

## City of Ocala

### EXHIBIT D

ITB# SUN/250665

#### ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS

FEDERALLY ASSISTED OPERATIONS/MANAGEMENT/SUBRECIPIENTS

The Contractor clauses and provisions of this Exhibit apply to all Federally assisted supply and service contracts. These provisions supersede and take precedence over any other clause or provision contained within this contract which may be in conflict therewith.

#### 1. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- (a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the 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 Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above clause in each Subcontract associated with this Contract. The clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

#### 2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- (a) 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 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 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.
- (b) 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 CITY OF OCALA 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.
- (c) The Contractor agrees to include the above two clauses in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

#### 3. Access to Records and Reports.

Authority - 49 U.S.C. § 5325(g), 2 C.F.R. § 200.333 and 49 C.F.R. part 633, 49 CFR part 625, 49 CFR part 630, FTA Master Agreement FY2020 at Sections 8(c)(1) and 20.

Applicability – all contracts

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete

and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor is notified that the Authority may be subject to the Single Audit Act, set forth in 2 CFR Part 200, Subpart F – Audit Requirements, as amended.
- d. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.
- e. Contractor agrees to comply with FTA regulations, “Transit Asset Management; National Transit Database,” 49 C.F.R. parts 625 and 630, as applicable, and follow applicable federal guidance.

[Flow Down Requirements](#) - This requirement flows down to all subcontracts at every tier.

#### **4. NOTICE OF FEDERAL REQUIREMENTS**

- (a) The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in CITY OF OCALA's Master Agreement with the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.
- (b) The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract

#### **5. TITLE VI CIVIL RIGHTS ACT OF 1964**

During the performance of this Contract, the Contractor for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- (a) **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter referred to as "DOT") 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 Contract.
- (b) **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement 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.
- (c) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor 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 grounds of race, religion, color, sex, age, or national origin.
- (d) **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by CITY OF OCALA or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor

shall so certify to CITY OF OCALA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- (e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, CITY OF OCALA shall impose such Contract sanctions as it or the FTA 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.
- (f) Incorporation of Provisions. The Contractor shall include the provisions of paragraph (1) through (f) above 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 CITY OF OCALA or FTA may direct as a means of enforcing such revisions including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request CITY OF OCALA, and, in addition, the United States to enter into such litigation to protect the interests of CITY OF OCALA and the United States.

## **6. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS – FTA CIRCULAR 4220.1F**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Greater Richmond Transit Company (CITY OF OCALA) requests, which would cause CITY OF OCALA to be in violation of the FTA terms and conditions.

## **7. ENERGY POLICY AND CONSERVATION ACT**

The Contractor shall recognize mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

## **8. TERMINATION** 2 C.F.R. § 200.339; 2 C.F.R. part 200, Appendix II (B)

**FLOW DOWN.** For all contracts in excess of \$10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Termination for Convenience (General Provision)** The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY'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 AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

**Termination for Convenience or Default (Cost-Type Contracts)** The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY 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 the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY 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 the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, 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, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

**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 AGENCY 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 be paid only 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 AGENCY 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 AGENCY, 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.

**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, the AGENCY may terminate this contract for default. The AGENCY 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 the AGENCY.

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

**Opportunity to Cure (General Provision)** The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY 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 AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**9. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION** 2 C.F.R. part 180; 2 C.F.R. part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; Executive Order 12689

**FLOW DOWN.** Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

**Debarment, Suspension, Ineligibility and Voluntary Exclusion.** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

**By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:**

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this

offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **10. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION.**

Authority – FTA Master Agreement FY2020 at Section 39(b)(1)-(2).

Applicability – all contracts

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Authority. The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

Flow Down Requirements - The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

## **11. RESTRICTIONS ON LOBBYING**

- (a) The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in Section 319 of Public Law 101-121, as implemented by the Department of Transportation in 49 C.F.R. Part 20, and as those authorities may be hereafter amended.
- (b) If a Standard Form LLL, "Disclosure Form to Report Lobbying," is required to be completed by the Contractor or Subcontractor at any tier, such disclosure form shall be furnished to CITY OF OCALA.

## **12. CLEAN AIR AND WATER ACT**

(a) Definitions:

- (1) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. § 7401 et seq.).
- (2) "Clean air standards," as used in this clause means:
  - (i) any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.
  - (ii) an applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. § 7410(d)]; or
  - (iii) an approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. § 7412(d)].
- (3) "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. § 1317).
- (4) "Compliance," as used in this clause, means compliance with:
  - (i) clean air or water standards; or

(ii) a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or Subcontractor, sued in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(6) "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. § 1251 et seq.).

(b) The Contractor agrees:

(1) to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Clean Water Act (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract.

(2) that no portion of the work required by the prime Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) to use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(4) to insert the substance of this clause into any nonexempt Subcontract, including this paragraph (b)(4).

### **13. FLY AMERICA**

The Contractor agrees that international air transportation of any persons involved in or property acquired for the Contract must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

### **14. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION**

(a) Overtime Requirements. No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(b) Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) above, 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 (in the case of work done under the Contract for the District of Columbia or a territory, to such District or to such territory), 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 provisions set forth in paragraph (a) above, 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 (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) above.

(c) Withholding for Unpaid and Liquidated Damages. CITY OF OCALA shall upon CITY OF OCALA's 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 provisions set forth in paragraph (b) of this clause.

(d) Payroll and Basic Records.

- (1) The Contractor or Subcontractor shall maintain payroll records during the course of Contract work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 209 C.F.R. 5.5(a)(3) implementing the Davis-Bacon Act.
- (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of CITY OF OCALA or the Department of Labor. The Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job.

- (e) Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the provisions set forth in paragraphs (a) through (d) above, and also a provision requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the provisions set forth in paragraphs (a) through (d) above.

**15. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS; 49 U.S.C. § 5310, § 5311, and § 5333, 29 C.F.R. Part 215**

- (a) 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.)
- (b) Flow Down: These provisions are applicable to all contracts and Subcontracts at every tier.
- (c) Transit Employee Protective Provisions

- (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- (i) 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 non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (ii) 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.

- (iii) 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.
- (d) CITY OF OCALA encourages the Contractor, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official CITY OF OCALA business or when performing any work for or on behalf of CITY OF OCALA. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, February 2, 2010, available at [https://www.transportation.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)). This includes, but is not limited to:
  - (1) Considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
  - (2) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
  - (3) Encouraging voluntary compliance with the agency’s text messaging policy while off duty.
- (e) The Contractor is encouraged to insert the substance of this clause in all tier Subcontract awards.

## **16. CHARTER SERVICE OPERATIONS**

If this is an operational service contract:

- (a) The Contractor agrees to comply with 49 U.S.C. § 5323(d) and 49 C.F.R. Part 604. The Contractor is prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. § 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation; and

### School Bus Operators

- (b) Pursuant to 49 U.S.C. § 5323(f) and 49 C.F.R. Part 605, the Contractor 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, the Contractor may not use federally funded equipment, vehicles, or facilities.

## **17. DRUG-FREE WORKPLACE PROGRAM**

- (a) As used in this clause:
  - (1) "Alcohol" means ethyl alcohol and any beverage containing ethyl alcohol.
  - (2) "Controlled substance(s)" means a substance, including a drug and an immediate precursor listed in Schedules I through V of Subchapter A of the Texas Controlled Substances Act, Tex. Rev. Civ. Stat. Ann. Articles 481.032 - 481.036. These substances include, but are not limited to, marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, cocaine, Quaaludes, amphetamines, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.

- (3) "Safety sensitive task" means each category of work performed at a construction workplace which, if performed by a person impaired by the effects of alcohol or a controlled substance:
    - (i) would pose a serious risk of death or personal injury to the employee or others in the vicinity; or
    - (ii) could compromise the quality of the construction in such manner as would impose a significant public safety risk in the operation of CITY OF OCALA's public transportation system.
  - (4) "Drug-free workplace" means a site for the performance of work done in connection with CITY OF OCALA's construction contract at which employees are prohibited from using alcohol or from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
  - (5) "Employee" means an employee of a Contractor or Subcontractor who may be directly engaged in the performance of work under CITY OF OCALA's construction contract.
  - (6) "Reasonable suspicion" means the presence or absence of specific criteria identified in the Contractor's drug-free workplace program (indicating the possibility that a person is under the influence of alcohol or a controlled substance) as observed by the Contractor's supervisory personnel with reasonable training in the identification of such criteria.
- (b) The program shall provide for mandatory drug testing of employees who are to perform safety sensitive tasks under the following circumstances:
- (1) All employees will be tested prior to assignment to CITY OF OCALA's construction project to ascertain the use of controlled substances if the employee will be performing safety sensitive tasks; and
  - (2) When there is a reasonable suspicion that an employee is under the influence of alcohol or a controlled substance at the workplace; and
  - (3) When an employee has been involved in an accident or unsafe practice (as defined in the Contractor's safety program) at the workplace.
- (c) The program may, at the Contractor's discretion, include mandatory employee drug testing under the following circumstances:
- (1) As part of or as a follow-up to counseling or rehabilitation for controlled substance use; or
  - (2) As part of a voluntary employee drug testing program.
- (d) A random testing procedure to detect the use of alcohol or a controlled substance by employees performing safety sensitive tasks is required as part of the Contractor's program for the purpose of preventing or deterring hazardous performance. The procedure shall require that, at a minimum, five percent (5%) of the Contractor's employees will be randomly tested within the Contract period or within each year of the Contract period, whichever period is shorter.
- (e) All testing by or on behalf of the Contractor because of a requirement in CITY OF OCALA's Contract shall be conducted only for employees engaged (or to be engaged) in safety sensitive tasks and only for use of alcohol or a controlled substance and shall be conducted in a manner and under written policies that minimize the intrusion on the employee's privacy and personal dignity. This provision shall not preclude the Contractor from adding its own additional testing requirements.
- (f) The Contractor shall publish a statement notifying employees that the use of alcohol at the workplace or the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance by employees at any time is prohibited and specifying the actions that will be taken against employees for violations of such prohibition.
- (g) The program must require each employee who will perform a safety sensitive task, prior to working under CITY OF OCALA's Contract to:
- (1) Acknowledge in writing the Contractor's drug-free workplace program; and

- (2) Give advance written consent to any drug testing that may be conducted under the Contractor's program and the use of test results for decisions related to employment, disciplinary action, or continued employment. The Contractor will agree, in connection with the employee's consent that the results of testing for alcohol and controlled substances will not be voluntarily referred to any law enforcement agency. If the Contractor is subject to a collective bargaining agreement:
  - (i) the procedure for obtaining the individual employee's acknowledgment and consent must be consistent with the Contractor's obligations under the collective bargaining agreement; and
  - (ii) employees shall have the right to be accompanied by a union representative when any specimen is obtained for testing.
- (h) The Contractor will establish a drug-free awareness program to inform its employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The Contractor's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees who refuse to submit to required testing and for other violations of the drug-free workplace program including, but not limited to, being unable to remain employed at the workplace until approval to return is obtained from CITY OF OCALA.
- (i) The Contractor's drug-free workplace program shall, at a minimum, include:
  - (1) Policies and procedures for specimen collection, chain of custody for specimens, laboratory qualification standards, laboratory analysis procedures, quality control requirements, and test result reporting procedures which substantially conform to the material requirements of the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the U.S. Department of Health and Human Services in effect on the date of award of CITY OF OCALA's construction contract.
  - (2) Procedures for the Contractor's employees to report their use of prescription drugs used in the course of medical treatment or which have been prescribed and authorized for use by a licensed medical practitioner.
  - (3) The criteria the Contractor will use for "reasonable suspicion" testing.
  - (4) The levels of alcohol or controlled substances which will be used in conjunction with a determination that an employee is "under the influence" or is "impaired by the effects of" alcohol or controlled substance(s).
- (j) The Contractor shall display a notice, prominently placed near each entrance to the workplace, stating that, by entering the premises, persons are consenting to an inspection of themselves and their property including, but not limited to, their clothing, vehicles, briefcases, lunch boxes, toolboxes, purses, and packages.
- (k) The Contractor agrees to use its best efforts to establish and maintain a work environment free of use by employees of alcohol or controlled substances through implementation of paragraph (b) through (j) of this clause. The Contractor shall prepare and maintain records in sufficient detail to demonstrate compliance with the requirements of this clause including, but not limited to, certifications from Subcontractors and records of drug or alcohol tests conducted during performance of the Contract. Such records shall be subject to inspection and audit by CITY OF OCALA, and the Contractor's noncompliance may authorize CITY OF OCALA to withhold all or any portion of any payments due the Contractor until the Contractor demonstrates compliance.
- (l) A Drug-Free Workplace Program clause identical to this clause (except for changes appropriate for designation of the parties), including this subparagraph (l) will be included in every Subcontract entered into in connection with this Contract.

## **18. EQUAL EMPLOYMENT OPPORTUNITY**

This clause applies to all contracts, except contracts for standard commercial supplies or raw materials and construction. During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. This shall include, but not be limited to: 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.
- (c) The Contractor shall include the provisions of paragraphs (a) and (b) of this clause in every Subcontract or purchase order except for standard commercial supplies or raw materials and construction.

**19. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**FLOW DOWN.** The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

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 C.F.R. 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, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1). As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

**Overview.** It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

- 1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- 2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
- 3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- 4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
- 5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
- 6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- 7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

**Contract Assurance.** 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 C.F.R. 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 AGENCY deems appropriate.

**DBE Participation.** For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY.

**DBE Participation Goal.** The DBE participation goal for this Contract is set at 2.55%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 2.55% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

**Proposed Submission.** Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the DBE Participation Schedule (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original DBE Letter of Intent (see below) from each DBE listed in the DBE Participation Schedule.
4. An original DBE Affidavit (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

**Good Faith Efforts.** If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In

determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

**Administrative Reconsideration.** Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's Buyer, David Williams ([dwilliams@ocalafl.gov](mailto:dwilliams@ocalafl.gov)). The Buyer will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Termination of DBE Subcontractor.** The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

**Continued Compliance.** The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the FDOT and AGENCY (City of Ocala). Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in the ACCESS TO RECORDS AND REPORTS SECTION.

**Sanctions for Violations.** If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and

- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

**DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of 2.55% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror is unable to meet the DBE goal of 2.55% and is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

\_\_\_\_\_ Bidder/Offeror cannot commit to any DBEs since work will not be subcontracted.

**DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

**DBE IDENTIFICATION AND INFORMATION FORM**

Firm Name	Address	Contact Name	Tele- phone Number	Description of Work to be Per- formed	Race & Gender of Firm	Participation % (of Total Contract Value)

**20. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from it. However, this clause does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit.

**21. AUDIT AND INSPECTION OF RECORDS**

- (a) This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.
- (b) The Contractor shall maintain records, and CITY OF OCALA, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transcriptions.

- (d) The Contractor further agrees to include in all Subcontracts hereunder a provision to the effect that the Subcontractor agrees that CITY OF OCALA, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor, involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts and transactions.

## **22. ACCESS REQUIREMENTS TO INDIVIDUALS WITH DISABILITIES**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 39;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 36;
- (e) DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Parts 101-10;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

## **23. PRIVACY ACT**

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction 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 Contract.
- (b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

## **24. RECYCLED PRODUCTS; 42 U.S.C. § 6962, 40 C.F.R. Part 247, Executive Order 12873**

- (a) 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.

- (b) Flow Down: These requirements flow down to all contractor and Subcontractor tiers.
- (c) 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

## **25. DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING**

- (a) The Contractor agrees to comply with:
  - (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
  - (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and:
    - (i) Adopt and enforce policies that ban text messaging while driving in Contractor-owned or rented vehicles or, if applicable, CITY OF OCALA-owned vehicles; or while driving privately-owned vehicles when performing any Work for or on behalf of CITY OF OCALA.
    - (ii) Conduct initiatives in a manner commensurate with the size of the business, such as,
      - (A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
      - (B) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
  - (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
    - (i) *Safety*. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract;
    - (ii) *Contractor Size*. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
    - (iii) *Extension of Provision*. The Contractor agrees to include these Special Provisions of this Contract in its sub-contract agreements and encourage its sub-contractors to comply with this Special Provision.
- (b) For purposes of this paragraph, the phrase "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise; it does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

## **26. VETERANS EMPLOYMENT**

CITY OF OCALA is a recipient of Federal financial assistance on this Contract. The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5 C.F.R.) who have the requisite skills and

abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **27. SEAT BELT**

Seat Belt Use. The Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (a) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (b) Including a "Seat Belt Use" provision in each of its sub-contractor agreements related to the Contract.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

## **28. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

- (a) Pursuant to Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, CITY OF OCALA is prohibited from using federal funds to:
  - (1) Procure or obtain,
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use "Covered Telecommunications Equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system.
- (b) As described in Public Law 115-232, section 889, "Covered Telecommunications Equipment or Services" is:
  - (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
  - (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (c) Contractor shall not use or provide to CITY OF OCALA Covered Telecommunications Equipment or Services in the performance of this Contract.
- (d) Contractor shall insert the substance of this Paragraph in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.
- (d) Contractor shall notify CITY OF OCALA immediately if Contractor cannot comply with the prohibition during the performance of this Contract.

## **29. Motor Carrier Safety**

Authority - FTA Master Agreement, FY2020 Section 33

Applicability - all contracts

Contractor agrees that it will comply with the applicable economic and insurance registration requirements of the:

- (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if it is engaged in operations requiring compliance with 49 C.F.R. part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone;
- (2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311;
- (3) The safety requirements of U.S. FMCSA regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and
- (4) The driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA's regulations, "Controlled Substances and Alcohol Use and Testing," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

## **30. Protection of Sensitive and Personally Identifiable Information**

Authority - FTA Master Agreement, FY2020 Section 36(c), US DOT Common Rules

Applicability - all contracts

Contractor must implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

## **31. Trafficking in Persons**

Authority - Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); FTA Master Agreement FY 2020 at Section 4(f)

Applicability - all contracts

Contractor agrees that it and its employees that participate in the Contract, may not: Engage in severe forms of trafficking in persons during the period of time that the Contract is in effect, Procure a commercial sex act during the period of time that the Contract is in effect, or Use forced labor in the performance of the Contract or subagreements thereunder. Violation of this provision provides City of Ocala the right to unilaterally terminate the Contract.

[Flow Down Requirements](#) – This requirement flows down to all subcontracts at every tier.

## **32. Federal Tax Liability and Recent Felony Convictions**

Authority - 2019 Pub. L 116-6; FTA Master Agreement FY 2020 at Section 4(g), DOT Order 4200.6.

Applicability - all contracts

By submitting a bid or otherwise attempting to enter into a contract with the City of Ocala, the undersigned Contractor certifies that it:

- (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

**33. Domestic Preferences for Procurements**

Authority - 2 CFR part 200 Appendix II (L); 2 C.F.R. § 200.322 Applicability - all contracts

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this Contract.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

\_\_\_\_\_  
NAME (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date