



## **AGENDA**

Metropolitan Transportation Engineering  
& Construction Cooperative (MTECC)  
Thursday, December 14, 2023, 9:00 a.m.  
**100 West Cypress Creek Road,  
6th Floor, Suite 650  
Fort Lauderdale, FL 33309-2181**

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### **REGULAR ITEMS** **(All Items Open for Public Comment)**

1. Call to Order
2. Approval of Minutes -September 14, 2023
3. Approval of Agenda
4. Public Comments

### **ACTION ITEMS**

1. **MOTION TO APPROVE:** Approval of the City of Fort Lauderdale as a member of MTECC.
2. **MOTION TO APPROVE:** Approval of the Amended MTECC Operating Fund Budget and Capital Project Fund for fiscal year 2023-24.
3. **MOTION TO APPROVE:** Agreement No. 23-04 between MTECC and S. Davis & Associates, P.A., for annual audit services for up to five years starting with the audit of the fiscal year 2022-23 MTECC financial statements.

### **DISCUSSION ITEMS**

1. MTECC Project Status Update
2. Executive Director's Report
3. General Counsel's Report

4. Board Comments

**NEXT MEETING: DATE**

**\*MOTION TO ADJOURN**

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\* Motion Requested

Public participation is solicited without regard to race, color, national origin, age, sex, religion, disability or family status. Persons who require special accommodations under the Americans with Disabilities Act or persons who require translation services (free of charge) should contact Carl Ema, Title VI Coordinator at (954) 876-0033/0052 or [emac@browardmpo.org](mailto:emac@browardmpo.org) (or via Florida Relay at 711) at least seven days prior to the meeting.

For complaints, questions or concerns about civil rights or non-discrimination please contact: Carl Ema, Title VI Coordinator at the numbers or e-mail above.



**Regular Items 2.**

**Metro Trans Engineering & Construction Cooperative (MTECC)**

**Meeting Date:** 12/14/2023

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**SUMMARY:**

Approval of Minutes -September 14, 2023

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**Attachments**

MTECC Board Draft Minutes 9.14.23

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**DRAFT**  
**MEETING MINUTES**  
**METRO TRANSPORTATION ENGINEERING AND**  
**CONSTRUCTION COOPERATIVE (MTECC)**  
**100 WEST CYPRESS CREEK ROAD**  
**6<sup>TH</sup> FLOOR, SUITE 650**  
**FORT LAUDERDALE, FLORIDA 33309-2181**  
**THURSDAY, SEPTEMBER 14, 2023, 9:00 A.M.**

**Members**

Chair Andrea McGee, Vice Mayor of Pompano Beach  
Vice Chair Caryl Shuham, Commissioner of Hollywood  
Tim Fadgen, Councilmember of Plantation

**Staff / Also Present**

Lowell Clary, MTECC Interim Executive Director  
Matthew Pearl, MTECC Legal Counsel  
Christopher Bross, MTECC Staff Support  
Sabrina Aubery, FDOT  
Christine Fanchi, MTECC  
Karl Kennedy, City of Pembroke Pines  
Milos Majstorovic, City of Fort Lauderdale

**REGULAR ITEMS**

**1. Call to Order**

The meeting was called to order at 9:00 a.m.

MTECC Executive Director Lowell Clary advised that the Board had received two letters from the city of Pembroke Pines, which would be added to the Agenda as Action Item 5.

**2. Approval of Minutes**

Mr. Clary noted a correction to p.2, Action Item 1B: the engineering firm listed in this Item is CTS Engineering.

[The minutes were approved by consensus.]

**3. Approval of Agenda**

**Motion** made by Vice Chair Shuham, seconded by Councilmember Fadgen, to approve. In a voice vote, the **motion** passed unanimously.

**4. Public Comments**

None.

### **ACTION ITEMS**

**1. MOTION TO APPROVE: Approval of the City of Coconut Creek as a member of MTECC**

**Motion** made by Vice Chair Shuham, seconded by Councilmember Fadgen, to approve. In a voice vote, the **motion** passed unanimously.

Mr. Clary explained that the city of Coconut Creek will undertake a U.S. Department of Housing and Urban Development (HUD) project planned for Lyons Road, which will come before the Board in the next couple of months.

**2. MOTION TO APPROVE: The Amended MTECC Operating Fund Budget and Capital Project Fund for fiscal year 2022-23.**

Mr. Clary recommended that the language in this Item be modified, changing the term “rebate” to “advance.” These funds will be advanced from MTECC for projects so work can begin, and will later be reimbursed as part of the project agreement.

**Motion** made by Vice Chair Shuham, seconded by Councilmember Fadgen, to approve, subject to the amendment of the MTECC member initial contribution rebate is removed and different language added so that it is an advance that remains the responsibility of the participating city. In a voice vote, the **motion** passed unanimously.

**3. MOTION TO APPROVE: The MTECC Operating Fund Budget and Capital Project Fund for fiscal year 2023-24.**

**Motion** made by Vice Chair Shuham, seconded by Councilmember Fadgen, to approve with the same change.

Mr. Clary noted that the Capital Project Fund will allocate approximately \$25,000 per project as an advance so cities may begin pre-work, which includes development of the scope of the project as well as independent fee estimates. He clarified that the City will still owe reimbursement of the advance if the project dies. Cities are asked to confirm that they understand this requirement as part of their agreement.

In a voice vote, the **motion** passed unanimously.

**4. MOTION TO APPROVE: Legal services agreement with Weiss Serota.**

MTECC General Counsel Matthew Pearl stated that Weiss Serota has agreed to a flat fee for all administrative work within the budget parameters of \$4000/month. Project-specific expenses will be included in terms of the Local Agency Program (LAP) agreement for each individual project. Operations will be done as part of the flat fee.

Chair McGee noted that in the future, most legal expenses will be part of job costs, and asked if Weiss Serota will still require \$48,000/year. Attorney Pearl clarified that it is too early to determine this at present, as there are still new members joining MTECC. Weiss Serota hopes to minimize the portion that will not be covered by project costs.

Chair McGee explained that her concern was for billing that may not be done by the hour, as this could make it more difficult for the MTECC Board to see what is being included in the flat fee. Attorney Pearl replied that he would invoice against the retainer and provide a brief overview of what he is doing for the organization each month.

The Item was approved by consensus.

#### **5. MOTION TO APPROVE:**

**A. Resolution for City of Pembroke Pines request for MTECC Services for Project 449690-1 Pembroke Road from SW 145<sup>th</sup> Avenue to Flamingo Road, Construction of Bicycle Lanes, Widening Sidewalks, Milling and Resurfacing. The FDOT LAP Project budget for the design phase of the project is \$965,285 in fiscal year 24-25. The budget for construction and construction inspection in fiscal year 2027-28 is \$7,495,223.**

**B. Resolution for the Pembroke Pines request for MTECC Services for Project 4334293 – Pembroke Pines Mobility HUB. This project was approved by the Broward MPO through as a Mobility HUB project. The project will be funded from Federal Highway Administration funds flexed to Federal Transit Administration at the request of the Broward MPO. The project budget \$420,000 in fiscal year 23-24 for design. The budget for the construction and construction inspection is fiscal year 2014-25 for \$2,204,000.**

**Motion** made by Vice Chair Shuham, seconded by Councilmember Fadgen, to approve.

Mr. Clary stated that MTECC has already begun working with Pembroke Pines on these two items. The LAP project will begin in the next fiscal year.

In a voice vote, the **motion** passed unanimously.

### **DISCUSSION ITEMS**

#### **1. Executive Director's Report**

Mr. Clary advised that he had provided the members with a report on July and August 2023 activities. Preliminary meetings were held with the Florida Department of Transportation (FDOT) to discuss six LAP projects in fiscal year (FY) 2024-2025, two of

which are from MTECC members Pembroke Pines and Hollywood. The other four project owners are not current members, but FDOT has informed those cities that joining MTECC is an option for them. MTECC has also provided FDOT with their complete procurement package, which FDOT will present to the Federal Highway Administration (FHWA) for review.

Mr. Clary emphasized that if MTECC develops a consistent process, it will save FDOT time. He noted that a positive working relationship has developed between MTECC and FDOT. One of the goals of this partnership is to provide greater flexibility regarding the timing of projects if FDOT approves the process. The current time period in FDOT's Work Program is three years between the design and construction phases. MTECC is seeking to shorten this time frame to two years if possible.

Another consideration is the possibility of combining construction projects in cities that may be adjacent to one another. He offered the example of Hallandale Beach and Hollywood, both of which have Complete Streets projects scheduled in future fiscal years. Another possibility may be one of the Pembroke Pines projects approved earlier today by the Board, which is located next to a project in Miramar. While Miramar may wish to complete its own design, as they are LAP-certified, there may be options to combine the construction phases of the two projects.

Mr. Clary noted that there will need to be development of a contingency policy for MTECC. Contingencies are not always built into LAP projects, which can create difficulties on these projects for construction companies. MTECC's agreement with cities requires that the city provide for any contingencies. The agreement also asks member cities to put up an advance as part of the project agreement, which can be returned to them later.

Mr. Clary continued that the city of Lighthouse Point has expressed interest in joining MTECC. Sunrise and Tamarac have a joint LAP project scheduled for FY 2024-2025 and are in discussions regarding MTECC as well. A workshop is scheduled with Fort Lauderdale the following week.

It was noted that there had been previous discussion of creating an MTECC website so the public can see which projects the organization is involved in. Mr. Clary stated that Staff is working with WSP to develop a website. MTECC will be accessible from the Broward MPO website.

## **2. General Counsel's Report**

None.

### **3. Board Comments**

None.

There being no further business to come before MTECC at this time, the meeting was adjourned at 9:30 a.m.

**NEXT MEETING DATE: November 2, 2023**



**Metro Trans Engineering & Construction  
Cooperative (MTECC)**  
**Meeting Date: 12/14/2023**

1.

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**REQUESTED ACTION:**

**MOTION TO APPROVE:** Approval of the City of Fort Lauderdale as a member of MTECC.

**WHAT THIS ACTION ACCOMPLISHES:**

This adds the City of Fort Lauderdale as a member of MTECC that allows Fort Lauderdale to access MTECC services for future projects in Fort Lauderdale.

**SUMMARY EXPLANATION/BACKGROUND:**

The City of Fort Lauderdale expressed interest in becoming a member of MTECC in July 2023. The City of Fort Lauderdale approved the MTECC Interlocal Agency Agreement at their Commission meeting on October 17, 2023. The endorsement of the MTECC Interlocal Agreement by the City of Fort Lauderdale is attached as Exhibit A to this action item.

The attached Resolution when approved by the Board will add the City of Fort Lauderdale as a member of MTECC.

MTECC staff have provided the City of Fort Lauderdale with the new member package including an invoice for the initial fee of \$50,000.00 to be paid to MTECC.

The City and Broward MPO are working on a Federal Transit Administration (FTA) grant for a project in Fort Lauderdale that could possibly be a near term project for MTECC to support Fort Lauderdale.

**MTECC STAFF RECOMMENDATION(S):**

Recommend approval of the City of Fort Lauderdale as a member of MTECC.

**ADDITIONAL INFORMATION/PREPARER:**

If you have any questions about this item, please contact Lowell Clary at (850) 212-7772 or [claryl@mteccfl.org](mailto:claryl@mteccfl.org).

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**Attachments**

Resolution Approving Ft. Lauderdale MTECC Membership



RESOLUTION NO. 2023-10

**A RESOLUTION OF THE BOARD OF THE METRO TRANSPORTATION ENGINEERING AND CONSTRUCTION COOPERATIVE (“MTECC”) APPROVING THE MEMBERSHIP OF THE CITY OF FORT LAUDERDALE IN MTECC; PROVIDING FOR IMPLEMENTATION AND AN EFFECTIVE DATE.**

**WHEREAS**, Pursuant to the Interlocal Agreement for the Creation of the MTECC, as amended and restated by the Founding Members (the “Agreement”), the joining of additional municipal members requires approval of the Board; and

**WHEREAS**, the City of Fort Lauderdale, desire to join MTECC; and

**WHEREAS**, the Board deems it appropriate and in the best interest of the public health, safety and welfare to approve the membership of the City of Fort Lauderdale in MTECC.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE METRO TRANSPORTATION ENGINEERING AND CONSTRUCTION COOPERATIVE, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

**Section 2. Approval of MTECC Membership.** That the Board hereby approves the membership of the City of Fort Lauderdale in MTECC.

**Section 3. Implementation.** That the Executive Director is hereby authorized to take any and all actions necessary to implement the purposes of this Resolution.

**Section 4. Effective Date.** This Resolution shall become effective upon adoption.

**ADOPTED this\_day of \_\_\_\_\_, 2023.**

METRO TRANSPORTATION ENGINEERING AND  
CONSTRUCTION COOPERATIVE

By \_\_\_\_\_  
Chair

Attest:

By \_\_\_\_\_  
Executive Director

**Exhibit A**  
[insert Joinder]

**FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR THE CREATION  
OF THE METRO TRANSPORTATION ENGINEERING & CONSTRUCTION  
COOPERATIVE**

This First Amended and Restated Interlocal Agreement for the creation of the Metro Transportation Engineering & Construction Cooperative (the "Agreement") is made and entered into, by and between the Broward Metropolitan Planning Organization (the "BMPO") and the undersigned Florida Municipal Corporations, each a Florida municipality or local government unit of the State of Florida (the "Municipal Members") (collectively the BMPO and Municipal Members shall be referred to as the "Parties").

RECITALS:

**WHEREAS**, on August 20<sup>th</sup>, 2015, the Federal Highway Administration, Florida Division and the State of Florida Department of Transportation entered into the Stewardship and Oversight Agreement on Project Assumption and Program Oversight (the "Oversight Agreement"); and

**WHEREAS**, the Oversight Agreement specifically authorizes the Florida Department of Transportation ("FDOT") to permit certified local agencies to carry out its responsibilities for administering federally funded transportation projects ("Federal Aid Projects"); and

**WHEREAS**, FDOT may only delegate its responsibility for the administration of Federal Aid Projects to a unit of government that has been certified under the FDOT Local Agency Program (the "LAP"); and

**WHEREAS**, the rules and requirements for the certification of a local agency are enumerated in the Florida Department of Transportation Local Agency Program Manual (the "Manual"); and

**WHEREAS**, FDOT has an extensive work program of Federal Aid Projects that fall within the jurisdiction of municipalities across Broward County (the "County"); and

**WHEREAS**, the Municipal Members desire to leverage their respective resources by creating an entity that may be LAP certified to complete all Federal Aid Projects located within their respective jurisdictions; and

**WHEREAS**, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

**WHEREAS**, Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of governmental units; and

**WHEREAS**, the Parties to this Agreement desire to establish the Metro Transportation Engineering & Construction Cooperative ("MTECC") for the purpose of administering both Federal Aid Projects and transportation projects completed without the use of federal funding ("Local Projects"); and

WHEREAS, the BMPO is duly organized and existing under Section 339.175, Florida Statutes. The BMPO has unique experience in multimodal transportation planning and the review, ranking, prioritization, programming, and coordination of municipal transportation projects, which can assist the Municipal Members in efficient and effective decision-making regarding future transportation investments and the use of federal and state and local transportation funding options; and

WHEREAS, Section 339.175, Florida Statutes specifies that the BMPO shall have such powers and privileges that are provided under Section 163.01 and does further authorize the BMPO to coordinate "development activities" in coordination with other local governments; and

WHEREAS, MTECC will administer these Federal Aid Projects in a manner that compliments the implementation of Local Projects; and

WHEREAS, the Parties desired to empower MTECC to accept funds for, and oversee the construction of the Federal Aid Projects as well as Local Projects; and

WHEREAS, the Parties entered into the Interlocal Agreement for the Creation of the Metro Transportation Engineering & Construction Cooperative which was recorded Instrument No. 118179439 with the Clerk of Court for Broward County, Florida in accordance with Chapter 162.01(11) Fla. Stat. on May 31, 2022 (the "Original Agreement"); and

WHEREAS, the parties desire to amend the Agreement to eliminate the prohibition on a member of the MTECC Board serving simultaneously on the BMPO as previously described in Section 8.f. of the Original Agreement.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

1. Recitals. Each and all of the forgoing recitals shall be incorporated herein and acknowledged to be true and correct to the best of the Parties' knowledge. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement.

2. Definitions. The following terms shall have the meanings prescribed herein.

- a. *Agreement* means and refers to this instrument, as amended from time to time.
- b. *BMPO* means and refers to the Broward Metropolitan Planning Organization.
- c. *BMPO Consultants* means and refers to private contractors engaged by BMPO.
- d. *BMPO Staff* means and refers to employees of the BMPO.
- e. *County* means and refers to Broward County.
- f. *FDOT* means and refers to the Florida Department of Transportation, an agency of the State of Florida created pursuant to Section 20.23, Florida Statutes.
- g. *Federal Aid Project* means and refers to transportation related projects funded by FDOT through a Local Agency Program ("LAP") Agreement.
- h. *Fiscal Year* means and refers to the twelve month period commencing October 1<sup>st</sup> and concluding September 30<sup>th</sup>.
- i. *Founding Members* means and refers to the City of Plantation, the City of Pompano Beach, and the City of Hollywood.

- j. LAP Agreement means and refers to a Florida Department of Transportation Local Agency Program Agreement for the planning, design, construction and/or completion of a Federal Aid Project.
  - k. Local Projects means and refers to any transportation related project that does not utilize federal funding and/or is not undertaken pursuant to a LAP Agreement.
  - l. MTECC means and refers to Metro Transportation Engineering & Construction Cooperative.
  - m. MTECC Consultants means and refers to private contractors engaged by MTECC.
  - n. Project Administration Agreement means and refers to a written agreement between MTECC and a Municipal Member setting forth the responsibilities of their respective rights and responsibilities for the administration of a Federal Aid Project or Local Project.
3. Purpose. The purpose of this Agreement is to consent to and authorize the creation of MTECC, in order to facilitate the planning, design and construction of transportation related projects throughout County.
4. Legal Status; Formation. MTECC shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes. This Agreement shall be filed with the Clerk of Court for Broward County, Florida in accordance with Section 163.01(11), Florida Statutes. The date of filing shall be the Organization Date.
5. Membership. Local governmental entities located within the County may enter into and become a Party to this Agreement following the approval of a majority of the members of the Board (as defined in Section 8 below), execution of this Agreement, payment of the Initial Contribution (as set forth in Section 11 below), and adoption of a resolution approving this Agreement and expressing of support for the establishment of and membership in MTECC by the governing body of the joining governmental entity.
6. MTECC Jurisdiction. The jurisdiction of the MTECC shall be the geographic boundaries of Broward County. MTECC shall be permitted to engage in the activities authorized in this Agreement only within the geographic boundaries of its Municipal Members.
7. Powers of MTECC. The Parties agree that MTECC shall exercise any or all of the powers granted under Sections 163.01, Florida Statutes, as may be amended from time to time, to carry out its purpose as defined in Section 3 of this Agreement. These powers include, without limitation, the following:
- a. In its own name to make and enter into contracts;
  - b. To employ agencies, employees, or consultants;
  - c. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;
  - d. To acquire, hold, or dispose of property;
  - e. To incur debts, liabilities, or obligations which shall not constitute the debts, liabilities, or obligations of any of the Parties to this Agreement;
  - f. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of MTECC, the conduct of the business of MTECC, and the maintenance of records and documents of MTECC;

- g. To maintain an office at such place or places as it may designate within the County;
- h. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes, necessary to complete the design, development and/or construction of transportation related projects, and to accept funding from federal, state, or local agencies;
- i. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

8. MTECC Governance.

- a. Governing Board of MTECC. MTECC shall be governed by a governing board (the "Board") consisting of three members ("Board Members").
- b. Initial Board Composition. The Parties agree that, upon the execution and recording of this Agreement, the initial membership of the Board shall be comprised of one eligible, voter-elected representative from each of the Founding Members (the "Initial Board Members") as selected by the respective governing bodies of the Founding Members:
  - ii. City of Pompano Beach
  - iii. The City of Plantation
  - iv. The City of Hollywood
- c. Term of Board Members. The term of office for the Initial Board Members shall be as follows:
  - i. Five Year Term: The City of Hollywood.
  - ii. Seven Year Term: City of Plantation, City of Pompano Beach.

The term of each Subsequent Board Member (defined below) shall be four (4) years ("Board Term").

- d. Subsequent Board Composition. Upon the conclusion of the term of office of the Initial Board Members and each subsequent term of office thereafter, eligible individuals shall be appointed to fill the Board seats ("Subsequent Board Members"). Subsequent Board Members shall be selected by the Municipal Members with the longest tenured memberships in MTECC, in descending order until each qualified Municipal Member has had an opportunity to appoint a Board Member (the "Member Rotation"). Municipal Members must be a party to this Agreement in good standing as defined in Section 11 for a minimum of three consecutive (3) years prior to appointing a Board Member. Once each eligible Municipal Member has had the opportunity to appoint a Board Member, appointments to the Board shall repeat in the same order as provided for in this Section. If a Municipal Member elects to forgo its ability to appoint a Board Member, the forgoing Municipal Member shall be deemed to have made an appointment for the purpose of determining the Member Rotation, and the next Municipal Member in the Member Rotation shall appoint a Board Member.

- e. Expansion of Board Membership. The Board may, by majority vote, expand the membership of the Board from three members to five members. Newly created Board seats shall be filled in accordance with Section 8.d.
  - f. Board Member Eligibility. Board Members shall be members of the governing body of the appointing Municipal Member. In the event a Board Member ceases to be a member of the governing body of the appointing Municipal Member, or becomes otherwise ineligible to serve on the Board, the appointing Municipal Member shall appoint a replacement official who is a member of the governing body to fulfill the remaining term of the ineligible Board Member.
  - g. Removal for Non-Attendance: If any Board Member fails to attend three consecutive meetings or six meetings in any twelve (12) month period, the Board shall notify the appointing Municipal Member and the Municipal Member shall appoint a new qualified individual to serve as Board Member for the remainder of the term.
  - h. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board Members participating in a meeting. The Board may adopt administrative policies related to MTECC operations, as well as rules related to the procedure to be followed during meetings of the Board. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.
9. MTECC Administration.
- a. Executive Director. The Board shall designate a principal administrative officer of MTECC (the "Executive Director"). The Executive Director shall:
    - i. Have the authority to execute contracts, deeds and other documents on behalf of MTECC.
    - ii. Be responsible for the hiring, supervision and removal of MTECC employees and consultants except as specifically defined herein.
    - iii. Ensure compliance with all laws and the provisions of this Agreement.
    - iv. Prepare and submit to the Board an annual budget commencing on October 1<sup>st</sup> and concluding September 30<sup>th</sup> of each year.
    - v. Develop policies and procedures that meet the requirements of the applicable contract/funding partner.
10. Authorized Activities of MTECC.
- a. Federal Aid Project Administration.
    - i. LAP Certification. On behalf of the Municipal Members, MTECC may become LAP certified by FDOT and may oversee all aspects of the delivery of Federal Aid Projects within its jurisdiction including, but not limited to: planning, procurement, and construction administration for projects funded and delivered under the LAP. Upon

certification under the LAP, MTECC may contract for the project delivery of Federal Aid Projects on behalf of FDOT.

- ii. Liability of the Parties for Federal Aid Project Completion. The Parties to this Agreement shall not be liable for any cost or expenses associated with the completion of any Federal Aid Project unless expressly agreed to in a Project Administration Agreement. Contractors selected by the Board for the design and construction of Federal Aid Projects shall be required to carry insurance policies with minimum policy limits acceptable to the Board (the "Policies").

b. Local Project Administration.

- i. Provision of Services to Municipal Members. MTECC shall make available to Municipal Members those services necessary to implement the purposes of this Agreement, as defined in Section 3 (the "Services"). The Services shall be performed by BMPO Staff, BMPO Consultants, MTECC Consultants, and MTECC Staff.
- ii. Payment for Services. Municipal Members shall pay for the cost of the Services rendered by BMPO Staff, BMPO Consultants, MTECC Staff and MTECC Consultants (the "Service Fee"). The Service Fee for BMPO Staff and MTECC Staff time shall equal the actual cost of the employee incurred on behalf of MTECC, as documented by time sheets including, but not limited to, salary, benefits, retirement contributions and administrative overhead. Administrative overhead for BMPO staff and MTECC staff shall not exceed 50% of an employee's salary. The Service Fee for Services performed by BMPO Consultants and MTECC Consultants shall be equal to the then current contracted rates. A schedule of Service Fees shall be provided to Municipal Members. Administrative overhead for BMPO Consultants and MTECC Consultants shall not exceed 10% of actual consultant fees.
- iii. Selection of Services. Services shall be procured in accordance with applicable laws that apply to the source of funds that are supporting the services/project. The provision of Services under this Agreement shall be memorialized in a Project Administration Agreement and/or the issuance of task work orders, which shall outline the Services to be completed and the associated Service Fees ("Task Work Orders"). Task Work Orders shall become binding upon the Parties following execution by the Municipal Member and MTECC. All Services to be performed must comply with all applicable Federal, State and local laws, guidelines and procedures.

11. Financial Obligations.

- a. Financial Contribution of Founding Members. Founding Members shall provide the initial funding for the establishment of MTECC. Each Founding Member shall make a non-refundable contribution of One Hundred Thousand Dollars (\$100,000) to MTECC (the "Establishment Contribution"). Founding Members shall tender the Establishment Contribution to MTECC not more than fifteen (15) days of the recording of this Agreement.
- b. Financial Contribution of Municipal Members.

- i. **Initial Contribution.** Non-Founding Municipal Members shall pay a non-refundable initial membership fee in the amount of Fifty Thousand Dollars (\$50,000) (the "Membership Fee") not more than fifteen (15) days of executing this Agreement. A Municipal Member that withdraws from MTECC and subsequently rejoins MTECC shall pay a new Membership Fee upon reentry.
    - ii. **Annual Fee.** All Municipal Members shall pay a non-refundable annual fee for the continued participation in MTECC in an amount set by the Board (the "Annual Fee"). The Annual Fee for each Fiscal Year shall be Twenty-Five Thousand Dollars (\$25,000) unless otherwise established by the Board no later than March 1 prior to the commencement of the next Fiscal Year. The Municipal Members shall pay an Annual Membership Fee for a minimum of five years. Each Annual Fee shall be paid on October 1<sup>st</sup> of each year (the "Due Date"). Any Municipal Member that fails to remit the Annual Fee within thirty (30) days of the Due Date shall not be considered a member in good standing, shall be ineligible to appoint a Board Member during its next turn in the Member Rotation, and shall forfeit its claim to any funds to be disbursed upon the termination of MTECC. Further, Municipal Members shall not be permitted to avail themselves of Services for projects in the geographical boundaries of the Municipal Member until remittance of the Annual Fee.
  - c. **Limitation of Financial Obligations.** The financial obligations of the Municipal Members shall be limited to the payment of the applicable Establishment Contribution, Membership Fee, Annual Fee as well as any Services Fees authorized by the Municipal Member in accordance with Section 10 of this Agreement.
12. **Term; Termination.** This Agreement shall remain in full force and effect from the date of its recording until dissolved in accordance with this Section. Should a Party terminate its participation in this Agreement, be dissolved, abolished, or otherwise cease to exist, MTECC and this Agreement shall continue until such time as the Parties agree to terminate this Agreement. In the event of the dissolution of MTECC resulting from termination of this Agreement, any funds held by MTECC contributed by Municipal Members ("Municipal Agency Funds") shall be distributed to the Municipal Members that remain a party to this Agreement at the time of dissolution. Municipal Agency Funds shall be disbursed within thirty (30) days of the effective date of the dissolution in a proportionate share to the Establishment Contribution, Membership Fees or Annual Fees paid by such Municipal Members. Funds held by MTECC that have been contributed by FDOT or any other Federal or State agency shall be returned to the appropriate agency.
13. **Withdrawal.** A Party may terminate its involvement in MTECC and its participation in this Agreement upon one hundred eighty (180) days' written notice to the other Parties, provided that there is no LAP Agreement for the completion of a Federal Aid Project or uncompleted Task Work Order for a Local Project within its jurisdiction at the time of the written notice. No Party may terminate its participation in MTECC while a LAP Agreement for the completion of a Federal Aid Project or Task Work Order in its geographic boundaries remains effective. A Party who withdraws will not receive a refund of the Initial Contribution, Membership Fee or Annual Fees.
14. **Consent.** This Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of MTECC as required by Sections 163.01, Florida Statutes.

15. Liability/ Sovereign Immunity. The Parties hereto shall each be individually and separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Agreement any and all applicable insurance coverage required by Florida law for governmental entities. Nothing in this Agreement shall be construed to affect in any way the Parties' rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the Parties, nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement. The Parties are entities subject to Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their employees pursuant to Section 768.28, Florida Statutes.
16. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Chief Executive and/or elected official for the Party for whom it is intended at the location of their City hall.
17. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by a majority of the Parties.
18. Filing. It is agreed that this Agreement shall be filed with the Clerk of the Circuit Court of Broward County, as required by Section 163.01(11), Florida Statutes.
19. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than another.
20. Quarterly Reports. A quarterly report of MTECC shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports, and other related records produced and maintained by MTECC, its employees, and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Agreement upon reasonable notice.
21. Merger. This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation

from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Agreement.

22. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.
23. Severability. If any clause, provision or section of this Agreement is found to be illegal or invalid by any court, the invalidity of such clause, provision or section will not affect the remainder validity of the remainder of the Agreement, and this Agreement will be construed and enforced.
24. Dispute Resolution. If the Parties are unable to resolve an issue about which there may be a disagreement regarding a matter covered in this Agreement or any subsequent Project Administration Agreement or Task Work Order, such dispute will be resolved in the following manner:
  - a. The Parties will meet through the respective municipal manager or administrator and the Executive Director, or their respective designee(s), in an effort to resolve the dispute; and
  - b. If the Parties are still unable to resolve the dispute, the Parties agree to further attempt to resolve the dispute in accordance with the governmental conflict procedures specified in Chapter 164, Florida Statutes, or such other process mutually agreed upon in writing by the Parties involved in the dispute.
25. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
26. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
27. Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Agreement shall be proper exclusively in Broward County, Florida.
28. Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.
29. Supremacy. This First Amended and Restated Agreement hereby supersedes and replaces the Original Agreement entered into between the Parties.
30. Effective Date. This Agreement shall become effective upon the execution by the Parties hereto and filing with the Clerk of Court for Broward County.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed the day and year as first stated below.

[Signature]  
Attest

Witness Name: GREGORY SWART

B. L.

Witness Name: Bryan Calverka

Broward Metropolitan Planning Organization

By: [Signature] 9/8/22

Name: FRANK C. ORTIS

Title: Chair

Approved As To Form: [Signature]

By: ALAN L. GABRIEL

Title: General Counsel

State of Florida  
County of Broward  
The foregoing instrument was acknowledged before me  
this 17 day of January, 2023  
By Alan L. Gabriel  
Personally known  OR produced identification   
Type of identification produced \_\_\_\_\_

[Signature]  
Notary Public



MARIA E. CERICE  
Commission # HH 205151  
Expires December 7, 2025

CITY OF POMPANO BEACH

By:   
REX HARDIN, MAYOR

By:   
GREGORY P. HARRISON, CITY MANAGER

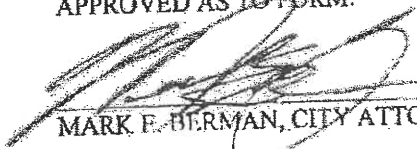
Dated: 9/28/22

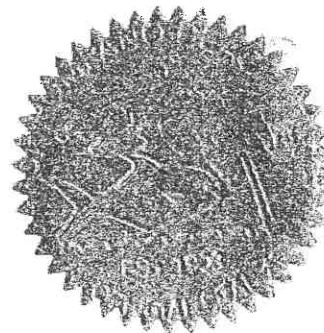
Attest:

  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

  
MARK E. BERMAN, CITY ATTORNEY



Attest:

Witness Name: Maria Gonzalez

Witness Name: John Pecorelli



City of Plantation, Florida

By: Lynn Stoner, Mayor

Name: Lynn Stoner

Title: Mayor

14 day of September, 2009

Approved As To Form:

By: Asst. City Attorney

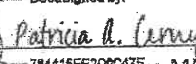
Name: Asst. City Attorney

Title: Asst. City Attorney


DocuSign Envelope ID: 4DC59D20-629C-4A4B-91AF-1CCF34E08EF0

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

ATTEST:

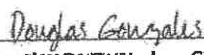
DS DocuSigned by:  
  
 Patricia A. Cerny, MMC, City Clerk

City of Hollywood, a municipal Corporation of the State of Florida

DocuSigned by:  
 By:   
 John Levy, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.

22nd day of September, 2022.

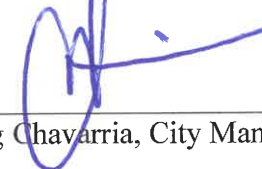
DocuSigned by:  
  
 Douglas R. Gonzales, City Attorney

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above.

AS TO A MUNICIPAL MEMBER:

CITY OF FORT LAUDERDALE

By   
Dean J. Trantalis, Mayor


By   
Greg Chavarria, City Manager

ATTEST:

  
David R. Soloman, City Clerk



Approved as to form and correctness:  
D'Wayne M. Spence, Interim City Attorney

By:   
Print Name: Kimberly Cunningham Mosley  
Title: Assistant City Attorney



COMMISSION AGENDA ITEM  
DOCUMENT ROUTING FORM

3L

Today's Date: 10/19/2023

**DOCUMENT TITLE: FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR THE CREATION OF THE METRO TRANSPORTATION ENGINEERING & CONSTRUCTION COOPERATIVE**

COMM. MTG. DATE: 10/17/2023 CAM #: 23-0847 ITEM #: CR-9 CAM attached:  YES  NO

Routing Origin: TAM Router Name/Ext: G.Smith/x3764 Action Summary attached:  YES  NO

CIP FUNDED:  YES  NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: CAO Router Name/Ext: K.Nembhard/x5001 # of originals routed: 3 Date to CAO: 10/19/2023

2) City Attorney's Office: Documents to be signed/routed?  YES  NO # of originals attached: 1

Is attached Granicus document Final?  YES  NO Approved as to Form:  YES  NO

Date to CCO: 10/19/2023 Kimberly Cunningham Mosley  
Attorney's Name

KCM  
Initials

3) City Clerk's Office: # of originals: 3 Routed to: Donna V./Aimee L./CMO Date: 10/19/23

4) City Manager's Office: CMO LOG #: DLT53 Document received from: 10/20/23

Assigned to: GREG CHAVARRIA   
ANTHONY FAJARDO  SUSAN GRANT   
GREG CHAVARRIA as CRA Executive Director

APPROVED FOR G. CHAVARRIA'S SIGNATURE  N/A FOR G. CHAVARRIA TO SIGN

PER ACM: S. Grant (Initial/Date) PER ACM: A. Fajardo (Initial/Date)

PENDING APPROVAL (See comments below)

Comments/Questions: \_\_\_\_\_

Forward  originals to  Mayor  CCO Date: 10/23/23 CCO

5) Mayor/CRA Chairman: Please sign as indicated. Forward \_\_\_ originals to CCO for attestation/City seal (as applicable) Date: \_\_\_\_\_

6) City Clerk: Scan original and forwards 3 originals to: G.Smith/x3764

Attach 1 certified Reso # 23-241  YES  NO Original Route form to K.Nembhard/x5001

**FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR THE CREATION  
OF THE METRO TRANSPORTATION ENGINEERING & CONSTRUCTION  
COOPERATIVE**

This First Amended and Restated Interlocal Agreement for the creation of the Metro Transportation Engineering & Construction Cooperative (the "Agreement") is made and entered into, by and between the Broward Metropolitan Planning Organization (the "BMPO") and the undersigned Florida Municipal Corporations, each a Florida municipality or local government unit of the State of Florida (the "Municipal Members") (collectively the BMPO and Municipal Members shall be referred to as the "Parties").

RECITALS:

**WHEREAS**, on August 20<sup>th</sup>, 2015, the Federal Highway Administration, Florida Division and the State of Florida Department of Transportation entered into the Stewardship and Oversight Agreement on Project Assumption and Program Oversight (the "Oversight Agreement"); and

**WHEREAS**, the Oversight Agreement specifically authorizes the Florida Department of Transportation ("FDOT") to permit certified local agencies to carry out its responsibilities for administering federally funded transportation projects ("Federal Aid Projects"); and

**WHEREAS**, FDOT may only delegate its responsibility for the administration of Federal Aid Projects to a unit of government that has been certified under the FDOT Local Agency Program (the "LAP"); and

**WHEREAS**, the rules and requirements for the certification of a local agency are enumerated in the Florida Department of Transportation Local Agency Program Manual (the "Manual"); and

**WHEREAS**, FDOT has an extensive work program of Federal Aid Projects that fall within the jurisdiction of municipalities across Broward County (the "County"); and

**WHEREAS**, the Municipal Members desire to leverage their respective resources by creating an entity that may be LAP certified to complete all Federal Aid Projects located within their respective jurisdictions; and

**WHEREAS**, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

**WHEREAS**, Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of governmental units; and

**WHEREAS**, the Parties to this Agreement desire to establish the Metro Transportation Engineering & Construction Cooperative ("MTECC") for the purpose of administering both Federal Aid Projects and transportation projects completed without the use of federal funding ("Local Projects"); and

WHEREAS, the BMPO is duly organized and existing under Section 339.175, Florida Statutes. The BMPO has unique experience in multimodal transportation planning and the review, ranking, prioritization, programming, and coordination of municipal transportation projects, which can assist the Municipal Members in efficient and effective decision-making regarding future transportation investments and the use of federal and state and local transportation funding options; and

WHEREAS, Section 339.175, Florida Statutes specifies that the BMPO shall have such powers and privileges that are provided under Section 163.01 and does further authorize the BMPO to coordinate "development activities" in coordination with other local governments; and

WHEREAS, MTECC will administer these Federal Aid Projects in a manner that compliments the implementation of Local Projects; and

WHEREAS, the Parties desired to empower MTECC to accept funds for, and oversee the construction of the Federal Aid Projects as well as Local Projects; and

WHEREAS, the Parties entered into the Interlocal Agreement for the Creation of the Metro Transportation Engineering & Construction Cooperative which was recorded Instrument No. 118179439 with the Clerk of Court for Broward County, Florida in accordance with Chapter 162.01(11) Fla. Stat. on May 31, 2022 (the "Original Agreement"); and

WHEREAS, the parties desire to amend the Agreement to eliminate the prohibition on a member of the MTECC Board serving simultaneously on the BMPO as previously described in Section 8.f. of the Original Agreement.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

1. Recitals. Each and all of the forgoing recitals shall be incorporated herein and acknowledged to be true and correct to the best of the Parties' knowledge. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement.
2. Definitions. The following terms shall have the meanings prescribed herein.
  - a. *Agreement* means and refers to this instrument, as amended from time to time.
  - b. *BMPO* means and refers to the Broward Metropolitan Planning Organization.
  - c. *BMPO Consultants* means and refers to private contractors engaged by BMPO.
  - d. *BMPO Staff* means and refers to employees of the BMPO.
  - e. *County* means and refers to Broward County.
  - f. *FDOT* means and refers to the Florida Department of Transportation, an agency of the State of Florida created pursuant to Section 20.23, Florida Statutes.
  - g. *Federal Aid Project* means and refers to transportation related projects funded by FDOT through a Local Agency Program ("LAP") Agreement.
  - h. *Fiscal Year* means and refers to the twelve month period commencing October 1<sup>st</sup> and concluding September 30<sup>th</sup>.
  - i. *Founding Members* means and refers to the City of Plantation, the City of Pompano Beach, and the City of Hollywood.

- j. LAP Agreement means and refers to a Florida Department of Transportation Local Agency Program Agreement for the planning, design, construction and/or completion of a Federal Aid Project.
  - k. Local Projects means and refers to any transportation related project that does not utilize federal funding and/or is not undertaken pursuant to a LAP Agreement.
  - l. MTECC means and refers to Metro Transportation Engineering & Construction Cooperative.
  - m. MTECC Consultants means and refers to private contractors engaged by MTECC.
  - n. Project Administration Agreement means and refers to a written agreement between MTECC and a Municipal Member setting forth the responsibilities of their respective rights and responsibilities for the administration of a Federal Aid Project or Local Project.
3. Purpose. The purpose of this Agreement is to consent to and authorize the creation of MTECC, in order to facilitate the planning, design and construction of transportation related projects throughout County.
4. Legal Status; Formation. MTECC shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes. This Agreement shall be filed with the Clerk of Court for Broward County, Florida in accordance with Section 163.01(11), Florida Statutes. The date of filing shall be the Organization Date.
5. Membership. Local governmental entities located within the County may enter into and become a Party to this Agreement following the approval of a majority of the members of the Board (as defined in Section 8 below), execution of this Agreement, payment of the Initial Contribution (as set forth in Section 11 below), and adoption of a resolution approving this Agreement and expressing of support for the establishment of and membership in MTECC by the governing body of the joining governmental entity.
6. MTECC Jurisdiction. The jurisdiction of the MTECC shall be the geographic boundaries of Broward County. MTECC shall be permitted to engage in the activities authorized in this Agreement only within the geographic boundaries of its Municipal Members.
7. Powers of MTECC. The Parties agree that MTECC shall exercise any or all of the powers granted under Sections 163.01, Florida Statutes, as may be amended from time to time, to carry out its purpose as defined in Section 3 of this Agreement. These powers include, without limitation, the following:
- a. In its own name to make and enter into contracts;
  - b. To employ agencies, employees, or consultants;
  - c. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;
  - d. To acquire, hold, or dispose of property;
  - e. To incur debts, liabilities, or obligations which shall not constitute the debts, liabilities, or obligations of any of the Parties to this Agreement;
  - f. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of MTECC, the conduct of the business of MTECC, and the maintenance of records and documents of MTECC;

- g. To maintain an office at such place or places as it may designate within the County;
- h. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes, necessary to complete the design, development and/or construction of transportation related projects, and to accept funding from federal, state, or local agencies;
- i. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

8. MTECC Governance.

a. Governing Board of MTECC. MTECC shall be governed by a governing board (the "Board") consisting of three members ("Board Members").

b. Initial Board Composition. The Parties agree that, upon the execution and recording of this Agreement, the initial membership of the Board shall be comprised of one eligible, voter-elected representative from each of the Founding Members (the "Initial Board Members") as selected by the respective governing bodies of the Founding Members:

- ii. City of Pompano Beach
- iii. The City of Plantation
- iv. The City of Hollywood

c. Term of Board Members. The term of office for the Initial Board Members shall be as follows:

- i. Five Year Term: The City of Hollywood.
- ii. Seven Year Term: City of Plantation, City of Pompano Beach.

The term of each Subsequent Board Member (defined below) shall be four (4) years ("Board Term").

d. Subsequent Board Composition. Upon the conclusion of the term of office of the Initial Board Members and each subsequent term of office thereafter, eligible individuals shall be appointed to fill the Board seats ("Subsequent Board Members"). Subsequent Board Members shall be selected by the Municipal Members with the longest tenured memberships in MTECC, in descending order until each qualified Municipal Member has had an opportunity to appoint a Board Member (the "Member Rotation"). Municipal Members must be a party to this Agreement in good standing as defined in Section 11 for a minimum of three consecutive (3) years prior to appointing a Board Member. Once each eligible Municipal Member has had the opportunity to appoint a Board Member, appointments to the Board shall repeat in the same order as provided for in this Section. If a Municipal Member elects to forgo its ability to appoint a Board Member, the forgoing Municipal Member shall be deemed to have made an appointment for the purpose of determining the Member Rotation, and the next Municipal Member in the Member Rotation shall appoint a Board Member.

- e. Expansion of Board Membership. The Board may, by majority vote, expand the membership of the Board from three members to five members. Newly created Board seats shall be filled in accordance with Section 8.d.
  - f. Board Member Eligibility. Board Members shall be members of the governing body of the appointing Municipal Member. In the event a Board Member ceases to be a member of the governing body of the appointing Municipal Member, or becomes otherwise ineligible to serve on the Board, the appointing Municipal Member shall appoint a replacement official who is a member of the governing body to fulfill the remaining term of the ineligible Board Member.
  - g. Removal for Non-Attendance: If any Board Member fails to attend three consecutive meetings or six meetings in any twelve (12) month period, the Board shall notify the appointing Municipal Member and the Municipal Member shall appoint a new qualified individual to serve as Board Member for the remainder of the term.
  - h. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board Members participating in a meeting. The Board may adopt administrative policies related to MTECC operations, as well as rules related to the procedure to be followed during meetings of the Board. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.
9. MTECC Administration.
- a. Executive Director. The Board shall designate a principal administrative officer of MTECC (the "Executive Director"). The Executive Director shall:
    - i. Have the authority to execute contracts, deeds and other documents on behalf of MTECC.
    - ii. Be responsible for the hiring, supervision and removal of MTECC employees and consultants except as specifically defined herein.
    - iii. Ensure compliance with all laws and the provisions of this Agreement.
    - iv. Prepare and submit to the Board an annual budget commencing on October 1<sup>st</sup> and concluding September 30<sup>th</sup> of each year.
    - v. Develop policies and procedures that meet the requirements of the applicable contract/funding partner.
10. Authorized Activities of MTECC.
- a. Federal Aid Project Administration.
    - i. LAP Certification. On behalf of the Municipal Members, MTECC may become LAP certified by FDOT and may oversee all aspects of the delivery of Federal Aid Projects within its jurisdiction including, but not limited to: planning, procurement, and construction administration for projects funded and delivered under the LAP. Upon

certification under the LAP, MTECC may contract for the project delivery of Federal Aid Projects on behalf of FDOT.

- ii. Liability of the Parties for Federal Aid Project Completion. The Parties to this Agreement shall not be liable for any cost or expenses associated with the completion of any Federal Aid Project unless expressly agreed to in a Project Administration Agreement. Contractors selected by the Board for the design and construction of Federal Aid Projects shall be required to carry insurance policies with minimum policy limits acceptable to the Board (the "Policies").

b. Local Project Administration.

- i. Provision of Services to Municipal Members. MTECC shall make available to Municipal Members those services necessary to implement the purposes of this Agreement, as defined in Section 3 (the "Services"). The Services shall be performed by BMPO Staff, BMPO Consultants, MTECC Consultants, and MTECC Staff.
- ii. Payment for Services. Municipal Members shall pay for the cost of the Services rendered by BMPO Staff, BMPO Consultants, MTECC Staff and MTECC Consultants (the "Service Fee"). The Service Fee for BMPO Staff and MTECC Staff time shall equal the actual cost of the employee incurred on behalf of MTECC, as documented by time sheets including, but not limited to, salary, benefits, retirement contributions and administrative overhead. Administrative overhead for BMPO staff and MTECC staff shall not exceed 50% of an employee's salary. The Service Fee for Services performed by BMPO Consultants and MTECC Consultants shall be equal to the then current contracted rates. A schedule of Service Fees shall be provided to Municipal Members. Administrative overhead for BMPO Consultants and MTECC Consultants shall not exceed 10% of actual consultant fees.
- iii. Selection of Services. Services shall be procured in accordance with applicable laws that apply to the source of funds that are supporting the services/project. The provision of Services under this Agreement shall be memorialized in a Project Administration Agreement and/or the issuance of task work orders, which shall outline the Services to be completed and the associated Service Fees ("Task Work Orders"). Task Work Orders shall become binding upon the Parties following execution by the Municipal Member and MTECC. All Services to be performed must comply with all applicable Federal, State and local laws, guidelines and procedures.

11. Financial Obligations.

- a. Financial Contribution of Founding Members. Founding Members shall provide the initial funding for the establishment of MTECC. Each Founding Member shall make a non-refundable contribution of One Hundred Thousand Dollars (\$100,000) to MTECC (the "Establishment Contribution"). Founding Members shall tender the Establishment Contribution to MTECC not more than fifteen (15) days of the recording of this Agreement.
- b. Financial Contribution of Municipal Members.

- i. **Initial Contribution.** Non-Founding Municipal Members shall pay a non-refundable initial membership fee in the amount of Fifty Thousand Dollars (\$50,000) (the "Membership Fee") not more than fifteen (15) days of executing this Agreement. A Municipal Member that withdraws from MTECC and subsequently rejoins MTECC shall pay a new Membership Fee upon reentry.
    - ii. **Annual Fee.** All Municipal Members shall pay a non-refundable annual fee for the continued participation in MTECC in an amount set by the Board (the "Annual Fee"). The Annual Fee for each Fiscal Year shall be Twenty-Five Thousand Dollars (\$25,000) unless otherwise established by the Board no later than March 1 prior to the commencement of the next Fiscal Year. The Municipal Members shall pay an Annual Membership Fee for a minimum of five years. Each Annual Fee shall be paid on October 1<sup>st</sup> of each year (the "Due Date"). Any Municipal Member that fails to remit the Annual Fee within thirty (30) days of the Due Date shall not be considered a member in good standing, shall be ineligible to appoint a Board Member during its next turn in the Member Rotation, and shall forfeit its claim to any funds to be disbursed upon the termination of MTECC. Further, Municipal Members shall not be permitted to avail themselves of Services for projects in the geographical boundaries of the Municipal Member until remittance of the Annual Fee.
  - c. **Limitation of Financial Obligations.** The financial obligations of the Municipal Members shall be limited to the payment of the applicable Establishment Contribution, Membership Fee, Annual Fee as well as any Services Fees authorized by the Municipal Member in accordance with Section 10 of this Agreement.
12. **Term; Termination.** This Agreement shall remain in full force and effect from the date of its recording until dissolved in accordance with this Section. Should a Party terminate its participation in this Agreement, be dissolved, abolished, or otherwise cease to exist, MTECC and this Agreement shall continue until such time as the Parties agree to terminate this Agreement. In the event of the dissolution of MTECC resulting from termination of this Agreement, any funds held by MTECC contributed by Municipal Members ("Municipal Agency Funds") shall be distributed to the Municipal Members that remain a party to this Agreement at the time of dissolution. Municipal Agency Funds shall be disbursed within thirty (30) days of the effective date of the dissolution in a proportionate share to the Establishment Contribution, Membership Fees or Annual Fees paid by such Municipal Members. Funds held by MTECC that have been contributed by FDOT or any other Federal or State agency shall be returned to the appropriate agency.
13. **Withdrawal.** A Party may terminate its involvement in MTECC and its participation in this Agreement upon one hundred eighty (180) days' written notice to the other Parties, provided that there is no LAP Agreement for the completion of a Federal Aid Project or uncompleted Task Work Order for a Local Project within its jurisdiction at the time of the written notice. No Party may terminate its participation in MTECC while a LAP Agreement for the completion of a Federal Aid Project or Task Work Order in its geographic boundaries remains effective. A Party who withdraws will not receive a refund of the Initial Contribution, Membership Fee or Annual Fees.
14. **Consent.** This Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of MTECC as required by Sections 163.01, Florida Statutes.

15. Liability/ Sovereign Immunity. The Parties hereto shall each be individually and separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Agreement any and all applicable insurance coverage required by Florida law for governmental entities. Nothing in this Agreement shall be construed to affect in any way the Parties' rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the Parties, nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement. The Parties are entities subject to Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their employees pursuant to Section 768.28, Florida Statutes.
16. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Chief Executive and/or elected official for the Party for whom it is intended at the location of their City hall.
17. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by a majority of the Parties.
18. Filing. It is agreed that this Agreement shall be filed with the Clerk of the Circuit Court of Broward County, as required by Section 163.01(11), Florida Statutes.
19. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than another.
20. Quarterly Reports. A quarterly report of MTECC shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports, and other related records produced and maintained by MTECC, its employees, and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Agreement upon reasonable notice.
21. Merger. This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation

from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Agreement.

22. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.
23. Severability. If any clause, provision or section of this Agreement is found to be illegal or invalid by any court, the invalidity of such clause, provision or section will not affect the remainder validity of the remainder of the Agreement, and this Agreement will be construed and enforced.
24. Dispute Resolution. If the Parties are unable to resolve an issue about which there may be a disagreement regarding a matter covered in this Agreement or any subsequent Project Administration Agreement or Task Work Order, such dispute will be resolved in the following manner:
  - a. The Parties will meet through the respective municipal manager or administrator and the Executive Director, or their respective designee(s), in an effort to resolve the dispute; and
  - b. If the Parties are still unable to resolve the dispute, the Parties agree to further attempt to resolve the dispute in accordance with the governmental conflict procedures specified in Chapter 164, Florida Statutes, or such other process mutually agreed upon in writing by the Parties involved in the dispute.
25. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
26. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
27. Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Agreement shall be proper exclusively in Broward County, Florida.
28. Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.
29. Supremacy. This First Amended and Restated Agreement hereby supersedes and replaces the Original Agreement entered into between the Parties.
30. Effective Date. This Agreement shall become effective upon the execution by the Parties hereto and filing with the Clerk of Court for Broward County.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed the day and year as first stated below.

[Signature]  
Attest

Witness Name: GREGORY SWART

B. L.

Witness Name: Bryan Calverka

Broward Metropolitan Planning Organization

By: [Signature] 9/8/22

Name: FRANK C. ORTIS

Title: Chair

Approved As To Form: [Signature]

By: ALAN L. GABRIEL

Title: General Counsel

State of Florida  
County of Broward  
The foregoing instrument was acknowledged before me this 17 day of January, 2023  
By Alan L. Gabriel  
Personally known  OR produced identification   
Type of identification produced \_\_\_\_\_

[Signature]  
Notary Public



MARIA E. CERICE  
Commission # HH 205151  
Expires December 7, 2025

CITY OF POMPANO BEACH

By:   
REX HARDIN, MAYOR

By:   
GREGORY P. HARRISON, CITY MANAGER

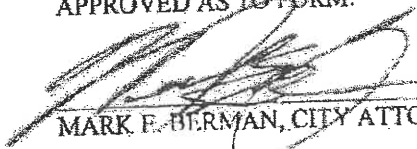
Dated: 9/28/22

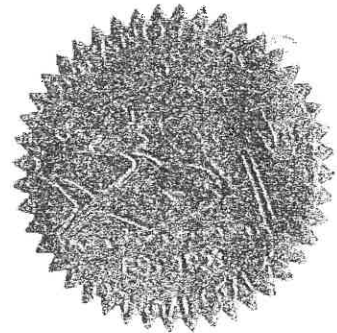
Attest:

  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

  
MARK E. BERMAN, CITY ATTORNEY



Attest:

Witness Name: Maria Gonzalez

Witness Name: John Pecorelli



City of Plantation, Florida

By: Lynn Stoner, Mayor

Name: Lynn Stoner

Title: Mayor

14 day of September, 2009

Approved As To Form:

By: [Signature]

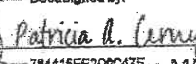
Name: Asst. City Attorney

Title: Asst. City Attorney


DocuSign Envelope ID: 4DC59D20-629C-4A4B-91AF-1CCF34E08EF0

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

ATTEST:

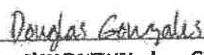
DS DocuSigned by:  
  
 Patricia A. Cerny, MMC, City Clerk

City of Hollywood, a municipal Corporation of the State of Florida

DocuSigned by:  
 By:   
 John Levy, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.

22nd day of September, 2022.

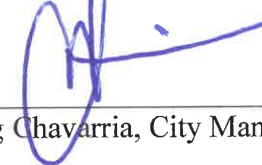
DocuSigned by:  
  
 Douglas R. Gonzales, City Attorney

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above.

AS TO A MUNICIPAL MEMBER:

CITY OF FORT LAUDERDALE

By   
Dean J. Trantalis, Mayor


By   
Greg Chavarria, City Manager

ATTEST:

  
David R. Soloman, City Clerk



Approved as to form and correctness:  
D'Wayne M. Spence, Interim City Attorney

By:   
Print Name: Kimberly Cunningham Mosley  
Title: Assistant City Attorney



COMMISSION AGENDA ITEM  
DOCUMENT ROUTING FORM

3L

Today's Date: 10/19/2023

**DOCUMENT TITLE: FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR THE CREATION OF THE METRO TRANSPORTATION ENGINEERING & CONSTRUCTION COOPERATIVE**

COMM. MTG. DATE: 10/17/2023 CAM #: 23-0847 ITEM #: CR-9 CAM attached:  YES  NO

Routing Origin: TAM Router Name/Ext: G.Smith/x3764 Action Summary attached:  YES  NO

CIP FUNDED:  YES  NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: CAO Router Name/Ext: K.Nembhard/x5001 # of originals routed: 3 Date to CAO: 10/19/2023

2) City Attorney's Office: Documents to be signed/routed?  YES  NO # of originals attached: 1

Is attached Granicus document Final?  YES  NO Approved as to Form:  YES  NO

Date to CCO: 10/19/2023 Kimberly Cunningham Mosley  
Attorney's Name

KCM  
Initials

3) City Clerk's Office: # of originals: 3 Routed to: Donna V./Aimee L./CMO Date: 10/19/23

4) City Manager's Office: CMO LOG #: DLT53 Document received from: 10/20/23

Assigned to: GREG CHAVARRIA   
ANTHONY FAJARDO  SUSAN GRANT   
GREG CHAVARRIA as CRA Executive Director

APPROVED FOR G. CHAVARRIA'S SIGNATURE  N/A FOR G. CHAVARRIA TO SIGN

PER ACM: S. Grant (Initial/Date) PER ACM: A. Fajardo (Initial/Date)

PENDING APPROVAL (See comments below)

Comments/Questions: \_\_\_\_\_

Forward  originals to  Mayor  CCO Date: 10/23/23 CCO

5) Mayor/CRA Chairman: Please sign as indicated. Forward \_\_\_ originals to CCO for attestation/City seal (as applicable) Date: \_\_\_\_\_

6) City Clerk: Scan original and forwards 3 originals to: G.Smith/x3764

Attach 1 certified Reso # 23-241  YES  NO Original Route form to K.Nembhard/x5001



**Metro Trans Engineering & Construction Cooperative (MTECC)**

**Meeting Date:** 12/14/2023

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**REQUESTED ACTION:**

**MOTION TO APPROVE:** Approval of the Amended MTECC Operating Fund Budget and Capital Project Fund for fiscal year 2023-24.

**WHAT THIS ACTION ACCOMPLISHES:**

This provides the budget authority for MTECC Operating Fund and Capital Project Fund for the Pembroke Pines LAP Project 449690-1 Pembroke Road From SW 145<sup>th</sup> Avenue to Flamingo Road and Pembroke Pines Mobility Hub Project - TIP Project Number 4334293, as advances from the Operating Fund to the Capital Projects Fund of \$25,000 for each project to support the Board's approval of MTECC's support of Pembroke Pines.

**SUMMARY EXPLANATION/BACKGROUND:**

The Annual Budget provides the authority for MTECC's activities in delivering projects on behalf of MTECC members.

The amended budget makes the following adjustments:

- Project activities have begun for the two Pembroke Pines projects requiring an advance from the MTECC Operating Fund to the MTECC Capital Projects Fund. This is funded from an advance of \$25,000.00 for each project. These funds will be replenished once the Project Agreement is expected to be executed with the City of Pembroke Pines later in fiscal year 2023-24 to the extent funds may have been expended by the Program Management Consultant up to the maximum of \$25,000 per project.

The key amended line items are highlighted in yellow highlights in the attached Exhibit A on pages 5, 7 and 8.

**MTECC STAFF RECOMMENDATION(S):**

Recommend approval of the amended MTECC Operating Budget and MTECC Capital Project Fund Budget for fiscal year 2023-24.

**ADDITIONAL INFORMATION/PREPARER:**

If you have any questions about this item, please contact Lowell Clary at (850) 212-7772 or [claryl@mteccfl.org](mailto:claryl@mteccfl.org).

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**Attachments**

Amend 1 Budget FY 23-24

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# **Metro Transportation Engineering & Construction Cooperative Amended Budget Fiscal Year 2023-2024**

## **Background**

The Metro Transportation Engineering & Construction Cooperative (MTECC) was established in 2022 by Interlocal Agreement “ILA” between the founding member municipal members of City of Hollywood, City of Plantation and the City of Pompano Beach under Section 163.01, Florida Statutes in cooperation with the Broward Metropolitan Planning Organization under Section 339.175, Florida Statutes. The founding municipal members appoint a MTECC Board Member from their elected officials that form the MTECC Board. The MTECC Board provides policy direction for the operation of MTECC. MTECC shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes. This Agreement was filed and recorded on May 31, 2022, with the Clerk of Court for Broward County, Florida in accordance with Section 163.01(11), Florida Statutes.

MTECC as an organization was created to facilitate the planning, design and construction of transportation related projects throughout the County. Under the ILA, additional municipalities in Broward County may join the MTECC through Interlocal Agreement with MTECC. A municipality must be a member of MTECC for MTECC to provide the planning, design, and construction of transportation related projects in the municipality.

From time-to-time Federal funds become available through the Florida Department of Transportation and the Federal Transit Administration to fund projects that are on municipal roads and other transportation facilities (transitways, sidewalks, bikeways, etc.). Projects funded through Federal funding must comply with Federal laws, regulations and standards which in most cases vary from other projects implemented by municipalities. MTECC was primarily established to specialize in delivering projects that must meet Federal requirements to be efficient in delivering these projects for the member municipality. This prevents the various municipalities from the expense of meeting the Federal requirements on what may be a Federal funded project once or twice every three to five years.

## **Budget/Fund Structure**

### **Special Revenue Fund**

Special Revenue funds include funds that contain revenues which are restricted for specific purposes. The MTECC Operating Fund is created as a Special Revenue Fund. The MTECC Operating Fund supports the administrative operations of MTECC including grants provided by MTECC municipality members under the ILA and the costs to support the following:

- MTECC Board activities and support.
- Executive Director for administrative activities.
- Board Attorney for administrative activities.
- Finance and Accounting for MTECC activities.
- Procurement support activities.
- Contract Management activities

- Board public relations and involvement activities.
- Other administrative support activities.

### **Capital Project Fund**

In the initial budget there are no revenues or projects in the MTECC Capital Projects Fund. As projects are undertaken by MTECC these will be included in the MTECC Capital Project Fund and accounted for as unique projects when grant agreements are executed. Projects in the Capital Projects Fund by their nature may cover multiple years depending on the size and complexity of the project.

### **Budget Process**

The Proposed Budget is provided to develop the proposed budget in the late Spring of each year with the proposed budget presented to the MTECC Board in July of each year to be adopted in September of each year for the subsequent fiscal year October 1 to September 30.

### **Adopting the Budget**

MTECC must adopt a balanced budget. A balanced budget as defined in Florida Statutes 166.241(2) is where the amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total appropriations for expenditures and reserves.

MTECC does not have any taxing authority and relies upon contributions from municipal members and grants for capital projects from partners such as FDOT and the Federal Transit Administration. MTECC will hold a public hearing on the tentative budget that is published for public review at least 5 days before the hearing. The budget becomes effective on October 1. The legal level of adoption is at the Fund Level for the MTECC Operating Fund and at the project level for the Capital Projects Fund.

### **Amending the Adopted Budget**

State law allows changes to the adopted budget at any time throughout the fiscal year and up to 60 days after the fiscal year end (Florida Statutes 166.241(4)). These changes include budget amendments, which increase or decrease the total budget of a fund. Any budget amendments move funds from Budgeted Reserve in the MTECC Operating Fund or at a project level for a capital project in the Capital Projects Fund require MTECC Board approval.

### **Budget Monitoring**

The budget is monitored monthly by the Executive Director to track variances between the actual and budgeted amounts, to identify trends and to estimate end-of-year results. Monthly financial reports are distributed to the MTECC Board members and all MTECC municipal members, Broward MPO, and for each project to the funding partner for the project. The Executive Director shall monitor the MTECC Operating Fund and each project in the Capital Projects Fund to evaluate the adequacy of funds year to date and through the end of the year. The Executive Director shall propose budget amendments to increase or decrease revenues and/or appropriated expenditures to maintain a balanced budget during each fiscal year for the MTECC Operating Fund and each project in the Capital Projects Fund.

### **Operating Budget Policies**

Budgetary basis refers to the reporting of revenues and expenditures or expenses in the financial statements as they are recognized in the accounts. The basis of accounting relates to the timing of the

measurements made, regardless of the measurement focus applied. All Governmental Funds are accounted for using the modified accrual basis of accounting except that encumbrances are treated as the equivalent of expenditures, as opposed to a reservation of fund balance. Under the modified accrual basis of accounting, revenues are recognized in the accounting period in which they become both measurable and available to finance expenditures of the fiscal period. Expenditures are generally recognized, under the modified accrual basis of accounting, when the related fund liability is incurred. Debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due, using the current financial resources measurement focus of accounting. At year-end, open encumbrance balances lapse.

The Annual Comprehensive Financial Reporting presents the status of the MTECC's finances on a basis consistent with Generally Accepted Accounting Principles (GAAP) (that is, the Governmental Funds use the modified accrual basis of accounting ) In order to provide a meaningful comparison of actual results with the budget, the Annual Comprehensive Financial Reporting presents MTECC's operations on a GAAP basis and also shows fund expenditures and revenues on a budget basis for the Special Revenue and Capital Projects Funds. MTECC is required to prepare a balanced budget in which current revenues will be sufficient to support current expenditures.

### **MTECC Operating Fund Financial Reserve Policies**

In general, MTECC should maintain adequate fund balances or reserves to handle unexpected decreases in revenues plus a reasonable level for extraordinary unbudgeted expenditures. For measurement purposes, the minimum target fund balance in the MTECC Operating Fund is the equivalent of 90 days of average expenditure for the MTECC Operating Fund and should be computed annually and remain unappropriated. On an annual basis, projections of reserve requirements and a plan for the use of additions for the current year shall be made in accordance with relevant MTECC policies.

### **Capital Projects Fund Project Level Financial Reserve Policies**

The Executive Director will analyze each project grant amount and establish a reserve amount for each project in coordination with the project team experts, funding partner and municipal member where the project is located. This reserve shall be maintained at the project level of the Capital Projects Fund and used for unexpected expenditures on the project. This reserve shall be monitored monthly and updated as needed to ensure there is adequate funding for each project.

### **Capital Improvement Policies**

MTECC shall coordinate the development of the MTECC Capital Improvement Plan with the development of the MTECC Operating Fund Budget and in coordination with funding partners such as the Broward MPO, FDOT, Federal Transit Administration and MTECC municipal members. MTECC shall have a five-year capital improvement plan that identifies specific projects and project phases by year within the five-year period. Each year, a new year will be added to the five-year capital improvement plan. Future operating expenditures and revenues associated with new capital improvement will be projected and included in the Five-Year Capital Improvement Plan.

MTECC shall capture the expenditures for capital improvement projects by project and at the completion of the project transfer the project value to the municipal member that by agreement will own the project for long-term operations and maintenance.

### **Revenue Policies**

MTECC depends on funding partners to provide grants for the MTECC operations and capital projects being implemented by MTECC. MTECC will include revenues as required by the ILA in the MTECC Operating Budget and any other grants that may be made by MTECC municipal members for MTECC operations. MTECC Capital Projects Funds revenues shall be developed based on executed grant agreements from project funding partners. Legally restricted revenues will be used for the specific purpose dictated by the issuer. To ensure compliance with revenue, reserve and budget policies, MTECC staff shall analyze and prepare reports annually to monitor, project and estimate revenues and expenditures, on an annual basis and forward for the next fiscal year.

## **Expenditure Policies**

Expenditures are a rough measure of MTECC's service output. While many expenditures can be easily controlled, unanticipated service demands may strain our ability to maintain a balanced budget. To ensure the proper control of expenditures and provide for a quick and effective response to adverse financial situations, expenditures and purchase commitments will be made in a form and process that is legal, appropriate, funded, authorized and sufficiently documented. Also, expenditures and purchase commitments will be recorded in an accurate and timely fashion.

## **Budget In Brief**

### **Adopted budget amounts for fiscal year 2023-2024 includes:**

**Revenues.** The revenues will involve an assessment to the MTECC member cities (assumes cities of Coconut Creek, Deerfield Beach, Hallandale Beach, Hollywood, Pembroke Pines, Plantation, and Pompano Beach), that is assumed to be \$25,000 per City to total revenues of \$175,000 for fiscal year 2022-23. Any new MTECC members will be assessed a \$50,000 initial year fee for joining MTECC should additional cities join MTECC during fiscal year 2023-24. Fort Lauderdale has an action to join MTECC scheduled for their October 17, 2023, Commission meeting.

**Expenditures.** The budget expenditures for general administrative activities in fiscal year 2023-24 include the following major categories.

### **General Administrative**

- Board Expense – these include Board preparation, meeting minutes and related support
- MTECC Legal Counsel – general support for Board meetings and administrative activities
- MTECC Executive Director – general support for Board meetings and administrative management and oversight of MTECC activities
- Program Management Consultant –
  - general support for Board meetings and technical support for administrative activities,
  - web development and support,
  - media relations and public involvement support for general MTECC activities
- Finance and Accounting – supports finance and accounting activities for MTECC.
- Insurance – overall insurance coverage for the Board and MTECC activities
- Annual Audit – required annual audit of MTECC activities.
- Other Administrative Expenses – this covers general administrative expenses that made not be addressed in other categories.

**MTECC Member Initial Contribution Rebate** – The Board may grant up to \$25,000 transfer from the MTECC Operating Fund to the MTECC Project Fund for the first member project to assist with costs to support the member project to the extent that funds are available and at the discretion of the Board.

**Budgeted Reserve.** The Budgeted Reserve for the MTECC Operating Budget for fiscal year 2023-24 was assumed to be \$138,310, or 45 percent of the annual expenditures of the MTECC Operating Fund.

### **MTECC Capital Project Fund**

**Deerfield Beach and Hallandale Beach have officially requested and the MTECC Board has approved moving forward with assistance in the July 2023 Board meeting for MTECC support for LAP projects in state fiscal year 2023-24. The MTECC Projects Fund has been added to the annual budget with an amended amount for fiscal year 22-23 and a tentative allocation for fiscal year 23-24. These will be further brought forward for MTECC Board review and approval to amend in the full project budgets as design that includes associated funding from FDOT/City to fund items such as:**

- MTECC Executive Director – items such as project scope development, meetings, negotiations, oversight, reporting, management of consultants and related project specific activities
- MTECC Legal Counsel – project level items such as draft agreements, negotiations, finalizing agreements, and availability for any project level issues.
- MPO Support – project level task orders and procurement processes
- Program Management Consultant
  - PMC Project Manager – project scope development, meetings, negotiations, oversight, management of PMC staff, reporting, etc.
  - PMC Design Consultant Manager – contract/project manager for design consultant on behalf of MTECC – scope development, manage design consultant activities for oversight, coordination, reporting, invoicing, payments, etc.
  - MTECC/City – design reviews at 30%, 60%, 90% plans and acceptance of 100% plans
  - Construction Bid Preparation – assist design consultant with the development of the plans, specifications, special provisions to prepare for construction bid
- Design Consultant – team responsible for the implementation of the design project.

**The Adopted Budget included an advance from the Operating Budget to the Capital Projects Fund in fiscal year 2023-24. These funds are held in reserve in the Capital Projects Fund. Amendment 1 allocates these funds from Reserve to specific projects for the Pembroke Pines HUB and \$25,000 for the Pembroke Pines LAP (FY 24-25) to support MTECC assistance approved by the Board at the September 14, 2023 meeting. These advances will be reimbursed from the Capital Projects Fund to the Operating fund when the Project Agreement is executed with the City of Pembroke Pines.**

## MTECC Operating Fund

Budget Item	Adopted Fiscal Year 2023-2024	Amend 1	Amended Fiscal Year 2023-24
<b>Revenues</b>			
<b>Founding Member Contributions</b>			
City of Hollywood	\$25,000		\$25,000
City of Plantation	\$25,000		\$25,000
City of Pompano Beach	\$25,000		\$25,000
<b>Non-Founding Member Contributions</b>			
City of Deerfield Beach	\$25,000		\$25,000
City of Hallandale Beach	\$25,000		\$25,000
City of Pembroke Pines	\$25,000		\$25,000
City of Fort Lauderdale	\$50,000		\$50,000
City of Coconut Creek	\$25,000		\$25,000
<b>Total Member Contributions</b>	<b>\$225,000</b>		<b>\$225,000</b>
Interest Earnings	<b>\$3,000</b>		<b>\$3,000</b>
<b>Total Revenues</b>	<b>\$228,000</b>		<b>\$228,000</b>
<b>Carry Over Prior Year</b>	<b>\$270,310</b>		<b>\$270,310</b>
<b>Total Available</b>	<b>\$498,310</b>		<b>\$498,310</b>
<b>Appropriations/Expenditures</b>			
Board Expenses	\$10,000		\$10,000
Board Attorney	\$48,000		\$48,000
Executive Director	\$60,000		\$60,000
Program Management Consultant	\$60,000		\$60,000
Finance/Accounting	\$65,000		\$65,000
Insurance	\$10,000		\$10,000
Annual Audit	\$12,000		\$12,000
Procurement	\$10,000		\$10,000
Public Relations/Involvement	\$5,000		\$5,000
Technology	\$10,000		\$10,000
Other Administrative Expenses	\$20,000		\$20,000
<b>Total Appropriations/Expenditures</b>	<b>\$310,000</b>		<b>\$310,000</b>
<b>Advance to MTECC Projects Fund</b>	<b>\$50,000</b>		<b>\$50,000</b>
<b>Budgeted Reserve</b>	<b>\$138,310</b>		<b>\$138,310</b>

## MTECC Capital Project Fund

Budget Item	Adopted Fiscal Year 2023-2024	Amend 1	Notes
<b>Revenues</b>			
<b>Project Grants</b>			
<b>Total Grants</b>	\$0.00		\$0.00
<b>Advances from MTECC Operating Fund</b>	\$50,000		\$50,000
<b>Total Revenues</b>	\$50,000		\$50,000
<b>Carry Over Prior Year</b>	\$0.00		\$0.00
<b>Total Available</b>	\$50,000		\$50,000
<b>Appropriations/Expenditures</b>			
<b>Project 445529-1 – Deerfield Beach</b>			
Program Management Consultant			
Design Consultant			
Contingency			
<b>Project Total</b>			
<b>Project 445527-1 – Hallandale Beach</b>			
Program Management Consultant			
Design Consultant			
Contingency			
<b>Project Total</b>			
<b>Project 449690-1 – Pembroke Pines</b>			
Program Management Consultant		\$25,000	\$25,000
Design Consultant			
Contingency			
<b>Project Total</b>			
<b>Project 4334292 – Pembroke Pines</b>			
Program Management Consultant		\$25,000	\$25,000
Design Consultant			
Contingency			
<b>Project Total</b>			

<b>Total Appropriations/Expenditures</b>	<b>\$0.00</b>	<b>\$50,000</b>	<b>\$50,000</b>
<b>Transfers to MTECC Operating Fund</b>	<b>\$0.00</b>		<b>\$0.00</b>
<b>Budgeted Reserve</b>	<b>\$50,000</b>	<b>-\$50,000</b>	<b>\$0.00</b>



### Action Items 3.

#### **Metro Trans Engineering & Construction Cooperative (MTECC)**

**Meeting Date:** 12/14/2023

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#### **REQUESTED ACTION:**

**MOTION TO APPROVE:** Agreement No. 23-04 between MTECC and S. Davis & Associates, P.A., for annual audit services for up to five years starting with the audit of the fiscal year 2022-23 MTECC financial statements.

#### **WHAT THIS ACTION ACCOMPLISHES:**

This provides for the annual audit of MTECC as required by Florida Statutes.

#### **SUMMARY EXPLANATION/BACKGROUND:**

In accordance with Florida Statutes all local governments in Florida are required to have an annual audit of their financial statements. The audit is also required when receiving grants from state and federal agencies that will be supporting projects being delivered by MTECC on behalf of MTECC members.

An evaluation team composed of representatives from each founding MTECC member, (Hollywood, Plantation and Pompano Beach) reviewed the two proposals received in response to the MTECC request for proposal. The evaluation team made a recommendation for review by the Executive Director. The Executive Director has reviewed the evaluation team's ranking and concurs with their ranking and recommendation that the contract be awarded to the top ranked proposer, S. Davis & Associates, P.A.

The audit services are within budget and will meet the requirements of Florida Statutes and state and federal grants.

#### **MTECC STAFF RECOMMENDATION(S):**

Recommend approval of the audit services contract with S. Davis & Associates, P.A. for up to a five- year period beginning with the audit of fiscal year 2022-23.

#### **ADDITIONAL INFORMATION/PREPARER:**

If you have any questions about this item, please contact Lowell Clary at (850) 212-7772 or [claryl@mteccfl.org](mailto:claryl@mteccfl.org).

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## **Attachments**

Resolution Approving MTECC Audit Services Agreement  
Agreement No. 23-04 MTECC Audit Services

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RESOLUTION NO. 2023-9

**A RESOLUTION OF THE BOARD OF THE METRO TRANSPORTATION  
ENGINEERING AND CONSTRUCTION COOPERATIVE (MTECC)  
APPROVING AGREEMENT NO. 23-04 FOR MTECC AUDIT SERVICES  
WITH S. DAVIS & ASSOCIATES, P.A. PROVIDING FOR  
IMPLEMENTATION AND AN EFFECTIVE DATE.**

**WHEREAS**, MTECC issued RFP No. 23-04, soliciting MTECC Audit Services; and

**WHEREAS**, the advertisement was for the award of an Agreement, with a base term of three years with MTECC's sole option to extend the agreement for two additional one-year periods; and

**WHEREAS**, on November 28, 2023, MTECC received two (2) Proposals from HCT Certified Public Accountants and Consultants LLC , and S. Davis & Associates, P.A.; and

**WHEREAS**, on December 7, 2023, the Evaluation Selection Committee (ESC), comprised of staff members from the founding cities of Hollywood, Plantation and Pompano Beach, met publicly to discuss and evaluate the Proposals received; and

**WHEREAS**, based on the final scoring and ranking results, the ESC recommends award to S. Davis & Associates, P.A.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE METRO TRANSPORTATION  
ENGINEERING AND CONSTRUCTION COOPERATIVE, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

**Section 2. Agreement Approved.** That the Board approves an Agreement with S. Davis & Associates, P.A. for the provision of MTECC Audit Services, for the firm fixed price amount of Eighty Thousand Dollars (\$80,000) over the full five-year term, in substantially the form attached hereto as Exhibit A (the "Agreement").

**Section 3. Implementation.** That the Executive Director is hereby authorized to take any and all actions necessary to implement the purposes of this Agreement.

**Section 4. Effective Date.** This Resolution shall become effective upon adoption.

**ADOPTED this\_day of \_\_\_\_\_, 2023.**

METRO TRANSPORTATION ENGINEERING AND  
CONSTRUCTION COOPERATIVE

By \_\_\_\_\_  
Chair

Attest:

By \_\_\_\_\_  
Executive Director

**AGREEMENT NO. 23-04**

**BETWEEN THE**

**METRO TRANSPORTATION ENGINEERING AND CONSTRUCTION COOPERATIVE**

**AND**

**S. DAVIS & ASSOCIATES, P.A.**

**FOR**

**AUDIT SERVICES**

This Agreement ("Agreement") is made and entered into the \_\_\_\_ day of December, 2023, by and between the Metro Transportation Engineering and Construction Cooperative, with its principal business address located at Trade Centre South, 100 West Cypress Creek Road, Suite 650, Fort Lauderdale, FL 33309, hereinafter referred to as ("MTECC"),

And

S. Davis & Associates, P.A. with its principal business address located at 2521 Hollywood Blvd, Hollywood, FL 33020 (hereinafter referred to as "CONTRACTOR") for Audit Services (the "Project"). References in this Agreement to "Executive Director" shall be meant to include his/her designee.

WITNESSETH:

WHEREAS, MTECC, solicited offers from firms to provide the required expertise in connection with the Project; and

WHEREAS, Offers were evaluated by an Evaluation and Selection Committee; and

WHEREAS, the Board of MTECC has selected the CONTRACTOR, upon the recommendation of the Evaluation and Selection Committee to perform Services in connection with the Project; and

WHEREAS, on \_\_\_\_\_, the Board of MTECC ratified the evaluation and recommendation of Offers received in response to RFP No. 23-04 and authorized the appropriate MTECC officials to execute an agreement with the CONTRACTOR; and

WHEREAS, MTECC and CONTRACTOR desire to enter into an Agreement whereby the duties and obligations of each party to the other are set forth therein.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

## SECTION 1. SCOPE OF SERVICES

- 1.1 The CONTRACTOR must meet the requirements and perform the services identified in the Request For Proposals for the MTECC's Audit Services, RFP No. 23-04, dated November 2, 2023, ("RFP"), referenced hereto and made a part hereof, as Exhibit "A", and the CONTRACTOR'S Offer, attached hereto and made a part hereof, as Exhibit "B"; and
- 1.2 The parties agree that the Services and the Federal Contractual Provisions, as specified in Exhibits "A", "B" and "C" (hereinafter collectively referred to as the "Scope of Services" or "Services") contain the description of Contractor's obligations and responsibilities and are deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.
- 1.3 CONTRACTOR agrees and acknowledges that CONTRACTOR is prohibited from exempting provisions of the Scope of Services and this Agreement in any of CONTRACTOR's Services pursuant to this Agreement.

## SECTION 2. TERM

- 2.1 The term of this Agreement will be for a period of three (3) years (the "Term") which shall begin on the date it is fully executed by both parties and issuance of a Notice to Proceed and shall remain in effect until such a time as the Services acquired in conjunction with this RFP have been completed and accepted by MTECC in accordance with this Agreement and the terms of the Request For Proposals. After the initial Term, MTECC shall have the sole option to extend the Term, at its discretion, for two (2) one year extensions. To exercise one or both annual extension(s), MTECC, through its Executive Director, shall notify CONTRACTOR, in writing, at least 30 days, prior to the expiration of the then current term.
- 2.2 Prior to beginning the performance of any services under this Agreement, the CONTRACTOR must receive a Notice to Proceed. CONTRACTOR shall perform the services describe in the Scope of Services within the time periods specified therein, said time periods shall commence from the date of the Notice to Proceed for such Services; **however, this Agreement shall terminate no later than December 13, 2028**, unless extended pursuant to Section 2.3 below or terminated earlier pursuant to Section 4 of this Agreement.
- 2.3 MTECC through its Executive Director and the CONTRACTOR may further extend this Agreement by mutual consent, in writing, for no more than six (6) months, prior to the expiration of the then current term. This provision in no way limits either

party's right to terminate this Agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.

### **SECTION 3. COMPENSATION**

**3.1** In consideration for the Scope of Services to be performed by CONTRACTOR pursuant this Agreement, MTECC agrees to pay CONTRACTOR, in the manner specified in the Scope of Services, the firm fixed price amount of **EIGHTY THOUSAND AND NO/100 Dollars (\$80,000.00)**, contingent upon the appropriation of funds. The amount of compensation payable by MTECC to CONTRACTOR shall be based upon the amounts as indicated on attached Exhibit "B", which amount shall be accepted by CONTRACTOR as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by CONTRACTOR that these amounts are the maximum payable and constitute a limitation upon MTECC'S obligation to compensate CONTRACTOR for its Services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon CONTRACTOR'S obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

**3.1.1** Compensation for the Scope of Services shall be based upon a fixed annual fee, payable in equal installments per month. As full compensation for all such work performed under this Agreement for these Auditing Services.

**3.2** CONTRACTOR will submit an invoice for compensation, developed and agreed upon by the MTECC Executive Director and CONTRACTOR, on a monthly basis, but only after the services for which the invoices are submitted have been completed. Invoices shall designate the nature of the services performed and shall also show a summary of fees with accrual of the total and credits for portions paid previously.

**3.3** MTECC shall pay CONTRACTOR in accordance with the Florida Prompt Payment Act. Additionally, payment may be withheld by the MTECC Executive Director for failure of CONTRACTOR to comply with a term, condition or requirement of this Agreement.

**3.4** Notwithstanding any provision of this Agreement to the contrary, the MTECC Executive Director may withhold, in whole or in part, payment to the extent necessary to protect MTECC from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Executive Director. The amount withheld shall not be subject to payment of interest by MTECC.

**3.5** Payment shall be made to CONTRACTOR at:

S. Davis & Associates, P.A.  
521 Hollywood Blvd  
Hollywood, FL 33020

- 3.6** CONTRACTOR agrees to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged for which CONTRACTOR receives reimbursement for a period of at least three (3) years after completion of the work provided for in this Agreement. Such books and records shall be available at all reasonable times for examination and audit by MTECC.
- 3.7** If it should become necessary for MTECC to request CONTRACTOR to render any additional services to either supplement the services described in the RFP or to perform additional work, such additional work shall be performed only if set forth in an amendment to this Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees included in Exhibit "B-1".

#### **SECTION 4. TERMINATION**

- 4.1** This Agreement may be terminated for cause by action of the MTECC Board if the CONTRACTOR is in breach and has not corrected the breach within thirty (30) days after written notice from MTECC identifying the breach, or for convenience by action of the MTECC Board upon not less than sixty (60) days' written notice by the MTECC Executive Director.
- 4.2** This Agreement may be terminated for cause by the CONTRACTOR if the MTECC is in breach and has not corrected the breach within sixty (60) days after written notice from the CONTRACTOR identifying the breach.
- 4.3** Termination of this Agreement by the MTECC for cause shall include but not be limited to, failure to suitably perform the services, failure to continuously perform the services in a manner calculated to meet or accomplish the objectives of MTECC as set forth in this Agreement or multiple breaches of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 4.4** Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.
- 4.5** In the event MTECC terminates this Agreement for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of MTECC's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by MTECC, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for MTECC's right to terminate this Agreement for convenience.

- 4.6** In the event this Agreement is terminated, any compensation payable by MTECC shall be withheld until all documents are provided to MTECC pursuant to Section 7.1 of this Agreement. In no event shall the MTECC be liable to CONTRACTOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

## **SECTION 5. INDEMNIFICATION**

To the fullest extent permitted by law, the CONTRACTOR hereby agrees to indemnify and hold harmless MTECC, and its officials, board members, employees and agents, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the MTECC Executive Director and the MTECC Attorney, any sums due CONTRACTOR under this Agreement may be retained by MTECC until all of MTECC'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by MTECC.

Nothing herein is intended to serve as a waiver of sovereign immunity by the MTECC nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. MTECC is subject to section 768.28, Florida Statutes, as may be amended from time to time.

The provisions of this section shall survive termination of this Agreement.

## **SECTION 6. INSURANCE**

- 6.1** In order to insure the indemnification obligation contained above, CONTRACTOR shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages as set forth in the RFP (Exhibit "A"). This Agreement shall not be deemed approved until the CONTRACTOR has obtained all required insurance coverages and has supplied MTECC with evidence of such coverage in the form of a Certificate of Insurance and endorsement. MTECC shall approve such certificates prior to the performance of any services pursuant to this Agreement.
- 6.2** CONTRACTOR shall make this same requirement binding on any of its subcontractors. CONTRACTOR shall indemnify and save the MTECC harmless from any damage resulting to them for failure of any subcontractor to take out or maintain such insurance.

## **SECTION 7. MISCELLANEOUS**

- 7.1 Contract Administrator.** The Contract Administrator is responsible to coordinate and communicate with CONTRACTOR and to manage and supervise the

execution and completion of the Services and the terms and conditions of this Agreement as set forth herein. **For purposes of the Agreement, Lowell R. Clary, Executive Director for MTECC is designated as the Contract Administrator.**

**7.2 Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of MTECC. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of MTECC and shall be delivered by CONTRACTOR to the MTECC Executive Director within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

**7.3 Audit and Inspection Rights and Retention of Records; Public Records.**

**7.3.1** MTECC shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

**7.3.2** CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by MTECC, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless CONTRACTOR is notified in writing by MTECC of the need to extend the retention period. Such retention of such records and documents shall be at CONTRACTOR'S expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by MTECC to be applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for MTECC's disallowance and recovery of any payment upon such entry.

**7.3.3** In addition, CONTRACTOR shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

**7.3.4** In addition, CONTRACTOR shall provide a complete copy of all working papers to MTECC, prior to final payment by MTECC, in accordance with the

RFP for CONTRACTOR services.

**7.3.5** CONTRACTOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to MTECC contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the MTECC and the public to all documents subject to disclosures under applicable law. CONTRACTOR'S failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the MTECC.

**Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.**

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: Chris Bross, MTECC Contracting Officer**  
**Mailing address: 100 West Cypress Creek Road, Suite 650**  
**Fort Lauderdale, FL 33309**  
**Telephone number: (954) 876-0064**  
**Email: brossc@mteccfl.gov**

**7.4 Policy of Non Discrimination.** CONTRACTOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONTRACTOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery. CONTRACTOR agrees to comply with the provisions set forth in attached Appendix "A", including Contractor's responsibility to incorporate the provisions in subcontracts, throughout the term of this Agreement.

**7.5 Public Entity Crime Act.** CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to MTECC, may not submit a bid on a contract with MTECC for the construction or repair of a public building or public work, may not submit bids on leases of real property to MTECC, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a

contract with MTECC, and may not transact any business with MTECC in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from MTECC'S competitive procurement activities. In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

- 7.6 Scrutinized Companies.** The CONTRACTOR certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Scrutinized Companies that boycott Israel List, and that it does not have business operations in Cuba or Syria as provided in Fla. Stat. §287.135, as may be amended or revised. MTECC may terminate the Agreement at MTECC's option if the CONTRACTOR is found to have submitted a false certification as provided under subsection (5) of Fla. Stat. §287.135, as may be amended or revised, or been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba, Syria, Sudan, or Scrutinized Companies that Boycott Israel List, as defined in Fla. Stat. § 287.135, as may be amended or revised.
- 7.7 Independent Contractor.** CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR pursuant to this Agreement shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees or agents of the MTECC. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 7.8 Third Party Beneficiaries.** Neither CONTRACTOR nor MTECC intends to directly or substantially benefit a third party by entering into this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 7.9 Notices.** Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth

herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

**MTECC:**

Lowell R. Clary, Executive Director  
C/O Christopher Bross, Contracting Officer  
Metro Transportation Engineering and Construction Cooperative  
100 West Cypress Creek Road, Suite 650  
Fort Lauderdale, Florida 33309

With a copy to:  
Matthew Pearl, Esq., MTECC General Counsel  
Weiss Serota Helfman Cole & Bierman, P.L.  
200 E. Broward Blvd., Suite 1900  
Fort Lauderdale, Florida 33301

**CONTRACTOR:**

Tanya Davis  
S. Davis & Associates, P.A.  
521 Hollywood Blvd  
Hollywood, FL 33020

**7.10 Assignment and Performance.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by CONTRACTOR. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the MTECC, which shall be in MTECC's sole and absolute discretion. A list of all such subcontractors shall be included in the Offer. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Offer, a list of such subcontractors shall be provided to the MTECC, subject to MTECC's approval.

CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the RFP and to provide and perform such services to MTECC's satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

**7.11 Conflicts.** Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against MTECC in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CONTRACTOR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of MTECC in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CONTRACTOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONTRACTOR is permitted to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

- 7.12 Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, MTECC shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 7.13 Materiality and Waiver of Breach.** MTECC and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. MTECC's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 7.14 Compliance with Laws.** CONTRACTOR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 7.15 Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless MTECC or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

- 7.16 Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.17 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.
- 7.18 Applicable Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 7.19 Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 7.20 Prior Agreements.** This Agreement and its attachments constitute the entire agreement between CONTRACTOR and MTECC, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with Section 7.18 above.
- 7.21 Drug-Free Workplace.** CONTRACTOR shall maintain a drug-free workplace.
- 7.22 Incorporation by Reference.** The truth and accuracy of each “Whereas” clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 7.23 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

**7.24 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**7.25 Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.

**7.26 Truth-in-Negotiation Certificate.** Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

**7.27 Disadvantage Business Enterprise (DBE) Program.**

**7.27.1** The contractor, sub-recipient, 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 USDOT 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.

**7.27.2** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from The MTECC. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MTECC. This clause applies to both DBE and non-DBE subcontracts.

**7.27.3** As a sub-recipient of FHWA or FTA funding, MTECC is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that MTECC can likely achieve the overall aspirational goal of 10.65% (6.6% for FTA) without the use of contract goals. Nevertheless, MTECC is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>

The contractor must also immediately and regularly enter DBE commitments and payments into FDOT Equal Opportunity Compliance (EOC) system. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at [eoohelp@dot.state.fl.us](mailto:eoohelp@dot.state.fl.us).

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature: MTECC, signing by and through its Chair and Executive Director, attested to and duly authorized to execute same, and Contractor, signing by and through its authorized representative, attested to and duly authorized to execute same.

**MTECC**

METRO TRANSPORTATION ENGINEERING  
AND CONSTRUCTION COOPERATIVE

By: \_\_\_\_\_  
Lowell R. Clary, Executive Director

By: \_\_\_\_\_  
Andrea McGee, Chair

This \_\_\_\_\_ day of \_\_\_\_\_ 2023.

This \_\_\_\_\_ day of \_\_\_\_\_ 2023.

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY FOR THE USE OF AND  
RELIANCE BY THE MTECC ONLY:

By: \_\_\_\_\_  
Matthew Pearl, MTECC General Counsel  
Weiss Serota Helfman Cole & Bierman, P.L.

**AGREEMENT NO. 23-04**

**BETWEEN THE MTECC AND S. DAVIS & ASSOCIATES, P.A.**

**FOR**

**AUDIT SERVICES**

**CONTRACTOR**

WITNESSES:

S. DAVIS & ASSOCIATES, P.A.

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

This day \_\_\_\_ of \_\_\_\_\_, 2023.

Print Name: \_\_\_\_\_

**AGREEMENT NO. 23-04**

**BETWEEN MTECC AND S. DAVIS & ASSOCIATES, P.A.**

**FOR**

**AUDIT SERVICES**

**EXHIBITS LIST**

- 1) **Exhibit “A”** – RFP No. 23-04, Date Issued: November 2, 2023  
A full copy of this document is available for review upon request at the MTECC’s Offices.
- 2) **Exhibit “B”** – CONTRACTOR’s Offer/Proposal, dated November 28, 2023.  
A full copy of this document is available for review upon request at the MTECC’s Offices.
- 3) **Exhibit “C”** Federal Contractual Provisions
  - Exhibit “C-1”** Federal Transit Administration Required Contractual Provisions
  - Exhibit “C-2”** Federal Highway Administration Required Contractual Provisions
- 4) **Appendix “A”** – Nondiscrimination Requirements

**AGREEMENT NO. 23-04**  
**BETWEEN MTECC AND S. DAVIS & ASSOCIATES, P.A.**  
**FOR**  
**AUDIT SERVICES**

**EXHIBIT "A"**

**RFP No. 23-04**

**Date Issued: November 2, 2023**

**A FULL COPY OF RFP No. 23-04 IS AVAILABLE FOR REVIEW AND INSPECTION UPON  
REQUEST AT THE MTECC OFFICE.**

**AGREEMENT NO. 23-04**  
**BETWEEN MTECC AND S. DAVIS & ASSOCIATES, P.A.**  
**FOR**  
**AUDIT SERVICES**

**EXHIBIT "B"**  
**CONTRACTOR'S OFFER**

**A FULL COPY OF CONTRACTOR'S OFFER IS AVAILABLE FOR REVIEW AND  
INSPECTION UPON REQUEST AT THE MTECC OFFICE.**

**UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT)  
Federal Transit Administration (FTA)**

**ATTACHMENT C-1**

**FUNDING SUPPLEMENT**

**FOR ALL FEDERALLY FUNDED  
PROCUREMENTS**



**METRO TRANSPORTATION ENGINEERING  
AND CONSTRUCTION COOPERATIVE**

**METRO TRANSPORTATION ENGINEERING  
AND CONSTRUCTION COOPERATIVE  
(MTECC)**

**TRADE CENTER SOUTH  
100 WEST CYPRESS CREEK ROAD, SUITE 650  
FORT LAUDERDALE, FL 33309**

## Table of Contents

<b>APPLICABLE PROVISIONS</b> .....	<b>4</b>
<b>REQUIRED CERTIFICATIONS/AFFIDAVITS</b> .....	<b>6</b>
<b>CONTRACT SUBJECT TO FEDERAL FINANCIAL ASSISTANCE/APPLICATION OF PROVISIONS AND CLAUSES</b> .....	<b>7</b>
1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES INCLUDING THE CONTRACTOR AND ITS SUBCONTRACTORS .....	8
2. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD.....	8
3. ACCESS TO THIRD PARTY CONTRACT RECORDS AND SITES OF PERFORMANCE .....	8
4. CHANGES TO FEDERAL REQUIREMENTS .....	10
5. CIVIL RIGHTS (TITLE VI, ADA, EEO) AND PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY .....	10
6. DISADVANTAGED BUSINESS ENTERPRISES (DBEs) .....	13
7. INCORPORATION OF FTA TERMS .....	19
8. ENERGY CONSERVATION .....	19
9. FEDERAL TAX LIABILITY/FELONY CRIMINAL VIOLATION .....	19
10. VETERANS EMPLOYMENT. As provided by 49 U.S.C. § 5325(k).....	20
11. TERMINATION (Appendix II to 49 C.F.R. Part 200).....	21
12. DEBARMENT AND SUSPENSION.....	21
13. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION .....	22
14. BUY AMERICA (For, Rolling Stock, Construction and Materials/Supplies).....	24
15. LOBBYING .....	25
16. CLEAN AIR.....	25
17. CLEAN WATER.....	25
18. CARGO PREFERENCE (For, Rolling Stock, Construction and Materials/Supplies).....	26
19. FLY AMERICA.....	26
20. FTA - CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT (40 U.S.C. §§ 3141-3144 and 3146-3148 and 49 C.F.R. Part 5).....	27
21. CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT (for the actual construction, alternation and/or repair, including painting and decorating of a public building or public work) .....	32
22. BONDING REQUIREMENTS (2 CFR §200.326) .....	33
23. CONTRACT WORK HOURS & SAFETY STANDARDS ACT.....	33
24. SEISMIC SAFETY .....	34
25. NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT.....	34
26. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS .....	35

27. CHARTER SERVICE OPERATIONS.....	36
28. SCHOOL BUS OPERATIONS.....	36
29. DRUG USE AND TESTING.....	36
30. ALCOHOL MISUSE AND TESTING.....	37
31. PATENT AND RIGHTS IN DATA.....	37
32. SPECIAL NOTIFICATION REQUIREMENT FOR STATES.....	37
33. RECYCLED PRODUCTS.....	38
34. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE.....	38
35. ADA ACCESS.....	39
36. BUS TESTING.....	40
37. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.....	40
38. TVM CERTIFICATION.....	41
39. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.....	41

## APPLICABLE PROVISIONS

= Applicable to this solicitation and/or purchase

1.  NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES INCLUDING THE CONTRACTOR AND ITS SUBCONTRACTORS
2.  FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD
3.  ACCESS TO THIRD PARTY CONTRACT RECORDS AND SITES OF PERFORMANCE
4.  CHANGES TO FEDERAL REQUIREMENTS
5.  CIVIL RIGHTS (TITLE VI, ADA, EEO) AND PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY
6.  DISADVANTAGED BUSINESS ENTERPRISES (DBEs)
7.  INCORPORATION OF FTA TERMS
8.  ENERGY CONSERVATION
9.  FEDERAL TAX LIABILITY/FELONY CRIMINAL VIOLATION
10.  VETERANS EMPLOYMENT. As provided by 49 U.S.C. § 5325(k)
11.  TERMINATION (Appendix II to 49 C.F.R. Part 200)
12.  DEBARMENT AND SUSPENSION
13.  RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION
14.  BUY AMERICA (For, Rolling Stock, Construction and Materials/Supplies)
15.  LOBBYING
16.  CLEAN AIR
17.  CLEAN WATER
18.  CARGO PREFERENCE (For, Rolling Stock, Construction and Materials/Supplies)
19.  FLY AMERICA
20.  FTA - CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT (40 U.S.C. §§ 3141-3144 and 3146-3148 and 49 C.F.R. Part 5)
21.  CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT (for the actual construction, alternation and/or repair, including painting and decorating of a public building or public work)
22.  BONDING REQUIREMENTS (2 CFR §200.325)
23.  CONTRACT WORK HOURS & SAFETY STANDARDS ACT
24.  SEISMIC SAFETY
25.  NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT
26.  TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS
27.  CHARTER SERVICE OPERATIONS
28.  SCHOOL BUS OPERATIONS
29.  DRUG USE AND TESTING
30.  ALCOHOL MISUSE AND TESTING

- 31.  PATENT AND RIGHTS IN DATA
- 32.  SPECIAL NOTIFICATION REQUIREMENT FOR STATES (**ONLY APPLIES IF STATE REQUIRES THIS - SEE NOTE TO PROCUREMENT UNDER THIS PROVISION**)
- 33.  RECYCLED PRODUCTS
- 34.  CONFORMANCE WITH NATIONAL ITS ARCHITECTURE
- 35.  ADA ACCESS
- 36.  BUS TESTING
- 37.  PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS
- 38.  TVM CERTIFICATION
- 39.  PROHIBITION ON CERTAIN TELECOMMUNICATIONS & VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

## **CONTRACT SUBJECT TO FEDERAL FINANCIAL ASSISTANCE/APPLICATION OF PROVISIONS AND CLAUSES**

This Contract/Project is funded in whole or in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the Metropolitan Transportation Engineering and Construction Cooperative (hereinafter referred to as "MTECC") and the U.S. Department of Transportation requiring compliance with purchasing procedures and standards as set forth in various federal statutes and regulations including 49 CFR Part 18, and the FTA Circular 4220.1F. The Contractor/Proposer/Bidder (may also be referred to herein as only "Contractor" unless expressly indicated otherwise) is required to comply with all terms and conditions prescribed for third-party contracts by FTA. The Contractor is responsible for ensuring its compliance with all applicable FTA requirements. Additionally, the Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the Contract, including all applicable FTA requirements. Upon request of MTECC or FTA, the Contractor shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of each subcontractor's compliance at all tiers. The following provisions and required Contract provisions shall be incorporated by reference in the Contract. These provisions are in addition to other General Terms and Conditions, Special Terms and Conditions, Solicitation Documents and Bid or Proposal Forms which may also be incorporated by reference in any resulting Contract. Some provisions require the Proposer, Bidder or Contractor to execute and submit certain required certifications with the Proposal, Bid or Agreement. Failure to execute and submit required certifications with the Proposal, Bid or Contract Documents may render a Proposal or Bid non-responsive or an Agreement null and void. MTECC has provided guidance to the Contractor by indicating applicable provisions and certifications in this Federal Funding Supplement. However, MTECC shall not be liable to the Contractor whatsoever for any mistakes or errors in determining the application of the provisions or certifications to the Agreement.

## **PROVISIONS 1 THROUGH 9 AND PROVISION 39 APPLY TO ALL CONTRACTS**

### **1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES INCLUDING THE CONTRACTOR AND ITS SUBCONTRACTORS**

- A. MTECC 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 MTECC, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- B. 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.

### **2. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD**

- A. 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution or performance of the underlying Contract, 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, 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 Contractor to the extent the Federal Government deems appropriate.
- B. 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 Contractor, to the extent the Federal Government deems appropriate.
- C. 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.

### **3. ACCESS TO THIRD PARTY CONTRACT RECORDS AND SITES OF PERFORMANCE**

- A. For a period of three years following Contract closing, the Contractor shall maintain, preserve and make available to MTECC, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times, complete and readily accessible, all books, records, accounts, reports, papers, including but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any types and supporting materials of Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.
- B. Contractor also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or their authorized representatives, including any project management oversight contractor, access to Contractor's records, information and construction sites (including all Work and materials) 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.
- C. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor agrees to maintain, complete and readily accessible, all books, records, accounts, reports, including but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any types and supporting materials for a period of 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 or in the event the Contractor is informed in writing to extend the three (3) year period, in which case the Contractor agrees to maintain same until MTECC, the FTA Administrator, the US 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).
- D. The Contractor shall maintain, and MTECC shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's offices engaged in performing the Contract.
- E. If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the Work terminated until three years after any resulting final termination settlement. The Contractor shall make available records relating to appeals under the Claims and Disputes clause in the General Terms and Conditions or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.
- F. This provision entitled "Access to Third Party Contract Records and Sites of Performance" applies with equal force and effect to any subcontractors at any tier hired by the Contractor to perform Work under this Contract. The Contractor shall insert this provision in all subcontracts at all tiers under this Contract and require subcontractor compliance therewith.

#### **4. CHANGES TO FEDERAL REQUIREMENTS**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed herein or included in the current Master Agreement between MTECC and FTA, as they may be amended or promulgated from time to time during the term of this Contract ("Federal Requirements"). Contractor's failure to so comply shall constitute a material breach of this Contract. Contractor may contact either MTECC or FTA for a copy of the current FTA Master Agreement or access it from FTA's website ([www.transit.dot.gov](http://www.transit.dot.gov)). The Federal Requirements and any changes to the Federal Requirements during the term of the Agreement are incorporated herein by reference and made a part hereof. The Federal Requirements and any changes to them shall apply to both the Contractor and all subcontractors.

#### **5. CIVIL RIGHTS (TITLE VI, ADA, EEO) AND PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY**

The following requirements apply to the Contract (except provision C(4) which applies only to construction projects):

- A. 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, Federal transit law at 49 U.S.C. § 5332, and FTA Circular 4704. Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, sex (including sexual orientation and gender identify), age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Promoting Free Speech and Religious Liberty. The Contractor shall ensure it complies with all provisions of the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- C. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying Contract:
  - 1. Race, Color, Religion, 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, 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 CFR 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 activities undertaken in the course of this Contract. 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, Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities- In accordance with Title 1 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq. and section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
4. The following EEO clauses apply to all Agreements for construction (41 C.F.R. Chapter 60).

During the performance of this Agreement the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
- b) Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. **The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.**
- c) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- d) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or

another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- e) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and **shall post copies of the notice in conspicuous places available to employees and applicants for employment.**
- f) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- g) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- h) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- i) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- D. The Contractor shall:
1. Prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.
  2. Prohibit the:
    - a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;
    - b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or
    - c) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
- a) Follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but FTA does not require an Indian Tribe to comply with FTA program- specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- E. Contractor 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.

## **6. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)**

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs.
- B. The Contractor 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 this DOT-assisted Contract. 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 MTECC deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. The Contractor is required to pay its subcontractors performing Work related to this Contract for satisfactory performance of that Work no later than 30 days after the Contractor's receipt of payment for that Work from MTECC. In addition, the Contractor shall return any retainage payments to subcontractors within 30 days after incremental acceptance of the subcontractor's Work by MTECC and Contractor's receipt of the partial retainage payment related to the subcontractor's Work.
- D. The Contractor must promptly notify MTECC, whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of Work. The contractor may not terminate any DBE subcontractor and perform that Work through its own forces or those of an affiliate without prior written consent of MTECC.
- E. MTECC sets an annual overall goal for the participation of DBEs. This Contract contains a minimum level of DBE participation, and is awarded in reliance upon the Contractor's representations that it can attain such DBE participation levels in addition to all other of Contractor's representations, certifications and submittals as required by this Contract.

- C. The Contractor shall cooperate with MTECC with regard to maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontract work under this Contract. The Contractor shall assist MTECC in verifying compliance with the DBE requirements of this Contract, if any, by submitting status reports itemizing payments to all DBE subcontractors with each monthly request for payment. Upon Contract completion, the Contractor shall submit a summary of payments, by subcontract, made to all subcontractors to MTECC's Administrative Compliance Officer.

## **7. INCORPORATION OF FTA TERMS**

The Agreement is subject to the requirements of the Federal Transit Administration Master Agreement effective February 9, 2021, as amended (see link below), as applicable to the Federal fiscal year in which the Solicitation Documents or Contract are issued/awarded ("FTA Master Agreement") (see link below). In addition, all contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F (entitled, "Third Party Contracting Guidance") dated November 1, 2008, as amended, are hereby incorporated by reference ("FTA Circular") (see link below). In the event of a conflict between the provisions of the General Terms and Conditions and either the FTA Master Agreement or the FTA Circular, the applicable FTA document will control. In the event of a conflict between the FTA Master Agreement and the FTA Circular, the FTA Master Agreement shall control. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTECC requests which would cause MTECC to be in violation of the FTA Master Agreement or the FTA Circular. Both the FTA Master Agreement and the FTA Circular are incorporated herein by reference and made a part hereof.

FTA Master Agreement (link to FY21 Master Agreement is provided, but Contractor is obligated to obtain most recent FTA Master Agreement from FTA's website at [www.transit.dot.gov](http://www.transit.dot.gov)): [www.transit.dot.gov/sites/fta.dot.gov/files/2021-02/FTA-Master-Agreement-v28-2021-02-09.pdf](http://www.transit.dot.gov/sites/fta.dot.gov/files/2021-02/FTA-Master-Agreement-v28-2021-02-09.pdf)

FTA Circular: [Third Party Contracting Guidance \(Circular 4220.1F\) \(dot.gov\)](http://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf) OR [www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf](http://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf)

## **8. ENERGY CONSERVATION**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan, if any, issued in compliance with the Energy Policy and Conservation Act. This requirement applies to the Contractor and all subcontractors.

## **9. FEDERAL TAX LIABILITY/FELONY CRIMINAL VIOLATION**

The Contractor shall certify 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 (including a conviction of an

offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. §3559) within the preceding twenty-four (24) months (see Exhibit 8 entitled, “Federal Tax Liability/Felony Criminal Violation Certification”). U.S. DOT Order 4200.6

The Contractor shall require all subcontractors, regardless of tier, to complete the same certification regardless of the value of the subcontract.

**PROVISION 10 APPLIES TO ALL CAPITAL PROJECTS  
(AS THAT TERM IS DEFINED IN 49 U.S.C §5302(3) – SEE BELOW)**

**10. VETERANS EMPLOYMENT. As provided by 49 U.S.C. § 5325(k)**

A. To the extent practicable, Contractor agrees that it:

- 1) Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
- 2) Will not 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, and

B. Contractor shall include paragraphs 10.A. (1) and (2) above in all its subcontracts.

The term “capital project” means a project for: (A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing; (B) rehabilitating a bus; (C) remanufacturing a bus; (D) overhauling rail rolling stock; (E) preventive maintenance; (F) leasing equipment or a facility for use in public transportation; (G) a joint development improvement that— (i) enhances economic development or incorporates private investment, such as commercial and residential development; (ii) (I) enhances the effectiveness of public transportation and is related physically or functionally to public transportation; or (II) establishes new or enhanced coordination between public transportation and other transportation; (iii) provides a fair share of revenue that will be used for public transportation; (iv) provides that a person making an agreement to occupy space in a facility constructed under this paragraph shall pay a fair share of the costs of the facility through rental payments and other means; and (v) may include— (I) property acquisition; (II) demolition of existing structures; (III) site preparation; (IV) utilities; (V) building foundations; (VI) walkways; (VII) pedestrian and bicycle access to a public transportation facility; (VIII) construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; (IX) renovation and improvement of historic transportation facilities; (X) open space; (XI) safety and security equipment and facilities (including lighting, surveillance, and related intelligent transportation system applications); (XII) facilities that incorporate community services such as daycare or health care; (XIII) a capital project for, and improving, equipment or a facility for an

intermodal transfer facility or transportation mall; and (XIV) construction of space for commercial uses; (H) the introduction of new technology, through innovative and improved products, into public transportation; (I) the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 ( 42 U.S.C. 12143 ), but only for grant recipients that are in compliance with applicable requirements of that Act, including both fixed route and demand responsive service, and only for amounts— (i) not to exceed 10 percent of such recipient’s annual formula apportionment under sections 5307 and 5311; or (ii) not to exceed 20 percent of such recipient’s annual formula apportionment under sections 5307 and 5311, if, consistent with guidance issued by the Secretary, the recipient demonstrates that the recipient meets at least 2 of the following requirements: (I) Provides an active fixed route travel training program that is available for riders with disabilities. (II) Provides that all fixed route and paratransit operators participate in a passenger safety, disability awareness, and sensitivity training class on at least a biennial basis. (III) Has memoranda of understanding in place with employers and the American Job Center to increase access to employment opportunities for people with disabilities. (J) establishing a debt service reserve, made up of deposits with a bondholder’s trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter; (K) mobility management— (i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309 ); but (ii) excluding operating public transportation services; (L) associated capital maintenance, including— (i) equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and (ii) reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used; (M) associated transit improvements; or (N) technological changes or innovations to modify low or no emission vehicles (as defined in section 5339(c) ) or facilities.

## **PROVISION 11 APPLIES TO AWARDS EXCEEDING \$10,000**

### **11. TERMINATION (Appendix II to 49 C.F.R. Part 200)**

See MTECC’s Agreement provisions.

## **PROVISIONS 12 AND 13 APPLY TO ALL AWARDS EXCEEDING \$25,000**

### **12. DEBARMENT AND SUSPENSION**

- A. 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:

- 1) Debarred from participation in any federally assisted Award;
- 2) Suspended from participation in any federally assisted Award;
- 3) Proposed for debarment from participation in any federally assisted Award;
- 4) Declared ineligible to participate in any federally assisted Award;
- 5) Voluntarily excluded from participation in any federally assisted Award; or
- 6) Disqualified from participation in ay federally assisted Award.

B. By signing and submitting its Bid or Proposal and Exhibit 9, entitled, "Debarment & Suspension (Nonprocurement) Certification," the Bidder or Proposer certifies as follows:

1) The certification in this clause is a material representation of fact relied upon by MTECC. If it is later determined by MTECC that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to MTECC, 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.

C. In addition to all other requirements of this provision, the Bidder or Proposer and all subcontractors shall use the System for Award Management (SAM) to prove they are not debarred or to identify debarred companies [see <https://www.sam.gov/SAM/>]. Post award, the Contractor shall use SAM if any new subcontractors are added to the Agreement and provide such documentation to MTECC in compliance with this provision.

D. The Bidder or Proposer further agrees to include this provision requiring such compliance in all of its lower tier covered transactions.

### **13. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

A. FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the award of the Agreement, the Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

- B. Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, MTECC is obligated to promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region IV. MTECC is required to include a similar notification requirement in all of its Third Party Agreements, which includes this Agreement. Pursuant to this same FTA requirement, the Contractor is required to include an equivalent provision to Provision 14 in all of its subcontractor or subconsultant agreements at every tier.
- 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.
  - 3) Additional Notice to U.S. DOT Inspector General. MTECC must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the MTECC has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between MTECC and FTA, or an agreement involving a principal, officer, employee, agent, or the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of MTECC. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all MTECC divisions, including divisions tasked with law enforcement or investigatory functions.
- C. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence. (d) Enforcement. The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

Please see the FTA Master Agreement, as amended, for other defined terms used in this provision.

- D. See other related provisions in MTECC General Terms and Conditions.

**PROVISION 14 APPLIES TO AWARDS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD, EXCEPT FOR ROLLING STOCK WHERE THE THRESHOLD IS \$150,000**

#### **14. BUY AMERICA (For, Rolling Stock, Construction and Materials/Supplies)**

The Buy America requirements apply to all contracts, which include the purchases of steel, iron and manufactured goods, including construction, the acquisition of goods, or the acquisition of rolling stock or capital leases, subject to the applicable threshold amounts.

The Contractor agrees to comply with 49 USC 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. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11.

Rolling stock (which includes train control, communication, traction power equipment and rolling stock prototypes) must be assembled in the United States and have a seventy percent (70%) domestic content. For rolling stock purchases for which the average cost of the vehicle is more than \$300,000, the cost of steel or iron produced in the United States and used in the rolling stock frames or car shells will be included in the domestic content calculation, regardless of whether the frame or car shell is produced in the United States. For rolling stock rebuilds the Buy America domestic content requirement is 100%. For rolling stock overhauls, the Buy America domestic content is 100%, unless the agency contracts with the original equipment manufacturer (OEM) and then it is currently 60%.<sup>1</sup>

The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements. The \$150,000 threshold amount for rolling stock applies only to the Contract; all subcontracts under this threshold amount are subject to Buy America. The Contractor shall provide the fully executed Buy America Certification provided in Exhibit 10.

Compliance with these Buy America requirements shall be deemed to satisfy 2 CFR § 200.322, "Domestic Preferences for Procurements."

Limitation on Certain Rolling Stock Procurements.— Award of a contract or subcontract shall not be made if prohibited by 49 U.S.C §5323(u) which prohibits such awards to an entity for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock:

- (a) is incorporated in or has manufacturing facilities in the United States; and
- (b) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that—
  - (i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff

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<sup>1</sup> Per 49 CFR Part 661 (Docket Nos. FTA-2016-0019 & FTA-2016-0020) Notice of Policy on the Implementation of the Phased Increase in Domestic Content under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances, FTA Response to Question E on Page 60282 of the Federal Register, Vol. 81, No. 170/Sept. 1, 2016.

Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;  
(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and  
(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

The "Simplified Acquisition Threshold" means the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. **For FY21 the Simplified Acquisition Threshold is \$250,000.**

## **PROVISION 15 APPLIES TO AWARDS EXCEEDING \$100,000**

### **15. LOBBYING**

Contractors and all subcontractors who submit a proposal or bid for a Contract 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 use 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 MTECC. The Contractor shall complete the affidavit/certification provided in Exhibit 11 entitled, "Restrictions on Lobbying and Non-Collusion Affidavit/Certification." Should the certification required by 49 C.F.R. Part 20 differ from Exhibit 11, the Contractor shall be required to complete the form in 49 C.F.R. Part 20.

## **PROVISIONS 16 AND 17 APPLY TO AWARDS EXCEEDING \$150,000**

### **16. CLEAN AIR**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q. Contractor agrees to report each violation to MTECC and understands and agrees that MTECC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **17. CLEAN WATER**

- A. 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 -1388. Contractor agrees to report each violation to MTECC and understands and agrees that MTECC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **PROVISIONS 18 AND 19 APPLY ONLY TO THE TRANSPORT OF PROPERTY OR PERSONS**

## **18. CARGO PREFERENCE (For, Rolling Stock, Construction and Materials/Supplies)**

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean 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 loading 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 MTECC (through the Contractor in the case of a subcontractor's bill-of-lading); and
- 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.

## **19. FLY AMERICA**

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 C.F.R 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. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum of unavailability adequately explaining (to MTECC's sole satisfaction) 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.

For the purpose of Provision 16, the following definitions shall apply:

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**PROVISIONS 20 AND 21 APPLIES ONLY TO ALL CONSTRUCTION, ALTERATION OR  
REPAIR CONTRACTS IN EXCESS OF \$2,000  
(SEE PROVISION 22 FOR ADDITIONAL REQUIREMENTS)**

**20. FTA - CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT (40 U.S.C. §§ 3141-3144 and 3146-3148 and 49 C.F.R. Part 5)**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by 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.

**(2) Withholding** - MTECC 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, MTECC 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 MTECC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). 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. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to MTECC, for transmission to the Federal Transit Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to MTECC. (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: That the

Payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 into 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 DavisBacon 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.

**21. CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT (for the actual construction, alternation and/or repair, including painting and decorating of a public building or public work)**

The Contractor and its subcontractors shall comply with the Copeland “Anti-Kickback” Act (“Act”) requirements of 29 C.F.R. 5.5(a)(1) through (10), which are incorporated by reference into this Contract. 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 Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

The Contractor shall also comply with the following requirements:

a) Section 1 of the Act, as amended, 18 U.S.C. § 874, applies to all Contracts:

- (i) Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both;

b) Section 2 of the Act, as amended, 18 U.S.C. § 3145, applies to construction and repair Contracts exceeding \$2,000:

- (i) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

(ii) (ii) Application — The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001; and

c) U.S. DOL regulations “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 CFR Part 3, which are incorporated by reference in this contract.

d) For additional requirements of the Act not specified in this Article, see preceding Article FTA 17 – Construction Employee Protections – Davis Bacon Act.

## **PROVISION 22 APPLIES TO ALL CONSTRUCTION OR FACILITY IMPROVEMENT CONTRACTS OR SUBCONTRACTS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD**

### **22. BONDING REQUIREMENTS (2 CFR §200.326)**

Refer to MTECC’s General Terms and Conditions/Payment and Performance Bond and the requirements for Bid/Proposal bonds in the solicitation documents.

See Provision 14 for a definition of the “Simplified Acquisition Threshold” and current Federal fiscal year amount.

## **PROVISION 23 APPLIES TO ALL CONTRACTS IN EXCESS OF \$100,000 THAT INVOLVE THE EMPLOYMENT OF MECHANICS OR LABORERS**

### **23. CONTRACT WORK HOURS & SAFETY STANDARDS ACT**

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

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

- (3) Withholding for unpaid wages and liquidated damages - MTECC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **PROVISION 24 APPLIES TO ALL CONTRACTS FOR THE DESIGN OR CONSTRUCTION OF NEW BUILDINGS OR ADDITIONS TO EXISTING BUILDINGS**

### **24. 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 by the 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. The Contractor must provide the Seismic Safety Certification (Exhibit 12) with the Bid/Proposal.

## **PROVISION 25 APPLIES ONLY TO CONTRACTS INVOLVING NONCONSTRUCTION ACTIVITIES**

### **25. NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT**

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations in 29 C.F.R Part 5.

The requirements of 40 U.S.C. §3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or

articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

## **PROVISIONS 26 THROUGH 30 APPLY ONLY TO AGREEMENTS FOR TRANSIT OPERATIONS**

### **26. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS**

Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

- (1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, US DOT regulations (49 CFR Part 21) or US Department of Labor regulations (41 CFR chapter 60), when required, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA- LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

- (2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority sub recipient participating a Project authorized by 49 U.S.C.

§ 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant

Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

- (3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient 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, U.S. DOL implementing procedures, and any revisions thereto.

## **27. CHARTER SERVICE OPERATIONS**

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

## **28. SCHOOL BUS OPERATIONS**

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

## **29. DRUG USE AND TESTING**

The Contractor agrees to establish and implement a drug testing program that complies with 49 CFR Part 40 Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the MTECC, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review

the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to MTECC. **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.**

### **30. ALCOHOL MISUSE AND TESTING**

The Contractor agrees to establish and implement an alcohol testing program that complies with 49 CFR Parts 40 and 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to MTECC. **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.**

## **PROVISION 31 APPLIES ONLY TO PLANNING, RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS**

### **31. PATENT AND RIGHTS IN DATA**

The Contractor shall comply with the requirements of 37 C.F.R Part 401, as well as MTECC’s Agreement provisions.

## **PROVISION 32 APPLIES ONLY to STATES AND ORGANIZATIONS THAT ARE BEING FUNDED DIRECTLY BY THE STATE WITH FTA GRANT FUNDS.**

### **32. SPECIAL NOTIFICATION REQUIREMENT FOR STATES**

**(NOTE TO PROCUREMENT:** Per FTA guidance dated July 2011: “The notification requirements concerning federal assistance apply only to States and those organizations that are being funded directly by the State with FTA grant funds. This would include sub- grantees, lessees, or third party contractors of the State. Government agencies that are not part of the State government who are receiving FTA grant funds directly from FTA do not have to comply with the special notification requirements for States.” **Therefore this provision will ONLY apply to MTECC Contracts if MTECC is obligated to comply through a State of Florida funding agreement.**)

- A. Types of Information. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- B. Documents. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

### **PROVISION 33 APPLIES TO ALL APPLICABLE PROCUREMENTS AND CONTRACTS (AS DEFINED BELOW)**

#### **33. RECYCLED PRODUCTS**

For all procurements and contracts involving items designated by the Environmental Protection Agency (EPA) where the Contractor purchase \$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 exceeds \$10,000 ("Applicable Procurements and Contracts"). 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.

### **PROVISION 34 APPLIES TO ALL CONTRACTS AND SOLICITATIONS FOR INTELLIGENT TRANSPORTATION SYSTEMS**

#### **34. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE**

National Intelligent Transportation Systems ("ITS") Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA- LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

### **PROVISION 35 APPLIES TO ALL CONTRACTS FOR ROLLING STOCK OR FACILITIES' CONSTRUCTION OR RENOVATIONS**

#### **35. ADA ACCESS**

- A. MTECC must comply with: 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities; all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; the Americans with Disabilities Act of 1990 (ADA), as amended; 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.
- B. All deliverable items provided by the Contractor for MTECC under this Contract shall comply with the above- referenced laws as well as all other applicable federal, state and local regulations and directives and any subsequent amendments thereto.

## **PROVISIONS 36 THROUGH 38 APPLY ONLY to ROLLING STOCK PROCUREMENTS**

### **36. BUS TESTING**

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. §§ 5318 and 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to MTECC at a point in the procurement process specified by MTECC which will be prior to MTECC's final acceptance of the first vehicle.
- B. A manufacturer who releases a report under paragraph A above shall provide notice to the operator of the testing facility that the report is available to the public.
- C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to MTECC prior to MTECC's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

### **37. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and (m) and FTA's implementing regulation at 49

C.F.R. Part 663 and to submit the following certifications:

- A. Buy America Requirements: The Bidder/Proposer/Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America (using Exhibit 10). If the Bidder/Proposer/Contractor certifies compliance with Buy America, it shall submit documentation which lists: 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the Bid or Proposal Contract Documents.
- C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit: 1) manufacturer's FMVSS self- certification sticker information that the vehicle complies with relevant FMVSS; or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### **38. TVM CERTIFICATION**

The Transit Vehicle Manufacturer (TVM) shall provide MTECC with the Transit Vehicle Manufacturer (TVM) Certification of Compliance (see Exhibit 13) stating that it has complied with FTA's DBE requirements in 49 CFR Part 26.49. Along with Exhibit 13, the TVM shall also provide MTECC with the most current letter from the FTA approving the TVM's DBE goal/methodology and eligibility to participate in the FTA DBE program as a TVM in accordance with 49 CFR Part 26.49. If the FTA has not yet approved the DBE Goal, the TVM shall make a certification to that effect as required by 49 CFR Part 26.49 and in addition submit to MTECC a copy of the documents submitted to FTA for approval. **These documents shall be submitted with the solicitation response or the TVM's (or Proposer's/Bidder's/Offeror's, if same is not the TVM) submittal may be deemed non-responsive.**

## **PROVISION 39 APPLIES TO ALL CONTRACTS**

### **39. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The Contractor shall comply with the requirements of 2 CFR 200.216.

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<sup>2</sup> Rolling stock procurements include both the manufacture of new vehicles, as well as the remanufacture of existing vehicles. It does not include overhauls.

## Federal Contractual Provisions

### ATTACHMENT C-2

## FEDERAL HIGHWAY ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS

The resulting Contract will be funded, in whole or in part, with federal funds through the Federal Highway Administration (FHWA). Consequentially, the following FHWA and Federally-mandated provisions, as applicable, will be incorporated into the resulting Contract. Municipality and any subsequent Consultant(s) acknowledge and agree to comply with the applicable provisions in this Section. Italicized language indicates clauses, which require drafting specific to each agreement's needs.

#### 1) **Contract Provisions 2 C.F.R. §200. 326**

The Purchaser's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

#### 2) **Buy America Requirements 23 USC 313; 23 CFR 635.410**

The Contractor shall 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 FHWA funded projects are produced in the United States, unless a waiver has been granted by FHWA 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 purchase (currently less than \$100,000) made with capital, operating, or planning funds.

#### 3) **USDOT Disadvantaged Business Enterprise (DBE) Program Requirements 49 CFR Part 26**

- a) As a sub-recipient of FHWA or FTA funding, MTECC is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that MTECC can likely achieve the overall aspirational goal of 10.65% (7% for FTA) without the use of contract goals. Nevertheless, MTECC is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>

- b) All bidders must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List . The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at [eoohelp@dot.state.fl.us](mailto:eoohelp@dot.state.fl.us).
- c) Bidders, contractors/consultants, sub-recipients, or subcontractor/consultants may not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The bidder contractor/subcontract, sub-recipient, or subcontractor/consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of FHWA and/or FTA-assisted contracts. Failure 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 deem appropriate.

**4) FHWA Non-Collusion Statement 23 USC 112(c); 23 CFR 635.112(f)**

EACH BIDDER SHALL FILE A STATEMENT EXECUTED BY, OR ON BEHALF OF THE PERSON, FIRM, ASSOCIATION, OR CORPORATION SUBMITTING THE BID CERTIFYING THAT SUCH PERSON, FIRM, ASSOCIATION, OR CORPORATION HAS NOT, EITHER DIRECTLY OR INDIRECTLY, ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION, IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THE SUBMITTED BID. FAILURE TO SUBMIT THE EXECUTED STATEMENT AS PART OF THE BIDDING DOCUMENTS WILL MAKE THE BID NONRESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION.

**5) Sanctions and Penalties for Breach of Contract 2 CFR Part 200, Appendix II(A)**

*[All contracts in excess of \$150,000 shall contain provisions or conditions which will address 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.]*

**6) Termination for Cause and Convenience 2 C.F.R. Part 200, Appendix II, ¶ B**

*[All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement].*

**7) Rights to Inventions Made Under a Contract or Agreement 2 C.F.R. Part 200, Appendix II, ¶ F**

- a) If the FHWA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FHWA. 2 C.F.R. Part 200, Appendix II, ¶ F.
- b) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

**8) Energy Efficiency 42 USC 6201; 2 CFR Part 200 Appendix II (H)**

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Florida Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**9) Procurement of Recovered Materials 2 CFR Part 200 Appendix II (K), 2 CFR 200.322; 40 CFR Part 247**

- a) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired -
  - i) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii) Meeting contract performance requirements; or
  - iii) At a reasonable price.
- b) Information about this requirement, along with the list of EPA- designate items, is available through the EPA.

**APPENDIX “A”**  
**(AS REFERENCED IN PARAGRAPH 7.4)**

**NONDISCRIMINATION REQUIREMENTS**

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

- (1) **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.
- (2) **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 Exhibit C of the Regulations.
- (3) **Solicitations for 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.
- (4) **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.
- (5) **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:

- a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) 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.

(7) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38, also where consultant work items include assessing or planning pedestrian rights of way, it will follow the [FDOT Design Manual](#) or [Florida GreenBook](#), as applicable; The Federal Aviation Administration’s Non-

discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).”

- (8) **NonDiscrimination Language for the Public:** The selected consultant will place or cause to be placed in any information developed for public dissemination the following statement: *The MPO does not discriminate in any program, service or activity on the basis of race, color, national origin, sex, age, disability, religion or family status. For more information contact \_\_\_\_\_ at \_\_\_\_\_ or 711 (for hearing impaired). Those requiring language services (free of charge) or accommodation for a disability should provide contact the MTECC at least \_\_\_\_\_ days in advance.*
- (9) **Cooperation with MTECC Oversight:** MTECC is responsible for conducting and documenting oversight of the RFP, bidding process, award and delivery of the consultant contract for compliance with civil rights authorities. This includes but is not limited to conducting Commercially Useful Function (CUF) reviews on all DBEs used by the selected consultant (or the consultant itself, if a DBE), and by reviewing payments and retainage to ensure subconsultants are paid promptly as defined in paragraph 11. The selected consultant will cooperate fully with MTECC oversight efforts, as well as those instituted by FDOT and/or FHWA.
- 10) The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



**Discussion Items 2.**

**Metro Trans Engineering & Construction Cooperative (MTECC)**

**Meeting Date:** 12/14/2023

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**SUMMARY:**

Executive Director's Report

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**Attachments**

Executive Director Sept. 2023 Activities

Executive Director Oct. 2023 Activities

Executive Director Nov. 2023 Activities

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## MTECC Executive Director Activities

### September 2023

#### Board Activities:

- Assisted development of Agenda and support materials for September MTECC Board Meeting
- Attended and presented at the September Board meeting.
- Follow up activities after the Board meeting (signing documents and related items)

#### Administrative Activities:

- MTECC Staff Meetings – routine MTECC staff meetings are held virtually (September 5 and September 19) to schedule and follow up on key MTECC activities.
- Information Technology – discussions during August to prepare for MTECC information technology needs – establishing protocols for file storage and e-mails for MTECC staff.
- City of Coconut Creek – Meeting of MTECC staff and City of Coconut Creek staff on September 13, 2023, to discuss next steps in MTECC membership (MTECC Board accepted City of Coconut Creek as MTECC member at the September Board meeting).
- Reviewed draft legislation that will impact the FDOT LAP program and discussed with MTECC legal counsel.
- Finance and Accounting Services:
  - Finalized finance and accounting outsourced scope of services.
  - Additional meetings with Finance and Accounting team to discuss next steps and follow up to establish MTECC's accounting system.
- Program Management Services:
  - Finalized WSP scope of services for the general services work order and issued Task Order.
  - Reviewed the WSP draft scope of services for Deerfield Beach Project 445529-1 design phase and Hallandale Beach Project 445527-1 design phase for up to \$25,000 each.

#### MTECC Board Members

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**Commissioner****Andrea McGee**

Pompano Beach, FL

**Commissioner****Caryl S. Shuham**

Hollywood, FL

**Councilmember****Tim Fadgen**

Plantation, FL

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**General Counsel****Matthew J. Pearl****Interim Executive Director****Lowell Clary**



- Design Engineering Services (DES) Library:
  - Developed process flow and descriptions for the “mini-procurement” process and overall documents supporting the procurement and next steps for the procurement for DES for upcoming LAP projects.
  - Reviewed the draft materials and supported the MTECC contracting officer sharing these documents with FDOT for their review.

**Project Activities (official request for MTECC services):**

- Deerfield Beach – FDOT LAP Project 445529-1
  - Development of PMC Task Order for this project up to \$25,000 as authorized at September board meeting.
  - Periodic discussions with City on the status and next steps.
  - Waiting on FDOT review of Request for Work Order documents.
- Hallandale Beach – FDOT LAP Project 445527-1
  - Development of PMC Task Order for this project up to \$25,000 as authorized at September board meeting.
  - Periodic discussions with City on the status and next steps.
  - Waiting on FDOT review of Request for Work Order documents.
- Pembroke Pines – FDOT LAP Project 449690-1
  - Board approved Pembroke Pines letter requesting MTECC assistance on the project.
- Pembroke Pines – FTA/MPO Project 4334292
  - Board approved Pembroke Pines letter requesting MTECC assistance on the project.
- MTECC Roles and Responsibilities
  - Continued discussion with cities with active projects and FDOT.
  - Preliminary work on draft Project Agreement for HUD and FTA funded projects through the MPO.

**MTECC Board Members**

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**Commissioner**  
**Andrea McGee**  
Pompano Beach, FL

**Commissioner**  
**Caryl S. Shuham**  
Hollywood, FL

**Councilmember**  
**Tim Fadgen**  
Plantation, FL

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**General Counsel**  
Matthew J. Pearl

**Interim Executive Director**  
Lowell Clary

**Future Project Activities:**

- **FDOT FY 24-25 LAP Projects** – kickoff meetings with the municipalities that have FDOT LAP projects in FY 24-25 (starts July 1, 2024).  
Participated in the following kickoff meetings in August:
  - 445533-1/City of Sunrise/City of Tamarac – Discussion with FDOT and Cities of Sunrise and Tamarac to discuss possible use of MTECC for FY 24-25 LAP project if desired. Offered to follow up with City of Sunrise as the lead for the project.
- **MPO HUB Projects**
  - Fort Lauderdale. City expressed desire to join MTECC and have MTECC deliver the HUB project. Interacted with the City team on the Interlocal Agency Agreement and related materials. Presented at a City Commission workshop meeting on September 19, 2023.
- **MPO HUD Grant**
  - Follow up meeting is scheduled with City of Coconut Creek to discuss MTECC, roles and responsibilities at the request of the City on September 13, 2023.

**MTECC Board Members**

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**Commissioner**  
**Andrea McGee**  
Pompano Beach, FL

**Commissioner**  
**Caryl S. Shuham**  
Hollywood, FL

**Councilmember**  
**Tim Fadgen**  
Plantation, FL

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**General Counsel**  
Matthew J. Pearl

**Interim Executive Director**  
Lowell Clary



## MTECC Executive Director Activities

### October 2023

#### Board Activities:

- No Board meeting

#### Administrative Activities:

- MTECC Staff Meetings – routine MTECC staff meetings are held virtually (October 3 and October 31) to schedule and follow up on key MTECC activities.
- Information Technology – set up MTECC staff e-mails and sent out the new contact information to the MTECC distribution list.
- Developed proposed updates to draft legislation that will impact the FDOT LAP program and discussed with MTECC legal counsel.
- Finance and Accounting Services:
  - Additional meetings with Finance and Accounting team to discuss next steps and follow up to establish MTECC’s accounting system.
- Program Management Services:
  - Updated the WSP scope of services for general services Work Program Number 1 to extent through September 30, 2024.
  - Finalized the WSP draft scope of services for Deerfield Beach Project 445529-1 design phase and Hallandale Beach Project 445527-1 design phase for up to \$25,000 each.
- Design Engineering Services (DES) Library:
  - Developed process flow and descriptions for the “mini-procurement” process and overall documents supporting the procurement and next steps for the procurement for DES for upcoming LAP projects.
  - Met with FDOT staff and reviewed their comments on the package submitted. Following up on comments and questions by MTECC staff is in process.
- Construction Engineering and Inspection Services (CEI) Library:
  - A schedule was developed for procurement of the CEI library.
- City of Fort Lauderdale approved the ILA to become a member of MTECC, subject to future approval by the MTECC Board.

#### MTECC Board Members

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**Commissioner****Andrea McGee**

Pompano Beach, FL

**Commissioner****Caryl S. Shuham**

Hollywood, FL

**Councilmember****Tim Fadgen**

Plantation, FL

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**General Counsel****Matthew J. Pearl****Interim Executive Director****Lowell Clary**

**Project Activities (official request for MTECC services):**

- Deerfield Beach – FDOT LAP Project 445529-1
  - Finalized PMC Task Order for this project up to \$25,000 as authorized at September board meeting.
  - Periodic discussions with City on the status and next steps.
  - Waiting on FDOT review of Request for Work Order documents.
- Hallandale Beach – FDOT LAP Project 445527-1
  - Finalized PMC Task Order for this project up to \$25,000 as authorized at September board meeting.
  - Periodic discussions with City on the status and next steps.
  - Waiting on FDOT review of Request for Work Order documents.
- Pembroke Pines – FDOT LAP Project 449690-1
  - No needed activities during October.
- Pembroke Pines – FTA/MPO Project 4334292
  - Meeting to refine the scope of services for the project with MPO, MTECC and City staff. Budget is limited to FTA grant funding and the project must be delivered within the budget available.
- MTECC Roles and Responsibilities
  - Made significant additions to the draft Project Agreement for HUD and FTA funded projects. Shared with the overall MTECC and MPO team.
  - Detailed discussion on the draft Project Agreement for HUD and FTA funded projects with MTECC and MPO staff to refine the draft agreement.

**MTECC Board Members**

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**Commissioner**  
**Andrea McGee**  
Pompano Beach, FL

**Commissioner**  
**Caryl S. Shuham**  
Hollywood, FL

**Councilmember**  
**Tim Fadgen**  
Plantation, FL

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**General Counsel**  
Matthew J. Pearl

**Interim Executive Director**  
Lowell Clary

**Future Project Activities:**

- **FDOT FY 24-25 LAP Projects:**
  - Available to meet with other non-member cities that have LAP projects in FY 24-25. Shared this with Cities of Sunrise, Pembroke Pines, and Coral Springs.
  - Hollywood – we continue to stay in contact with the City of Hollywood concerning their initial notice to MTECC staff for MTECC assistance their FY 24-25 LAP project.
- **MPO HUB Projects**
  - Fort Lauderdale. MPO is developing the concept scope of services that will provide the scope for the design phase of the project. This is expected to be ready for the design phase last Spring to early Summer 2024.
- **MPO HUD Grant**
  - City of Coconut Creek is working with the County and MPO to secure the environmental clearance and also to ensure the right of way is clear for the proposed scope of services. As soon as this is complete the HUD grant can be completed and the design phase may begin. The timing of this is unsure but should be ready in early 2024.
- **City of Plantation – City projects** – met with the MPO, MTECC and City of Plantation to discuss possible MTECC assistance on select City projects.

**MTECC Board Members**

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**Commissioner**  
**Andrea McGee**  
Pompano Beach, FL

**Commissioner**  
**Caryl S. Shuham**  
Hollywood, FL

**Councilmember**  
**Tim Fadgen**  
Plantation, FL

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**General Counsel**  
Matthew J. Pearl

**Interim Executive Director**  
Lowell Clary



## MTECC Executive Director Activities

### November 2023

**Board Activities:**

- No Board meeting

**Administrative Activities:**

- MTECC Staff Meetings – routine MTECC staff meetings are held virtually (October 3 and October 31) to schedule and follow up on key MTECC activities.
- Discussed proposed legislation (SB 0266) that impacts FDOT LAP projects with MPO staff and made additional updates.
- Finance and Accounting Services:
  - Reviewed multiple versions of the accounting chart of accounts including methods to track key balance sheet items, revenue and expenses by municipal member and by major expense categories.
- Program Management Services:
  - Executed WSP scope of services for Deerfield Beach Project 445529-1 design phase and Hallandale Beach Project 445527-1 design phase for up to \$25,000 each.
  - Finalizing sub agreements to support Web development for the MTECC internet site.
- Design Engineering Services (DES) Library:
  - Developed responses to FDOT comments and questions. This included follow up with DES firms.
- Construction Engineering and Inspection Services (CEI) Library:
  - A schedule was developed for procurement of the CEI library that will begin in December.

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**MTECC Board Members****Commissioner****Andrea McGee**

Pompano Beach, FL

**Commissioner****Caryl S. Shuham**

Hollywood, FL

**Councilmember****Tim Fadgen**

Plantation, FL

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**General Counsel****Matthew J. Pearl****Interim Executive Director****Lowell Clary**

**Project Activities (official request for MTECC services):**

- Deerfield Beach – FDOT LAP Project 445529-1
  - PMC active under Task Order for this project up to \$25,000.
  - Periodic discussions with City on the status and next steps.
  - Waiting on FDOT review of Request for Work Order documents.
- Hallandale Beach – FDOT LAP Project 445527-1
  - PMC active under Task Order for this project up to \$25,000.
  - Periodic discussions with City on the status and next steps.
  - Waiting on FDOT review of Request for Work Order documents.
- Pembroke Pines – FDOT LAP Project 449690-1
  - No needed activities during October.
- Pembroke Pines – FTA/MPO Project 4334292
  - Additional meetings to refine the scope of services for the project with MPO, MTECC and City staff. Budget is limited to FTA grant funding and the project must be delivered within the budget available.
- MTECC Roles and Responsibilities
  - Further discussion on the draft Project Agreement for HUD and FTA funded projects with MTECC and MPO staff to refine the draft agreement.

**MTECC Board Members**

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Pompano Beach, FL

**Commissioner****Caryl S. Shuham**

Hollywood, FL

**Councilmember****Tim Fadgen**

Plantation, FL

**General Counsel**

Matthew J. Pearl

**Interim Executive Director**

Lowell Clary



**Future Project Activities:**

- **FDOT FY 24-25 LAP Projects:**
  - Available to meet with other non-member cities that have LAP projects in FY 24-25. Shared this with Cities of Sunrise, Pembroke Pines, and Coral Springs.
  - Hollywood – discussion with Hollywood about possible LAP project for FY 24-25.
- **MPO HUB Projects**
  - Fort Lauderdale. MPO is developing the concept scope of services that will provide the scope for the design phase of the project. This is expected to be ready for the design phase last Spring to early Summer 2024.
- **MPO HUD Grant**
  - City of Coconut Creek is working with the County and MPO to secure the environmental clearance and also to ensure the right of way is clear for the proposed scope of services. As soon as this is complete the HUD grant can be completed and the design phase may begin. The timing of this is unsure but should be ready in early 2024.
- **City of Plantation Projects** – Further discussion of possible local funded projects to narrow down the list to two or three for further discussion. Also, to present the item MTECC Board for discussion of MTECC taking on MTECC member local funded projects.

**MTECC Board Members**

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**Commissioner**  
**Andrea McGee**  
Pompano Beach, FL

**Commissioner**  
**Caryl S. Shuham**  
Hollywood, FL

**Councilmember**  
**Tim Fadgen**  
Plantation, FL

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**General Counsel**  
Matthew J. Pearl

**Interim Executive Director**  
Lowell Clary



**Metro Trans Engineering & Construction  
Cooperative (MTECC)**  
**Meeting Date: 12/14/2023**

**3.**

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**SUMMARY:**

General Counsel's Report

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