exhibit B | CONSULTANT AFFIDAVIT |
| Exhibit C | DBE PARTICIPATION STATEMENT |
| Exhibit D | CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION FOR FEDERAL AID
CONTRACTS |
| Exhibit E | CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES ON
FEDERAL AID CONTRACTS |
| Exhibit F | TRUTH IN NEGOTIATION CERTIFICATE |

- Exhibit G BID OPPORTUNITY LIST FOR PROFESSIONAL CONSULTANT SERVICES AND COMMODITIES & CONTRACTUAL SERVICES
- Exhibit H FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS
- Exhibit I TERMS AND CONDITIONS FOR FEDERAL AID CONTRACTS
- Schedule A RATE SCHEDULE
- Schedule B INSURANCE COVERAGE

ARTICLE 18

APPLICABLE LAW

18.1 This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by such laws, rules and regulations of the United States as made applicable to Services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Lee County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

ARTICLE 19

SECURING AGREEMENT/PUBLIC ENTITY CRIMES

19.1 CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. At the time this Agreement is executed, CONSULTANT shall sign and

deliver to OWNER the Truth-In-Negotiation Certificate identified in Article 13 and attached hereto and made a part hereof as Exhibit G. CONSULTANT'S compensation as set forth in each subsequently issued Work Order, if any, shall be adjusted to exclude any sums by which OWNER determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

19.2 By its execution of this Agreement, CONSULTANT acknowledges that it has been informed by OWNER of and is in compliance with the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

ARTICLE 20

DISPUTE RESOLUTION

20.1 Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of CONSULTANT with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached during negotiations to OWNER for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court

Mediator certified by the State of Florida. The mediation shall be attended by representatives of CONSULTANT with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached at mediation to OWNER'S board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Stat.

20.2 Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Lee County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

ARTICLE 21

IMMIGRATION LAW COMPLIANCE

21.1 By executing and entering into this agreement, the Consultant is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Consultant to comply with the laws referenced herein shall constitute a breach of this agreement and the MPO shall have the discretion to unilaterally terminate this agreement immediately.

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement for the Development of the Bicycle/Pedestrian Master Plan.

ATTEST:

LEE COUNTY METROPOLITAN
PLANNING ORGANIZATION
LEE COUNTY, FLORIDA,

By: Meghan A. Marion

Date: _____

By: _____
Bob Raymond, MPO Chairman

Approved as to form and
legal sufficiency:

Assistant County Attorney

Consultant Name

Witness

Typed Name and Title

Witness

Typed Name and Title

By: _____

Typed Name and Title

Exhibit A

SCOPE OF SERVICES

Exhibit B

CONSULTANT AFFIDAVIT

CONSULTANT AFFIDAVIT

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared (Date) _____
who was sworn and says:

1. He is (Title) _____ of (Firm) _____ with office in (City and State) _____

2. The named firm is submitting the attached proposal for:
Description: _____
Financial Project I.D.(s) _____ F.A.P. No(s) _____
in _____ County(ies), Florida.
3. The affiant has made diligent inquiry and answers this affidavit based upon his own knowledge.
4. Only one proposal for the above-referenced project will be submitted, under the same or different name, and the proposer has no financial interest in the firm or another proposer for the same work.
5. Neither the affiant or the firm has directly or indirectly entered in any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in connection with the firm's proposal on the above project. This statement shall restrict the discussion of pricing data until the completion of the execution of the Consultant Agreement for this project.
6. Neither the firm nor its affiliates, nor any one associated with them is presently debarred, suspended or otherwise ineligible from participating in contract lettings by any state agency in any state or the F.H.W.A.
7. Neither the firm, nor any officer, director, employee of the firm or any of its affiliates has been criminally or civilly charged with antitrust violations, or had convictions or judgments resulting from such charges. There have been no charges or subsequent convictions of any criminal act under state or federal law which involved fraud, bribery, conspiracy, public contract, except for matters previously disclosed to the Department and filed in Case No. (s) _____ with the Clerk of Agency Proceedings, (If inapplicable, enter N/A).
8. This affidavit includes disclosure of employees who were charged or convicted of contract crimes while in the employ of another company.

Affiant

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary
My Commission Expires:

NOTICE

Any evidence of collusion among participating proposers will preclude their recognition as proposers on such job and subjects them to penalties and restraints under applicable State and Federal Law.

PROPOSERS ON ALL DEPARTMENT PROJECTS MUST SIGN AND ATTACH THIS AFFIDAVIT TO EACH PROPOSAL

Exhibit C

DBE PARTICIPATION STATEMENT

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**ANTICIPATED DBE PARTICIPATION
 STATEMENT
 LOCAL AGENCY PROGRAM**

275-030-12
 EQUAL OPPORTUNITY OFFICE
 03/09

1. FDOT LAP AGREEMENT#	2. FDOT LAP AGREEMENT AMOUNT	3. LOCAL AGENCY CONTRACT (PRIME)#.	4. LOCAL AGENCY NAME
5. PRIME CONTRACTOR NAME		6. FEID NUMBER (PRIME CONTRACTOR)	
7. CONTRACT DOLLAR AMOUNT		8. FEID NUMBER (LOCAL AGENCY)	
9. IS THE PRIME CONTRACTOR A FLORIDA CERTIFIED "DBE"? (DISADVANTAGED BUSINESS ENTERPRISE)	YES <input type="checkbox"/> NO <input type="checkbox"/>	10. IS THE WORK OF THIS CONTRACT CONSTRUCTION <input type="checkbox"/> OR MAINTENANCE <input type="checkbox"/> ? OTHER _____	
11. REVISION (Y/N)? _____ IF YES, REVISION# _____			

12. ANTICIPATED DBE SUBCONTRACTS (BELOW):

	DBE SUBCONTRACTOR OR SUPPLIER	TYPE OF WORK/SPECIALTY	DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS
A				
B				
C				
D				
E				
F			11A TOTAL DOLLARS TO DBE'S	11B TOTAL PERCENT OF CONTRACT

SECTION TO BE FILLED BY PRIME CONTRACTOR

13. NAME OF SUBMITTER	14. DATE	15. TITLE OF SUBMITTER
16. EMAIL ADDRESS OF PRIME CONTRACTOR SUBMITTER		17. FAX NUMBER
18. PHONE NUMBER		

SECTION TO BE FILLED BY LOCAL AGENCY

19. SUBMITTED BY	20. DATE	21. TITLE OF SUBMITTER
22. EMAIL ADDRESS OF SUBMITTER		23. FAX NUMBER
24. PHONE NUMBER		

NOTE: THIS INFORMATION IS USED TO TRACK AND REPORT ANTICIPATED DBE PARTICIPATION IN ALL FEDERALLY FUNDED FDOT CONTRACTS. THE ANTICIPATED DBE AMOUNT IS VOLUNTARY AND WILL NOT BECOME A PART OF THE CONTRACTUAL TERMS. THIS FORM MUST BE SUBMITTED AT THE PRE CONSTRUCTION. FDOT STAFF FORWARDS THE FORM TO THE EQUAL OPPORTUNITY OFFICE.

THE FOLLOWING SECTIONS ARE FOR FDOT LAP COORDINATOR USE

DIST	LAP COORDINATOR NAME	DATE TO EO OFFICE (ELECTRONICALLY)	EXECUTED DATE (LAP AGREEMENT)	EXECUTED DATE (BETWEEN LOCAL AGENCY AND PRIME)	PRECON. CONF DATE.

Exhibit D

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION FOR FEDERAL AID CONTRACTS**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION FOR FEDERAL
AID CONTRACTS**
(Compliance with 49CFR, Section 29.510)
(Appendix B Certification]

375-030-32
PROCUREMENT
10/01

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant:

By _____ Date: _____
Authorized Signature

Title: _____

Instructions for Certification

1. By signing and submitting this certification with the proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted. If at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms 'covered transaction', 'debarred', 'suspended', 'ineligible', 'lower tier covered transaction', 'participant', 'person', 'primary covered transaction', 'principal', 'proposal', and 'voluntarily excluded', as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Appendix B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.

Exhibit E

**CERTIFICATION FOR DISCLOSURE OF LOBBYING
ACTIVITIES ON FEDERAL AID CONTRACTS**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES
ON FEDERAL-AID CONTRACTS**
(Compliance with 49CFR, Section 20.100 (b))

375-030-33
PROCUREMENT
10/01

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

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

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. (Standard Form-LLL can be obtained from the Florida Department of Transportation's Professional Services Administrator or Procurement Office.)

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

The prospective participant also agrees by submitting his or her proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Name of Consultant: _____

By: _____ Date: _____

Authorized Signature: _____

Title: _____

Exhibit F

TRUTH IN NEGOTIATION CERTIFICATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
TRUTH IN NEGOTIATION CERTIFICATION

375-030-30
PROCUREMENT
10/01

For any lump-sum or cost-plus-a-fixed-fee professional service agreement over \$60,000 the Florida Department of Transportation (Department) requires the Consultant to execute this certificate and include it with the submittal of the Technical Proposal.

The Consultant hereby certifies, covenants and warrants that wage rates and other factual unit costs supporting the compensation for this project's agreement will be accurate, complete, and current at the time of contracting.

The Consultant further agrees that the original agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the Department determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the agreement. For purpose of this certificate, the end of the agreement shall be deemed to be the date of final billing or acceptance of the work by the Department, whichever is later.

Name of Consultant

By: _____
Authorized Signature

Date

Exhibit G

**BID OPPORTUNITY LIST FOR PROFESSIONAL CONSULTANT SERVICES
AND COMMODITIES & CONTRACTUAL SERVICES**

FLORIDA DEPARTMENT OF TRANSPORTATION
BID OPPORTUNITY LIST

FORM #275-030-10

Please complete and mail or fax to:

Equal Opportunity Office
605 Suwannee St., MS 65
Tallahassee, FL 32399-0450
TELEPHONE: (850) 414-4747
FAX: (850) 414-4879

This information may also be included in your bid or proposal package.

Prime Contractor/Consultant: _____

Address/Telephone Number: _____

Bid/Proposal Number: _____

Quote Submitted MM/YR: _____

49 CFR Part 26.11

The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project. Prime contractors and consultants must provide information for Nos. 1, 2, 3 and 4 and should provide any information they have available on Numbers 5, 6, 7, and 8 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: _____
2. Firm Name: _____
3. Phone: _____
4. Address: _____

5. Year Firm Established: _____

6. DBE
 Non-DBE
7. Subcontractor
 Subconsultant

8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 mil ion
 Between \$10 - \$15 million
 More than \$15 million

1. Federal Tax ID Number: _____
2. Firm Name: _____
3. Phone: _____
4. Address: _____

5. Year Firm Established: _____

6. DBE
 Non-DBE
7. Subcontractor
 Subconsultant

8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 mil ion
 Between \$10 - \$15 million
 More than \$15 million

1. Federal Tax ID Number: _____
2. Firm Name: _____
3. Phone: _____
4. Address: _____

5. Year Firm Established: _____

6. DBE
 Non-DBE
7. Subcontractor
 Subconsultant

8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 mil ion
 Between \$10 - \$15 million
 More than \$15 million

Exhibit H

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

**LEE COUNTY TRANSIT
FEDERAL TRANSIT ADMINISTRATION
Grant Procurement Clause Package #2
(Goods, Services and Construction)
Revised July 14, 2008**

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1. FLY AMERICA REQUIREMENTS

49 U.S.C. §5331 **49 CFR Parts 653 and 654**

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

**49 U.S.C. 5323(j)
49 CFR Part 661**

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

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

BUY AMERICA CERTIFICATION

(Required for contracts greater than \$100,000)

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

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

3. CHARTER BUS REQUIREMENTS

**49 U.S.C. 5323(d)
49 CFR Part 604**

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 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.

3. SCHOOL BUS REQUIREMENTS

**49 U.S.C. 5323(F)
49 CFR Part 605**

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. 1241
46 CFR Part 381**

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

**42 U.S.C. 7701 et seq. 49
CFR Part 41**

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

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

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

10. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] -

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any

registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11). _____

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	None None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
<u>II Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	Yes ³ Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (7) dated October, 2000) between Purchaser and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

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

2. Lee County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Lee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

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

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

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

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

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

Performance and Payment Bonding Requirements (Non-Construction)

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

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

1. Lee County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

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

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

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

(b) When it is determined that a performance bond is required, the Contractor shall be required to

obtain performance bonds as follows:

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

2. Lee County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Lee County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

1. The penal amount of payment bonds shall equal:

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

(ii) Forty percent of the contract price if the contract price is more than \$1 million

but not more than \$5 million; or

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to Lee County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Lee County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Lee County Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Lee County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Lee

County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Lee County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. CLEAN AIR

**42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18**

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

15. RECYCLED PRODUCTS

**42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873**

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000

or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON ACT

**40 USC § 167; 276a -276a-5 (1998)
29 CFR § 5 (1999)**

Applicability to Contract

Construction contracts over \$2,000.00

Flow Down

Applies to third party contractors and subcontractors

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately

set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

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

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

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

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

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

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

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

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

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

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Lee County Transit for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information

may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of

probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In

addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. §§ 327 -333 (1999)

29 C.F.R. § 5 (1999)

29 C.F.R. § 1926 (1998)

Applicability to Contracts

Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. § 5.5(a).)

Section 107 of the Act which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Flow Down

Applies to third party contractors and subcontractors.

Model Clauses/Language

Pursuant to Section 102 (Overtime):

(These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For nonconstruction contracts, this is the only section required along with the payroll section.)

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The **(write in the name of the grantee or recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

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

of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)**Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

18. COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 276c (1999)

29 C.F.R. § 3 (1999)

29 C.F.R. § 5 (1999)

Applicability to Contracts

All construction contracts in excess of \$2,000.

Flow Down

Applicable to all third party contractors and subcontractors.

Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. Since there are no specific statutory or regulatory requirements for additional mandatory language, no additional clauses are necessary for this provision.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

AND RELATED ACTS

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

21. TERMINATION

49 U.S.C.Part 18 FTA Circular 4220.1D

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

a. Termination for Convenience (General Provision) Lee County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in

the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lee County to be paid the Contractor. If the Contractor has any property in its possession belonging to Lee County, the Contractor will account for the same, and dispose of it in the manner Lee County directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

c. Opportunity to Cure (General Provision) Lee County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate period of time, not less than ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

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

e. Termination for Convenience (Professional or Transit Service Contracts) Lee County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any

extension or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lee County.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Lee County goods, the Contractor shall, upon direction of Lee County, protect and preserve the goods until surrendered to the Lee County or its agent. The Contractor and Lee County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lee County.

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Lee County may terminate this contract for default. Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Lee County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lee County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lee County in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Lee County, acts of another Contractor in the performance

of a contract with the Lee County, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within ten (10) days from the beginning of any delay, notifies the Lee County in writing of the causes of delay. If in the judgment of Lee County, the delay is excusable, the time for completing the work shall be extended. The judgment of Lee County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) Lee County may terminate this contract in whole or in part, for Lee County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Lee County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of Lee County, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Lee County may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) Lee County may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of Lee County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Lee County, or property supplied to the Contractor by Lee County. If the termination is for default, Lee County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lee County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Lee County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Lee County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Lee County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29 Executive Order 12549

Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

Flow Down

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

Instructions for Certification

- 1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Lee County may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to Lee County if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction,"

"principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Lee County for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Lee County.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Lee County may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1D

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Lee County. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Lee County Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Lee County Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Lee County, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Lee County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida, in which Lee County is located.

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

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401 49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal

Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

The requirements of this section apply only when specified here or as prescribed within any other terms of the applicable contract documents.

29. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contracts

This disclaimer applies to all contracts.

Flow Down

The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1D

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Lee County requests which would cause Lee County Transit to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

**49 U.S.C. §5331
49 CFR Parts 653 and 654**

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the Lee County Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before May 1st and to submit annually the Management Information System (MIS) reports before May 1st to:

**Transit Director
Lee County Transit
6035 Landing View Road
Ft. Myers, FL 33907**

To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to (a) submit before 14 days prior to service start up a copy of the Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: the possible selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.

Exhibit I

TERMS AND CONDITIONS FOR FEDERAL AID CONTRACTS

TERMS FOR FEDERAL AID CONTRACTS
CONTRACT (Purchase Order) # _____

The following terms apply to all contracts in which it is indicated in Section 7.B of the Standard Written Agreement, the Master Agreement Terms and Conditions, the Contractual Services Agreement, or the Purchase Order Terms and Conditions, that the contract involves the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Department relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relation to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that , in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this Agreement notwithstanding.
- C. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- E. Solicitations of Subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
 - 1. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - 2. cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs C. through H. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may direct

as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statement shall be included in all subsequent agreements between the Consultant and any sub-consultant or contractor.

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Department. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- N. The Department hereby certifies that neither the consultant nor the consultant's representative has been required by the Department, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to
 - 1. employ or retain, or agree to employ or retain, any firm or person, or
 - 2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Department further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

- O. The Consultant hereby certifies that it has not:
 - 1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above contractor) to solicit or secure this contract;
 - 2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or

3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above contractor) any fee contribution, donation, or consideration of any kind for ,or in connection with , procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

SCHEDULE A

Rate Schedule

SCHEDULE B

INSURANCE COVERAGE

INSURANCE COVERAGE

(1) The amounts and types of insurance coverage shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If CONSULTANT has any self-insured retentions or deductibles under any of the below listed minimum required coverages, CONSULTANT must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be CONSULTANT'S sole responsibility.

(2) The insurance required by this Agreement shall be written for not less than the limits specified herein or required by law, whichever is greater.

(3) Coverages shall be maintained without interruption from the date of commencement of the Services until the date of completion of all Services required hereunder or as specified in this Agreement, whichever is longer.

(4) Simultaneously with the execution and delivery of this Agreement by CONSULTANT, CONSULTANT has delivered properly executed Certificates of insurance (3 copies) acceptable to the OWNER evidencing the fact that CONSULTANT has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to OWNER, on a timely basis, if requested by OWNER. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the

OWNER. CONSULTANT shall also notify OWNER, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by CONSULTANT from its insurer, and nothing contained herein shall relieve CONSULTANT of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by CONSULTANT hereunder, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

(5) All insurance coverages of the CONSULTANT shall be primary to any insurance or self insurance program carried by the OWNER applicable to this Agreement.

(6) The acceptance by OWNER of any Certificate of Insurance pursuant to the terms of this Agreement does not constitute approval or agreement by the OWNER that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.

(7) CONSULTANT shall require each of its subconsultants to procure and maintain, until the completion of the subconsultant's services, insurance of the types and to the limits specified in this Section except to the extent such insurance requirements for the subconsultant are expressly waived in writing by the OWNER.

(8) Should at any time the CONSULTANT not maintain the insurance coverages required herein, the OWNER may terminate the Agreement and any Work Orders issued pursuant to the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the CONSULTANT for such coverages

purchased. If CONSULTANT fails to reimburse OWNER for such costs within thirty (30) days after demand, OWNER has the right to offset these costs from any amount due CONSULTANT under this Agreement or any other agreement between OWNER and CONSULTANT. The OWNER shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the OWNER to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Agreement.

(9) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Services required hereunder or termination of the Agreement or any Work Order, the CONSULTANT shall furnish to the OWNER, in triplicate, renewal or replacement Certificate(s) of Insurance not later than three (3) business days after the renewal of the policy(ies). Failure of the Contractor to provide the OWNER with such renewal certificate(s) shall be deemed a material breach by CONSULTANT and OWNER may terminate the Agreement or any subsequently issued Work Order for cause.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Required by this Agreement? Yes No

(1) Workers' Compensation and Employers' Liability Insurance shall be maintained by the CONSULTANT during the term of this Agreement for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. The amounts of such insurance shall not be less than:

a. Worker's Compensation - Florida Statutory Requirements

b. Employers' Liability (check one)

\$500,000 Each Accident
\$500,000 Disease Aggregate
\$500,000 Disease Each Employee

\$1,000,000 Each Accident
\$1,000,000 Disease Aggregate
\$1,000,000 Disease Each Employee

(2) The insurance company shall waive all claims rights against the OWNER and the policy shall be so endorsed.

(3) United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work.

Applicable Not Applicable

(4) Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work.

Applicable Not Applicable

COMMERCIAL GENERAL LIABILITY

Required by this Agreement? Yes No

(5) Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by the CONSULTANT. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, Contractual Liability for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be maintained for a period of not less than five (5) years following the completion and acceptance by the OWNER of the work under this Agreement. Limits of Liability shall not be less than the following:

<input type="checkbox"/>	General Aggregate	\$300,000
	Products/Completed Operations Aggregate	\$300,000
	Personal and Advertising Injury	\$300,000
	Each Occurrence	\$300,000
	Fire Damage	\$ 50,000
<input type="checkbox"/>	General Aggregate	\$500,000
	Products/Completed Operations Aggregate	\$500,000
	Personal and Advertising Injury	\$500,000
	Each Occurrence	\$500,000
	Fire Damage	\$ 50,000
<input checked="" type="checkbox"/>	General Aggregate	\$1,000,000
	Products/Completed Operations Aggregate	\$1,000,000
	Personal and Advertising Injury	\$1,000,000
	Each Occurrence	\$1,000,000
	Fire Damage	\$ 50,000

(6) The General Aggregate Limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies

separately to each of your projects away from premises owned by or rented to you." Applicable deductibles or self-insured retentions shall be the sole responsibility of CONSULTANT. Deductibles or self-insured retentions carried by the CONSULTANT shall be subject to the approval of the Risk Management Director or its designee.

(7) The OWNER shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the OWNER.

(8) Coverage shall be included for explosion, collapse or underground property damage claims.

(9) Watercraft Liability coverage shall be carried by the CONSULTANT or the SUBCONSULTANT in limits of not less than the Commercial General Liability limit shown in subparagraph (1) above if applicable to the completion of the Services under this Agreement.

Applicable Not Applicable

(10) Aircraft Liability coverage shall be carried by the CONSULTANT or the SUBCONSULTANT in limits of not less than \$5,000,000 each occurrence if applicable to the completion of the Services under this Agreement.

Applicable Not Applicable

AUTOMOBILE LIABILITY INSURANCE

Required by this Agreement? Yes No

(11) Automobile Liability Insurance shall be maintained by the CONSULTANT for the ownership, maintenance or use of any owned, non-owned or hired vehicle with limits of not less than:

Bodily Injury & Property Damage - \$ 500,000

Bodily Injury & Property Damage - \$1,000,000

UMBRELLA LIABILITY

(12) Umbrella Liability may be maintained as part of the liability insurance of the CONSULTANT and, if so, such policy shall be excess of the Employers' Liability, Commercial General Liability, and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

(13) The policy shall contain wording to the effect that, in the event of the exhaustion of any underlying limit due to the payment of claims, the Umbrella policy will "drop down" to apply as primary insurance.

PROFESSIONAL LIABILITY INSURANCE

Required by this Agreement? Yes No

(14) Professional Liability Insurance shall be maintained by the CONSULTANT to insure its legal liability for claims arising out of the performance of professional services under this Agreement. CONSULTANT waives its right of recover against OWNER as to any claims under this insurance. Such insurance shall have limits of not less than:

\$ 500,000 each claim and in the aggregate

\$1,000,000 each claim and in the aggregate

\$2,000,000 each claim and in the aggregate

\$5,000,000 each claim and in the aggregate

(15) Any deductible applicable to any claim shall be the sole responsibility of the CONSULTANT. Deductible amounts are subject to the approval of the OWNER.

(16) The CONSULTANT shall continue this coverage for a period of not less than five (5) years following completion of all Services authorized under this Agreement.

(17) The policy retroactive date will always be prior to the date services were first performed by CONSULTANT or OWNER under this Agreement, and the date will not be moved forward during the term of this Agreement and for five years thereafter. CONSULTANT shall promptly submit Certificates of Insurance providing for an unqualified written notice to OWNER of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In addition, CONSULTANT shall also notify OWNER by certified mail, within twenty-four (24) hours

after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by CONSULTANT from its insurer. In the event of more than a twenty percent (20%) reduction in the aggregate limit of any policy, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. CONSULTANT shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by OWNER.

VALUABLE PAPERS INSURANCE

(18) In the sole discretion of the County, on a work order by work order basis, CONSULTANT may be required to purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

PROJECT PROFESSIONAL LIABILITY

(19) If OWNER notifies CONSULTANT that a project professional liability policy will be purchased, then CONSULTANT agrees to use its best efforts in cooperation with OWNER and OWNER'S insurance representative, to pursue the maximum credit available from the professional liability carrier for a reduction in the premium of CONSULTANT'S professional liability policy. If no credit is available from CONSULTANT'S current professional policy underwriter, then CONSULTANT agrees to pursue the maximum credit available on the next renewal policy, if a renewal occurs during the term of the project policy (and on any subsequent professional liability

policies that renew during the term of the project policy). CONSULTANT agrees that any such credit will fully accrue to OWNER. Should no credit accrue to OWNER, OWNER and CONSULTANT, agree to negotiate in good faith a credit on behalf of OWNER for the provision of project-specific professional liability insurance policy in consideration for a reduction in CONSULTANT'S self-insured retention and the risk of uninsured or underinsured consultants.

(20) CONSULTANT agrees to provide the following information when requested by OWNER or OWNER'S Project Manager:

- a. The date the professional liability insurance renews.
- b. Current policy limits.
- c. Current deductibles/self-insured retention.
- d. Current underwriter.
- e. Amount (in both dollars and percent) the underwriter will give as a credit if the policy is replaced by an individual project policy.
- f. Cost of professional insurance as a percent of revenue.
- g. Affirmation that the design firm will complete a timely project errors and omissions application.

(21) If OWNER elects to purchase a project professional liability policy, CONSULTANT to be insured will be notified and OWNER will provide professional liability insurance, naming CONSULTANT and its professional subconsultants as named insured's.

**REVIEW AND COMMENT ON ACTIONS NEEDED FOR MPO
DESIGNATED EMPLOYEES TO WORK DURING THE RPC SHUTDOWN
IN DECEMBER**

RECOMMENDED ACTION: Review and Comment on the actions needed for the MPO employees to work during the RPC shutdown.

At their November 18th MPO Board meeting, the Board, directed Staff, if necessary, to make the necessary revisions to the current Staff Services Agreement so that the designated MPO employees could work during the December Regional Planning Council shutdown (included two furlough days).

Staff is working with the MPO attorney to determine what actions we may need to take (including Services Agreement language amendments that were brought up from the RPC Attorney) to allow the MPO staff to work during the RPC shutdown.