

INTERLOCAL AGREEMENT

between

CITY OF FORT LAUDERDALE

and

DOWNTOWN FORT LAUDERDALE
TRANSPORTATION MANAGEMENT ASSOCIATION, INC.

for

COMMUNITY BUS AND TRANSIT SERVICES

THIS INTERLOCAL AGREEMENT, made this ____ day of _____ 2015, made and entered into by and between:

CITY OF FORT LAUDERDALE, a municipal corporation organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY",

AND

THE DOWNTOWN FORT LAUDERDALE TRANSPORTATION MANAGEMENT ASSOCIATION, INC., its successors and assigns, hereinafter referred to as "TMA".

WHEREAS, CITY finds that there is a need for public transportation services provided by Broward County Transit (hereinafter referred to as "BCT") to be supplemented to serve a greater number of people traveling throughout CITY and surrounding communities; and

WHEREAS, public transportation resources are limited and must be used in the most efficient manner; and

WHEREAS, the CITY and BROWARD COUNTY (hereinafter referred to as "COUNTY") entered into an Agreement for Community Bus Service which Agreement takes effect on October 1, 2014 ("COUNTY Agreement"); and

WHEREAS, in accordance with the COUNTY Agreement, CITY approved contracting for the operation of a portion of the community bus system with TMA wherein CITY would provide the funds received from COUNTY to TMA for the operation of the community bus system ("TMA Agreement"); and

WHEREAS, the operation of the community bus system pursuant to both Agreements has proven beneficial to citizens within the CITY of Fort Lauderdale; and

WHEREAS, both CITY and TMA agree that better public transportation for residents of CITY and those persons traveling within or throughout CITY is needed; and

WHEREAS, it is desirable to provide additional forms of community bus and transit services to the residents of CITY and those persons traveling within or throughout CITY; and

WHEREAS, it is the intent of CITY that the additional forms of public transit provided under this agreement shall not duplicate the existing mass transit provided by BCT; and

WHEREAS, CITY has obtained the requisite funding to provide such community bus and transit service through various Funding Entities; and

WHEREAS, the Board for the TMA, at its meeting of October 22, 2014, authorized the TMA Board Chair to execute the Interlocal Agreement for Community Bus Service;

WHEREAS, pursuant to Resolution 14-170 adopted at its meeting of October 7, 2014, the City Commission of the CITY authorized the City Manager to execute an Interlocal Agreement for Community Bus Service with the TMA; and

NOW THEREFORE IN CONSIDERATION, of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and TMA agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

- 1.1 *ADA* - Americans with Disabilities Act of 1990, 42 USC Sections 12101 et seq. and the implementing regulations found in 29 CFR Parts 1630, 1602; 28 CFR Part 35, 49 CFR Parts 27,37,38, 28 CFR Part 36, and 47 CFR Sections 64.601 et seq.
- 1.2 *Agreement* - means this document, Articles 1 through 13, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.3 *BCT* - The Broward County Transit Division.
- 1.4 *Business Days* - Business Days shall mean Monday through Friday, excluding CITY-recognized holidays which are New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.
- 1.5 *Community Bus Service* - Community Bus Service shall mean the public transportation service provided as an additional form of public transit service to the residents of CITY and those persons traveling within or throughout provided hereunder by TMA through the use of its employees or by a third party that has entered into a contract with TMA. The term Community Bus Service may be

used interchangeably throughout this Agreement with the term public transportation service, transportation service, or transit service.

- 1.6 *City Contract Administrator* - The City Manager or designee. The primary responsibilities of the City Contract Administrator are to coordinate and communicate with TMA and to manage and supervise execution and completion of the Scope of Services and terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the City Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.7 *TMA Contract Administrator* - The Executive Director of the TMA or TMA Board designee. The primary responsibilities of the TMA Contract Administrator are to coordinate and communicate with CITY and to execute and complete the Scope of Services and terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the TMA Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.8 *Emergency Service* - Emergency Service shall mean service scheduled at the direction COUNTY, CITY or both, during periods of adverse weather or other emergency conditions as determined by COUNTY, CITY or both, including, but not limited to, inclement weather, hurricane, earthquake, fire, flood, cloudburst, cyclone, or other natural phenomenon of a severe and unusual nature, act of a public enemy, epidemic, quarantine, restriction, embargo, or other periods of extreme or catastrophic events.
- 1.9 *FTA* - The Federal Transit Administration that has provided funds to the CITY and COUNTY to assist with the funding of the Community Bus and Transit Services.
- 1.10 *Funding Entities* – Public and private entities that contribute funding towards the administration and operation of the Community Bus Service.
- 1.11 *Grant Agreements* - All of the agreements between the CITY and Funding Entities for grant fund expenditures for Community Bus and Transit Services.
- 1.12 *TMA* – The Downtown Fort Lauderdale Transportation Management Association, Inc. a Florida non-profit corporation.
- 1.13 *Vehicle(s)* - The wheelchair accessible, passenger vehicle(s), as described in Exhibit "E".

ARTICLE 2
SCOPE OF SERVICES

- 2.1 TMA shall provide Community Bus and Transit Services within the CITY and surrounding communities according to the maps and schedules as contained in Exhibit "A", a copy of which is attached hereto and made a part hereof. The provision of Community Bus and Transit Services may be performed by TMA through the use of its employees or TMA may enter into a contract with a third party to perform the services. In the event TMA contracts with a third party, TMA shall remain bound by all terms and conditions set forth herein and shall ensure that its contractor complies at all times with each and every term, condition, duty, and obligation hereafter.

Any and all amendments to Exhibit A shall be only in full force and effects upon the prior written consent of CITY. TMA may request a change to Exhibit "A" by submitting to the City Contract Administrator the Community Bus Program Service Change Application Form (Exhibit "F"). The CITY, at its sole discretion, may make changes to Exhibit "A" pursuant to Section 2.12.4 of this agreement and shall provide TMA with notice of such changes within ten (10) days of adoption. TMA has thirty (30) days from receipt of the notice of change to Exhibit "A" to implement such changes.

The services to be provided shall include the following:

- 2.1.1 Service shall be provided at a minimum number of hours a week to certain locations and at scheduled intervals as listed on the attached Exhibit "A" for Community Bus Service. TMA further acknowledges and agrees that compensation under this Agreement is as set forth in Section 5.1, and CITY shall not compensate TMA for any deviations or changes from the service routes established in Exhibit "A" without the prior written consent of City Contract Administrator.
- 2.1.2 Service shall be provided at a minimum number of hours a week to certain locations and at scheduled intervals as listed on the attached Exhibit "A" for Riverwalk Water Trolley Transit Service. TMA further acknowledges and agrees that compensation under this Agreement is as set forth in Section 5.1, and CITY shall not compensate TMA for any deviations or changes from the service routes established in Exhibit "A" without the prior written consent of City Contract Administrator.
- 2.1.2 TMA acknowledges that the CITY is obligated to set the fares for all routes pursuant to the terms of agreements with Funding Entities. CITY shall notify TMA of any change in fare within thirty (30) business days of adoption for such change in fare.

2.1.3 TMA acknowledges that the CITY, in compliance with the provisions of 49 USC Section 5307(c)(1)(I), must hold a public hearing before its City Commission for any of the following:

- (1) Prior to the implementation or change in fares.
- (2) Prior to any change in service affecting twenty-five percent (25%) or more to the route miles, when calculated on total route miles or on daily revenue miles.
- (3) Prior to establishing a new transit route.
- (4) Prior to discontinuing any transit route in its entirety.
- (5) Prior to implementing headway adjustments of more than ten (10) minutes during peak service hours or more than twenty (20) minutes during non-peak hours.

In the event that service changes are necessitated by road closures or road construction/repair, interruptions due to hurricane or other natural disaster, City or TMA Contract Administrator may authorize service reductions on a temporary basis, without a prior public hearing, for a period not to exceed six (6) months. The temporary change in service shall be given widest possible advance notice through the use of electronic media, flyers, handouts, or other printed material and shall include a telephone number to inquire further about the change or through which individual patrons may seek alternative format information.

2.1.4 The TMA shall perform outreach to notify current riders and potential riders of the Community Bus service being provided including any changes to service so changed in accordance with Section 2.1.3.

2.1.5 If any TMA route traverses onto private property, it shall be the responsibility of TMA to obtain any necessary permission to access said property for use as an origin and/or destination associated with this Agreement.

2.1.6 For services currently provided and within twelve (12) months after the start of any new service, TMA shall maintain a minimum average of 7.1 passengers per revenue service hour per vehicle. It is understood and agreed between CITY and TMA that a minimum average of 7.1 passengers per revenue service hour, per vehicle, during any rolling twelve (12) month period is required by COUNTY. In the event ridership falls below the minimum acceptable levels, CITY and TMA will work together to review routes and measures to increase ridership.

2.1.7 Florida Commercial Driver's License operators hired by TMA or its contractors shall issue bus route timetables or other transit information, provided by the TMA to any passenger requesting such material.

- 2.1.8 TMA, while providing the community bus activities addressed herein, shall comply and assures the compliance of any third party contractor, with the applicable laws and regulations relating to nondiscrimination on the basis of disability including but not limited to:
- (1) Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S. C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
 - (2) The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
 - (3) DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38, all as currently enacted or as may be amended from time to time.
- 2.1.9 In accordance with Broward County Ordinance 92-8, TMA certifies by means of Exhibit "B", which is attached hereto and incorporated herein by reference as if set forth in full herein, that it will have a Drug-Free Workplace Program. In the event TMA contracts with a third party to perform the services addressed herein, such contractor shall comply with COUNTY's Drug-Free Workplace Program requirements.
- 2.1.10 TMA agrees to participate in BCT's drug and alcohol testing program, or establish and implement subject to BCT review and approval, its own drug and alcohol testing program that complies with 49 CFR Part 655. In the event TMA subcontracts all or part of the community bus services to a third party, a similar requirement including review and approval by the City Contract Administrator must be included in any subsequent agreement. TMA further agrees to certify, prior to the commencement of services under this Agreement and annually thereafter, compliance with current Federal Transit Administration's regulations (a model format for certifying compliance is attached as Exhibit "D").

- 2.1.11 TMA agrees to prepare, maintain, and submit annual reports to CITY and COUNTY summarizing its drug and alcohol testing program results from the previous year. The annual reports covering the prior calendar year must be submitted to CITY and COUNTY by a date determined by City Contract Administrator, but no later than February 10th of each year. Additionally, TMA shall provide quarterly program reports to CITY and COUNTY summarizing its drug and alcohol testing results and shall permit CITY and COUNTY to inspect its records during site visits to ensure compliance with program requirements.
- 2.1.12 TMA agrees that throughout the term of this Agreement the CITY official logo(s), the COUNTY official logo(s) when applicable, the logo of any Grantors funding the service, and COUNTY-assigned identification number shall be conspicuously displayed on the rear of the vehicle(s) at all times.
- 2.1.13 TMA shall maintain certain records of information and data in the format prescribed by CITY. TMA shall supply the reports listed below to CITY pursuant to the schedule as set forth below. Reports shall be transmitted to CITY in a format that can be read and updated using standard software tools compatible with CITY's system, such as Microsoft Excel, Microsoft Word and Acrobat Reader.
- 2.1.14 TMA shall report to CITY *Immediately*:
- (1) Reports of all accidents/incidents (loss of life, injuries, stoppage, or major disruption of service)
 - (2) Revenue Vehicle System Failure (mechanical failure of vehicle that occurs in revenue service). If a vehicle is out-of-service for more than one day, TMA shall notify CITY of vehicle condition and estimated return to service date.
- 2.1.15 TMA shall report to CITY *Monthly* by the seventh business day of each month:
- (1) Ridership report: number of passengers by route and by stop, as applicable, revenue miles, per vehicle miles
 - (2) Current roster of drivers
 - (3) Fuel usage for revenue service vehicles in gallons
 - (4) Complaint summary as required in Article 2 herein

2.1.16 TMA shall report or provide to CITY *Annually*:

- (1) Vehicle inventory and mileage on each vehicle
- (2) Current insurance certificate in accordance with CITY and COUNTY requirements
- (3) National Transit Database Operating Expenses Summary Form
- (4) Safety Certification no later than February 10th for the prior calendar year period. The certification shall attest to compliance with the adopted System Safety Security Program Plan (SSPP), and the performance of safety inspections on all vehicles operated by TMA or its contractors. The Safety Certifications shall comply with the standards set forth in Rule 14-90, Florida Administrative Code, Equipment and Operation Safety Standards for Bus Transit Systems as currently is enacted or as may be amended from time to time.

2.1.17 TMA shall meet the deliverables, outcomes or both and expend funds obtained pursuant to this Agreement in accordance with provisions herein.

- (1) Additionally, the CITY requires a monthly update on the Performance Indicators provided in Exhibit "J". The report is due to the Transportation and Mobility Department by the 10th of each month.

2.1.18 The CITY will monitor the performance of the TMA against goals and performance standards as stated above. Substandard performance as determined by the CITY will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the TMA within a reasonable period of time after being notified by the CITY, Agreement suspension or termination procedures will be initiated.

2.1.19 TMA and/or their contractors are required to participate in training for new equipment and/or procedures with ten (10) days of their implementation.

2.1.20 TMA shall at all times have and maintain in proper working order a dedicated TTY number.

2.1.21 In the event that the vehicle(s) is not equipped with an audio/visual system to automatically announce major intersections, destination

points and transfer points with other fixed routes, internally both audibly and on a signboard, the operator shall use the internal announcement feature of the on-board public address (PA) system to make the announcements set forth below. In the event that the PA system is not available or is inoperable, the operator shall make the following required announcements using his/her own voice loudly and clearly to be heard by all passengers, in time for the passenger to request a stop at the announced location:

- (a) transfer points with other fixed-routes; and
- (b) other major intersections and destination points; and
- (c) intervals along a route to orient individuals with visual impairments or other disabilities to his or her location, especially if there is a long distance between other announcements; and
- (d) any stop requested by a passenger with a disability, even if it does not meet any of the other criteria for announcement.

2.2 TMA shall respond to complaints regarding the quality of service brought by patrons or by COUNTY, CITY or both on its own initiative or otherwise. Such response to written complaints shall be provided by TMA verbally within two (2) calendar days of complaint and in writing within five (5) calendar days. TMA shall copy City and County Contract Administrators on all correspondence pertaining to routes that are funded by the respective agency. At the request of CITY, COUNTY or both, TMA shall meet with City and/or County Contract Administrators to review any complaints or concerns and to promptly correct any deficiencies. Contract Administrators' determination as to quality of operation or services shall be conclusive, and curative measures shall be implemented by TMA as expeditiously as possible.

2.2.1 TMA shall be required to resolve all written and oral complaints received from the public, COUNTY or CITY. TMA shall be required to conduct the necessary investigation, impose disciplinary action on employees where appropriate and respond to each complainant with the results of such investigation and/or disciplinary action. Copies of all such correspondence shall be provided to City Contract Administrator on a weekly basis.

2.2.2 TMA shall submit a monthly report to City Contract Administrator summarizing complaints and damage or other claims received during the preceding month as well as the resolution, if known, of such matters. In addition, TMA shall prepare and furnish such other reports as City Contract Administrator may, from time to time, require.

2.2.3 TMA shall be solely responsible to provide, during the term of this Agreement, a high quality community bus service which shall include, but

not be limited to, all vehicles, equipment, personnel, training, labor, and materials necessary to provide the transportation, scheduling, dispatching, reporting, and monitoring of the community bus service required herein throughout the term of this Agreement, either directly or through a third party.

2.2.4 TMA agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions set forth in 49 CFR Part 604. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

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

2.3 Maintenance of Vehicles. TMA shall have a continuing obligation to ensure safe and proper mechanical condition and cleanliness of the vehicle(s). TMA, or its subcontractor, shall perform cleaning and extermination for pests in the vehicle(s). All equipment on the vehicle(s) shall be maintained in a fully and proper operable condition at all times (by way of example, but not as a method of exclusion, "all equipment" shall include, but in no way shall be limited to, fully functioning air-conditioning system, turn signals, wheelchair lifts, etc.). TMA, or its subcontractor, agrees to maintain all vehicle(s) in first class appearance and mechanical condition throughout the duration of this Agreement.

2.3.1 TMA, or its subcontractor, shall maintain all vehicle(s) and equipment in accordance with a preventive maintenance schedule from the vehicle manufacturer (Scheduled Maintenance Guide). TMA, or its subcontractor, shall conduct and document pre-trip and post-trip/Bus Defect vehicle inspections each day and shall utilize the form attached hereto as Exhibit "G". In addition, TMA, or its subcontractor, shall perform all necessary maintenance to ensure the continued and safe operation of all vehicle(s).

2.3.2 COUNTY, CITY or both may conduct periodic inspections using its own or contracted service personnel to ensure compliance with all maintenance and cleaning requirements specified in this Agreement or in manufacturers' specification and any vehicle not determined by COUNTY to be acceptable will be removed from service by CITY and all deficiencies

corrected immediately. At the request of COUNTY, CITY or both, TMA shall take the vehicle(s) to a location designated by the City Contract Administrator for inspection.

- 2.3.3 TMA agrees to allow such on-board surveys and/or inspections as may be requested by COUNTY, CITY or both. COUNTY, CITY or both shall have the right to inspect the vehicle(s) during TMA's regular hours or at any time in case of emergency to determine whether TMA has complied with and is complying with the terms and conditions of this Agreement. Should extraordinary wear and tear and/or damage be identified by such inspections, CITY may, at its discretion, require TMA to effect repairs. The TMA shall have seven (7) days to notify CITY in writing if it deems the required repairs to be unreasonable.
- 2.4 TMA shall ensure that all personnel providing services pursuant to this Agreement comply with all applicable federal, state, county and city regulations, laws, and licensing requirements prior to and at all times while operating vehicle(s) or performing any duties or functions relating to the requirements of this Agreement.
- 2.4.1 Vehicle(s) shall be operated by properly licensed operators (Florida Commercial Driver's License minimum Class C with a passenger endorsement or, if air-brakes are applicable, a Florida Commercial Driver's License Class B with a passenger endorsement) employed by TMA or its contractors. These employees shall provide full utilization of vehicle(s) to disabled passengers. TMA or its contractor shall obtain driving and level one criminal background checks for all vehicle operators from the State of Florida Department of Law Enforcement or other sources approved by City Contract Administrator. CITY shall require its vehicle operators performing the services hereunder to notify CITY within 24 hours of any conviction for any traffic violation (except parking). TMA shall not employ a vehicle operator to perform Community Bus Service that does not meet the requirements of Florida law.
- 2.4.2 TMA shall not employ or retain, or allow to be employed or retained any vehicle operators or supervisors, whose driving record, as compiled by the Department of Motor Vehicles of the state of Florida, contains a conviction or plea of nolo contendere regardless of whether adjudication was withheld, for any of the following:
- a. More than one (1) moving violation in the last three (3) years*.
 - b. An at-fault accident in the last three (3) years*.
 - c. A Failure to Appear or a Failure to Pay in the last three (3) years*.

- d. A Reckless Driving in the last seven (7) years*.
- e. A Driving Under the Influence (DUI) in the last seven (7) years*. Two convictions (lifetime) for DUI is automatic disqualification.
- f. A suspension within the last three (3) years*. One suspension for PIP permitted.
- g. A Manslaughter resulting from the operation of a motor vehicle.
- h. A Hit and Run or Hit and Run with Property Damage.
- i. A Reckless Driving causing injury.
- j. A DUI causing injury.
- k. Any combination of violations that indicate a pattern of irresponsibility or poor judgment.

*All time periods shall be rolling.

2.5 Safety and Security Reporting Requirements. TMA shall notify City Contract Administrator as indicated below and shall submit a monthly report to City Contract Administrator summarizing the following:

- (a) TMA shall notify City Contract Administrator within two (2) hours of the occurrence and provide a full incident report of any Major Incident involving a transit vehicle. A Major Incident involves one of the following conditions:
 - A fatality due to an incident which shall include suicides, but does not include deaths by natural causes, or death not associated with an incident.
 - Injuries requiring immediate medical attention away from the scene for one or more persons.
 - Total property damage equal to or in excess of \$25,000.00.
 - An evacuation due to life safety reasons.
- (b) A summary report of all Non-Major Incidents involving a transit vehicle shall be provided within seventy-two (72) hours. A Non-Major Incident involves one of the following conditions:
 - Where one person is transported for off-site medical care.

- Total property damage equal to or in excess of \$7,500.00, but less than \$25,000.00.
- All non-arson fires not qualifying as Major Incidents.
- All crimes aboard transit vehicle(s) and resulting arrests.

2.6 Minimum Standards. TMA agrees to comply with the following minimum standards:

(a) TMA, as a contracted public transit provider, shall comply with the requirements of Rule 14-90, "Equipment and Operation Safety Standards for Bus Transit Systems" Florida Administrative Code, as currently enacted or as may be amended from time to time, (Rule 14-90).

(b) TMA agrees to comply with the following minimum standards:

(1) Develop and adopt a System Safety Program Plan (SSPP) and Security Program Plan (SPP) that complies with the safety standards set forth in Rule 14-90.

(2) Make the SSPP and SPP available for review and/or inspection at least annually and upon request of CITY or COUNTY.

(3) Permit inspections, safety and security review by CITY or COUNTY and/ or the State of Florida.

(4) Comply with CITY's adopted SSPP and ensure that safety inspections have been performed no less than annually on all vehicle(s) operated pursuant to the provisions of this Agreement by meeting the requirements of Rule 14-90.

(5) All vehicle(s) shall be kept clean and orderly during all times of active service.

(6) All accidents shall be reported immediately to the police.

(7) Vehicle(s) shall not be operated if the top or interior lights or the headlights or taillights are not functioning properly. Likewise, a vehicle shall not be driven unless the brakes, steering mechanism, tires, horn, windshield wipers, and side and rearview mirrors are in good working order.

(8) Advertising, if allowed by COUNTY and CITY on any vehicle, shall not obstruct the driver's view and shall not obstruct the vehicle's top lights or other lights. No vehicle shall have within it, or

on its exterior, any sign which encourages, advertises for, or otherwise solicits tips.

(9) All vehicle(s) shall be equipped with rearview mirror and side mirrors on driver's and passenger's sides.

(10) Speedometer shall be properly installed, in good working order, and exposed to the view of both the driver and the passenger(s).

(11) The interior of the vehicle(s) shall be clean, sanitary, free from torn or damaged upholstery or floor coverings and from damages or broken seats.

(12) Door hinges and latches shall be in good mechanical working order and all doors shall operate easily and close securely.

(13) Vehicle(s) shall be structurally sound and operate with a minimum of noise, vibration, and visible exhaust fumes.

(14) The body, fenders, doors, trim and grill of the vehicle(s) shall be free from cracks, breaks and dents, and painted.

(15) Vision shall be unobstructed on all four (4) sides of the vehicle(s).

SERVICES TO BE PROVIDED BY CITY

2.7 EQUIPMENT

2.7.1 TMA shall utilize wheelchair accessible, passenger vehicle(s), as described on Exhibit "E" to be used in regular route service as set forth in Exhibit "A." Such vehicle(s) shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations.

2.7.2 CITY shall lease to TMA wheelchair accessible, passenger vehicle(s), as described in Exhibit "E," to be used in public transportation service as set forth in Exhibit "A" and other approved services. Such vehicle(s) shall comply with the Americans with Disabilities Act of 1990 and all applicable federal and state regulations. These vehicle(s) shall be leased to TMA for Ten Dollars (\$10.00) per vehicle, per year.

2.7.3 Vehicle(s) used by TMA, or its subcontractor, to provide services pursuant to this Agreement, shall be equipped with bicycle racks or similar device used to transport non-motorized bicycles.

2.7.4 CITY shall provide the manufacturers' warranties and maintenance shop manuals to TMA that accompany leased vehicles described in Exhibit E, and as may be amended.

2.7.5 CITY, in its sole discretion, acting through its Contract Administrator, may authorize a replacement vehicle(s). In the event that a vehicle(s) is replaced, Exhibit "E" shall be updated. TMA's use or subcontractor use of any replacement vehicle(s) shall be subject to all terms and conditions of this Agreement.

2.8 TECHNICAL ASSISTANCE

2.8.1 COUNTY has agreed in the COUNTY Agreement to provide Florida Commercial Driver's License operators hired to provide the community bus services provided in this Agreement with training in passenger relations, rules of the road, and transit system information. All Florida Commercial Driver's License operators shall be required to attend and successfully complete COUNTY's training program prior to operating the vehicle(s) addressed herein. This requirement shall extend to any and all Florida Commercial Driver's License operators employed at any time during the term of this Agreement. In the event training is not available, City Contract Administrator may provide a written extension, not to exceed sixty (60) days from the date the driver begins operating the vehicle(s), for Florida Commercial Driver's License operators to attend and complete COUNTY's training.

2.8.2 CITY shall assist TMA staff with any aspect of planning and scheduling of public transit routing that TMA might request.

2.8.3 CITY shall forward to the TMA COUNTY-printed bus route timetables sufficient to inform CITY residents and passengers of service made available as described in Exhibit "A" or any modification thereto.

2.9 TMA acknowledges and agrees that City Contract Administrator, unless specifically authorized herein, has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

2.10 EMERGENCY SERVICE.

2.10.1 EMERGENCY TRANSPORTATION SERVICE: In addition to the scheduled Community Bus Service as set forth in Exhibit "A," TMA, upon direction of the City Contract Administrator, may be required to provide Emergency Transportation Service. Emergency Transportation Service may include, but shall not be limited to, evacuation and reverse evacuation transportation for individuals, as well as any other

transportation deemed necessary by CITY. The Parties agree that extreme conditions or catastrophic events may not affect the operations of all cities equally and at CITY's discretion, CITY may require TMA to authorize the use of Vehicle(s) leased to TMA herein by any other city that has an agreement with CITY for Community Bus Service. TMA shall not be entitled to any compensation for the use of any Vehicle(s) that is utilized by another city as set forth above. Fares shall not be collected from passengers during Emergency Transportation Service.

2.10.2 SUSPENSION OF OPERATIONS: TMA may suspend all or a portion of service when said performance is made impossible by inclement weather, hurricane, earthquake, fire, flood, cloudburst, cyclone, or other natural phenomenon of a severe and unusual nature, act of a public enemy, epidemic, quarantine, restriction, embargo, or any other unforeseeable cause beyond control of TMA or its contractor. TMA shall request verbal or written approval by CITY prior to suspending operations.

2.10.3 EMERGENCY RESPONSE PLAN: TMA shall have a plan, updated on an annual basis, to maintain operations during the occurrence of emergencies such as, but not limited to periods of adverse weather or other emergency conditions including, but not limited to, inclement weather, hurricane, earthquake, fire, flood, cloudburst, cyclone, or other natural phenomenon of a severe and unusual nature, act of a public enemy, epidemic, quarantine, restriction, embargo, or other periods of extreme or catastrophic events. Plans for backup telecommunications such as cellular phones, backup generators and backup fuel sources and other alternatives shall be detailed in a written plan and submitted to CITY thirty (30) days from the effective date of this Agreement.

2.11 ADVERTISING

2.11.1 TMA shall not place advertisements of any kind or nature on any vehicle(s) without the prior written approval of City Contract Administrator. In the event that advertisements are allowed, all advertising shall conform to the BCT Advertising Guidelines and Regulations, as currently enacted or as may be amended from time to time. Additionally, TMA, subject to approval of City Contract Administrator, may obtain advertising services pursuant to the terms and conditions of the agreement between Broward County and Direct Media, Inc. for Transit Advertising Program dated April 28, 2009.

2.12 CHANGES IN SCOPE OF SERVICES

- 2.12.1 Except for those changes permitted in Section 2.1 herein, any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 10.1.2 below.
- 2.12.2 Any appreciable changes in the level of services, as determined by City Contract Administrator's sole discretion, to be provided by TMA as set forth herein shall only be implemented after CITY and TMA have entered into a modified agreement describing the changed services. Nothing in this Agreement precludes the possibility of CITY or TMA providing public transportation services if ridership levels warrant expanded service.
- 2.12.3 The parties agree to renegotiate this Agreement if applicable federal, state, or local laws or revisions of said laws make changes in the Agreement necessary or desirable, as determined by Contract Administrators.
- 2.12.4 Changes to the funding, revenue service hours, routes and vehicles or any combination of same that are not within the authority of the Contract Administrator as delegated by the TMA Board or CITY to approve as provided in this Agreement and which do not require a public hearing as provided in Section 2.1.3 of this Agreement may be made by Motion or Resolution approved by the City Commission, TMA Board, or CRA Board as such entities' interests may be effected, such amendment to be included in an amendment to this Agreement authorized to be executed by the applicable Contract Administrator.

ARTICLE 3 GRANT COMPLIANCE

3.1 General Conditions.

- 3.1.1 The TMA will be responsible for operating within the constraints of certain transportation and mobility grant programs, in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds. Such conditions shall include but not be limited to the specific requirements and conditions associated with the receipt of certain grant funds and are outlined in a document provided to TMA by the CITY for within thirty (30) days of execution. The TMA has provided the City, through its Transportation and Mobility Department, with all documentation that shows that the TMA is lawfully in possession of the property used in furtherance of this Agreement and that the TMA will remain so for the term of this Agreement. TMA shall provide the City such other necessary records and documentation to

assure compliance with future grant agreements, including monitoring and audits.

- 3.1.2 TMA agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. TMA also agrees to comply with all such applicable grant requirements including but not limited to performance and financial reporting. TMA further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- 3.1.3 Federal or State Participation. In the event any federal or state agency providing financial assistance to a project or operation suspends or terminates federal or state assistance or in the event of suspension or termination of federal or state assistance, TMA shall reimburse the CITY for all disallowed costs, including any and all federal or state financial assistance.
- 3.1.4 E-VERIFY TMA agrees for itself to use and will include in its agreements with its sub-grantees and its subcontractors performing work or providing services pursuant to and during the term of this Agreement, a requirement to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the TMA, sub-grantees and subcontractors.

ARTICLE 4
TERM AND TIME OF PERFORMANCE

- 4.1 The term of this Agreement shall begin on October 1, 2014, and shall end on September 30, 2017. The term may be extended for up to two (2) additional one (1) year renewal periods upon written approval of the City Contract Administrator ninety (90) days prior to the expiration date of the current term. If the term of this Agreement extends beyond a single fiscal year of CITY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from CITY in accordance with Chapter 129 Florida Statutes.
- 4.2 Prior to beginning the performance of any services under this Agreement, TMA must receive a Notice to Proceed from City Contract Administrator.

ARTICLE 5
FINANCIAL ASSISTANCE

5.1 CITY agrees to reimburse TMA for eligible expenses relating to maintenance, operation, administrative or capital outlay as appropriated in the CITY's Approved Annual Budget, as amended.

5.2 The name of the official payee to whom CITY shall issue checks shall be the DOWNTOWN FORT LAUDERDALE TRANSPORTATION MANAGEMENT ASSOCIATION.

5.3 METHOD OF BILLING AND PAYMENT

5.3.1 TMA shall submit invoices for reimbursement on a monthly basis. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and current and future grants and include a list of all Florida commercial licensed drivers, including drivers' license numbers, for each individual permitted to operate the vehicles(s) under this Agreement.

5.3.2 Invoices shall include the required elements on a standard invoice form, a sample of which is attached as Exhibit "I".

5.3.3 The TMA further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

(a) The CITY will pay to the TMA funds available under this Agreement based upon information submitted by the TMA and consistent with any approved budget and CITY policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the TMA, and not to exceed actual cash requirements. Payments will be adjusted by the CITY in accordance with advance fund and program income balances available in TMA accounts. In addition, the CITY reserves the right to liquidate funds available under this Agreement for costs incurred by the CITY on behalf of the TMA.

(b) TMA must restrict the appropriate portion of their budget to meet matching fund requirements for any applicable grant.

5.4 COST ELIGIBILITY

5.4.1 Project costs eligible for CITY participation will be allowed only from the effective date of this agreement. It is understood that CITY participation in eligible project costs is subject to:

- a) Commission approval of the Budget appropriation requests in the Adopted Budget
- b) Availability of funds
- c) Approval of all plans, specifications, third party contracts, contracts or other obligating documents and all other terms of this agreement
- d) City Contract Administrator's approval of the project scope and budget at the time appropriation of funds become available.

5.5 PAYABLE INTEREST

5.5.1 Payment of Interest.

CITY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof TMA waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

- 5.5.2. Rate of Interest. In any instance where the prohibition or limitations of Section 5.5.1 are determined to be invalid or unenforceable, the annual rate of interest payable by CITY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

ARTICLE 6 INDEMNIFICATION / GOVERNMENTAL IMMUNITY

- 6.1 At all times hereafter, TMA and its third party contractor, jointly and severally, shall indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, TMA or TMA's contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, TMA, its contractor, or both, shall, upon written notice from CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by City Attorney to defend CITY. The provisions and obligations of this section shall survive the expiration or earlier termination of this

Agreement. To the extent considered necessary by City Contract Administrator and City Attorney, any sums due TMA under this Agreement may be retained by CITY until all of CITY'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 CITY.

ARTICLE 7 INSURANCE

- 7.1 TMA, TMA's contractor, or both, as a third party contractor, shall at all times during the term of this Agreement keep and maintain in full force and effect, at TMA's or subcontractor's sole cost and expense, insurance of the types and amounts as set forth on Exhibit "C", a copy of which is attached hereto and incorporated herein by reference as if set forth in full, and shall name CITY, COUNTY, or both, as an additional insured.

At or prior to the commencement of TMA's performance pursuant to the provisions of any agreement with TMA involving the vehicle(s) provided hereunder, TMA shall deliver the original certificate of insurance required herein to CITY. TMA shall pay the premiums for all insurance required by this Agreement. TMA shall cause all policies of insurance required by this Agreement to be renewed from time to time so that at all times the insurance protection required by this Agreement shall continuously exist. The policy shall not be canceled or materially changed without the giving of at least thirty (30) days' prior written notice thereof to CITY, and in such event, a policy pursuant to the above terms must be substituted.

7.1.1 Workers' Compensation

The Participant shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

ARTICLE 8 TERMINATION

- 8.1 This Agreement may be terminated for cause by action of the City Commission or by TMA upon thirty (30) days' written notice by the party that elected to terminate, or for convenience by action of the City Commission or TMA Board upon not less than one hundred eighty (180) days written notice by CITY or TMA Contract Administrators or both. This Agreement may also be terminated by CITY or TMA Contract Administrators or both upon such notice as CITY or TMA Contract Administrators or both deem appropriate under the circumstances in the event CITY, TMA or both Contract Administrators determine that termination is necessary to protect the public health, safety, or welfare.

- 8.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of CITY as set forth in this Agreement, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by CITY or TMA Contract Administrators or both which CITY or TMA or both Contract Administrators deem necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 8.4 Upon termination of this Agreement for whatever reason, TMA shall return the vehicles leased herein to CITY within seven (7) days of the termination date. TMA shall return the vehicles to CITY in the condition they were received at the onset of this Agreement, normal wear and tear excepted. TMA's obligation to return the vehicles to CITY in the condition they were received shall include the removal of any painting or wrapping of the vehicle for advertisement purposes. Any costs necessary to restore and/or prepare the vehicle for return to CITY shall be the sole responsibility of TMA. CITY, through its Maintenance Transit Manager, shall have the right to inspect and to approve the condition of the vehicle prior to acceptance and should the Maintenance Transit Manager determine that the vehicle is not in the proper condition, TMA shall at its sole cost and expense remedy any and all reasonable deficiencies identified by the Maintenance Transit Manager.
- 8.5 No waiver by the CITY of any breach of any provision of this Agreement shall be deemed to be a waiver of any other provision or be construed to be a modification of the terms of this Agreement.
- 8.5.1 In accordance with 24 CFR 84.61, suspension or termination may occur if Participant materially fails to comply with any term of this Agreement.
- 8.5.2 In accordance with 24 CFR 84.61, this Agreement may be terminated for convenience.
- 8.5.3 The Participant shall not incur new expenses for administration, operations or maintenance after receiving notice of the cancellation of this Agreement and shall cancel as many outstanding obligations as possible.

ARTICLE 9

MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY; and, if a copyright is claimed, TMA grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by TMA, whether finished or unfinished, shall become the property of CITY and shall be delivered by TMA to City Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to TMA shall be withheld until all documents are received as provided herein.

9.2 EEO COMPLIANCE

TMA shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. TMA shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 21 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as CITY deems appropriate.

TMA shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. TMA and subcontractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, TMA shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, TMA represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). CITY hereby materially relies on such

representation in entering into this Agreement. An untrue representation of the foregoing shall entitle CITY to terminate this Agreement and recover from TMA all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

Consistent with the provisions of the Title VI, FTA Circular 4702.1A, TMA, as a grant recipient of FTA assisted funds, TMA shall ensure that transit services and related benefits shall be distributed in an equitable manner with no discrimination on the grounds of race, color, or national origin. Accordingly, TMA shall provide information to the public regarding its Title VI complaint procedures and apprise members of the public of protections against discrimination afforded to them by Title VI, including, but not limited to posting notices on its vehicle(s), website, and bus schedules.

9.3 PUBLIC ENTITY CRIME ACT

TMA represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, 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 CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 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 by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, TMA 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 TMA has been placed on the convicted vendor list.

9.4 THIRD PARTY BENEFICIARIES

Neither TMA nor CITY intends to directly or substantially benefit a third party by 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 right or claim against either of them based upon this Agreement.

9.5 NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

FOR CITY:

Transportation & Mobility Department Director
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

FOR TMA:

Executive Director
Downtown Fort Lauderdale Transportation Management Association, Inc.
290 Northeast Third Avenue
Fort Lauderdale, FL 33301

FOR COUNTY:

Director
Broward County Transit Division
One North University Drive, Suite 3100A
Plantation, FL 33324

9.6 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, TMA shall not subcontract any portion of the work required by this Agreement, except as authorized herein. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by TMA of this Agreement or any right or interest herein without CITY's written consent.

TMA represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he/she will render his/her services.

TMA shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of TMA's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

9.7 CONFLICTS

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

TMA further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or TMA is not a party, unless compelled by court process. Further, TMA 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 CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude TMA or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event TMA is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, TMA agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as TMA.

9.8 MATERIALITY AND WAIVER OF BREACH

CITY and TMA agree that each requirement, duty, and obligation set forth herein was bargained for at arms'-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

CITY'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.

9.9 COMPLIANCE WITH LAWS

The TMA agrees to comply with all other applicable federal, state and local laws, regulations, codes, ordinances, rules and policies governing the funds provided under this Agreement. The participant also agrees to comply with all such applicable grant requirements including but not limited to performance and financial reporting.

9.10 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 CITY or TMA 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.

9.11 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.12 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 Articles 1 through 13 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 13 shall prevail and be given effect.

9.13 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial

Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, TMA AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

9.14 HIPAA COMPLIANCE

It is expressly understood by the parties that CITY personnel and/or its agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 CFR 164.502 and related regulations. In the event TMA is considered by CITY to be a covered entity or business associate and/or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (hereinafter known as "HIPAA"), TMA shall fully protect individually identifiable health information as required by HIPAA and, if requested by CITY, shall execute a Business Associate Agreement in the form attached hereto as Exhibit "H" for the purpose of complying with HIPAA. Where required, TMA shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of TMA's and CITY's uses of client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement. CITY hereby authorizes the City Administrator to sign Business Associate Agreements on its behalf.

9.15 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits A, B, C, D, E, F, G, H, I, J, and K are incorporated into and made a part of this Agreement.

9.16 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

ARTICLE 10 ANNUAL BUDGET

- 10.1 The TMA shall submit an annual budget to the CITY by August 1st each year. All budget amendments shall be submitted to CITY in a timely manner and consistent with grant requirements. TMA shall meet the deliverables, outcomes, performance indicators and expend funds obtained pursuant to this Agreement in accordance with Exhibit "J".

10.1.1 City of Fort Lauderdale Recognition

The TMA shall insure recognition of the role of the CITY in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the TMA will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

10.1.2 Amendments and Addendums

The CITY or TMA may amend or incorporate addendums to this Agreement at any time, provided that such amendments or addendums make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization. Such amendments or addendums shall not invalidate this Agreement, nor relieve or release the CITY or TMA from its obligations under this Agreement.

The CITY may, in its sole discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for any other reason. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both CITY and TMA, in accordance with Section 2.1 above.

10.1.3 Use and Maintenance of Agreement Facilities and Equipment

The TMA agrees that the Agreement facilities and equipment will be used by the TMA or its subcontractor to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the CITY. The TMA or its subcontractor further agree to maintain the Agreement facilities and equipment in good working order for the useful life of said facilities and equipment.

10.1.4 Default

The following events shall constitute an “Event of Default” pursuant to this Agreement:

1. The TMA fails to perform any covenant or term or condition of this Agreement; or any representation or warranty of the TMA herein or in any other grant documents executed concurrently herewith or made subsequent hereto, shall be found to be inaccurate, untrue or breached.
2. If the TMA shall have made misrepresentation of a material nature in its application of any grant agreement or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto.
3. Failure to notify the CITY there is pending litigation with respect to the performance by the TMA of any of its duties or obligations.
4. If the TMA or any endorser of the Agreement files a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, assignment for the benefit of creditors, receivership, dissolution or similar relief under any present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other local law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of TMA for all or any part of the properties of TMA; or if within ten days after commencement of any proceeding against the TMA, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, debtor relief or similar relief under any present or future Federal Bankruptcy Act or any other present or future federal, state or other local law, such proceeding shall not have been dismissed or stayed on appeal; or if, within ten days after the appointment, without the consent or acquiescence of the TMA or of any endorser of the Agreement, of any trustee, receiver, or liquidator of the TMA or any endorser of the Note, or of all or any portion of the Property, such appointment shall not have been vacated or stayed on appeal or otherwise; or if within ten (10) days after the expiration of any such stay, such appointment shall not have been vacated.
5. Other events of Default

6. TMA's breach, violation or failure to perform any of the obligations or any of the covenants and conditions contained herein.

CITY shall notify TMA of default in writing as soon as CITY becomes aware of such default. Upon the occurrence of any event of default, the CITY shall cease making disbursements hereunder and, if TMA shall have failed to cure such default within sixty (60) days, declare immediately due and payable, all monies advanced hereunder.

The CITY may suspend or terminate this Agreement if the TMA materially fails to comply with any terms of this Agreement, which include, but are not limited to, the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and federal, state or local guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the TMA to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds or equipment provided under this Agreement; or
4. Submission by the TMA to the CITY reports that are incorrect or incomplete in any material respect.

ARTICLE 11 ADMINISTRATIVE REQUIREMENTS

11.1 Financial Management

11.1.1 Accounting Standards

The TMA agrees to comply with and adhere to the accounting principles and procedures required under Generally Accepted Accounting Principles (GAAP), utilize adequate internal controls, and maintain necessary source documentation for all revenues and expenditures.

11.1.2 Cost Principles

The TMA shall administer its program in conformance with CITY standards and general accounting principles and the requirements of any grant funded activities. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

11.1.3 Federal and State Participation (if applicable)

In the event any federal or state agency providing financial assistance to a project or operation suspends or terminates federal assistance or in the event of suspension or termination of federal assistance, the TMA shall reimburse the CITY for all disallowed costs, including any and all federal financial assistance.

11.1.4 The TMA shall collect and retain fare box revenues for TMA's allowable use on routes authorized by CITY to charge such fares. If such fares are deemed program income by a Grantor, the TMA agrees to report the revenue to CITY as required.

11.2 Documentation and Record Keeping

11.2.1 Records to be Maintained

The TMA (or its subcontractor) shall maintain all records required by federal, state and local regulations as specified in applicable grant agreements, which are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records required to determine the eligibility of activities;
- c. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with financial assistance of the CITY;
- d. Records documenting compliance with applicable grant agreements;
- e. Financial records as required by CITY and grants for reimbursable costs, including payroll records if applicable;

The TMA will report to the CITY on a monthly and/or quarterly basis as required throughout the term of this Agreement of all services provided and beneficiaries of those services. The TMA will be responsible for maintaining all records necessary to document compliance with the provisions of applicable grant agreements as now in effect, and as may be amended from time to time.

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of TMA and its subcontractors that are related to this Agreement. TMA and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of TMA and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, TMA or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

TMA and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, 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, as may be amended from time to time, 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. 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 CITY to be applicable to TMA's and its subcontractors' records, TMA and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by TMA or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment pertaining to such entry.

TMA shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 11.3.

11.3.1 Disclosure

The TMA understands that ridership information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the CITY's or TMA's responsibilities with respect to services provided under this Agreement, may be prohibited by state or federal law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian. TMA is responsible for identifying and following any state or federal law that may be applicable to disclosure.

11.3.2 Close-outs

The TMA's obligation to the CITY shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets subject to a court appointed receiver (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the CITY), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the TMA has control over grant funds, including program income.

11.3.3 Project Completion, Agency Certification

The TMA will certify in writing on or attached to the final invoice, that the project associated with each grant was completed in accordance with applicable plans and specifications, is in place on the TMA facility, that adequate title is in the TMA and that the project is accepted by the TMA as suitable for the intended purpose.

11.3.4 Reporting Procedures

a. Progress Reports

The TMA shall submit regular Progress Reports as outlined above, to the CITY in the form, content, and frequency as required by the CITY.

11.3.5 Procurement

a. Compliance

The TMA agrees to adhere to all applicable federal, state and local rules and as defined in the grant agreements with regard to the purchase of all equipment and furnishings. Procurement of all items costing \$25,000 or more, singly or in aggregate, shall be conducted through open competition that may include price or rate quotations or sealed bids from at least two or more qualified sources or responsive bidders. Sole source procurement shall be used only in instances where items to be purchased are not available through open competition.

The TMA shall comply with current CITY policy as applicable based on funding source concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall

revert to the CITY upon termination of this Agreement, subject to a court appointed receiver.

ARTICLE 12
STAFFING

12.1 PERSONNEL & TMA CONDITIONS

Staff Positions to be allocated to each activity are as provided in Exhibit K. TMA must notify the City Contract Administrator of any changes in personnel assigned or their general responsibilities under this Agreement within 10 working days.

12.1.1 Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The TMA shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The CITY shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the TMA is an independent contractor.

12.2.

Equal Employment Opportunity: In connection with the carrying out of any project, the TMA shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The TMA will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The TMA shall insert the foregoing provision modified only to show the particular contractual relationship in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves the installation, construction, demolition, removal, site improvement or similar work, the TMA shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be setting forth the provisions of the nondiscrimination clause.

12.3 Title VI – Civil Rights Act of 1964: Execution of this Interlocal Agreement constitutes a certification that the TMA will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.) the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the TMA thereto.

12.4 Americans with Disabilities Act of 1990 (ADA): Execution of this Interlocal Agreement constitutes a certification that the TMA will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.) the regulations of the federal government issued thereunder, and the assurance by the TMA pursuant thereto.

12.5 Conduct

12.5.1 Assignability

The TMA shall not assign or transfer any interest in this Agreement without the prior written consent of the CITY thereto; provided, however, that claims for money due or to become due to the TMA from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

12.5.2. Subcontracts

a. Approvals

The TMA shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the CITY prior to the execution of such agreement.

b. Monitoring

The TMA will monitor all subcontracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The TMA shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

No employee, officer, or agent of the TMA shall participate in the selection, award, or administration of a contract supported by funds associated with this Agreement if a real or apparent conflict of interest would be involved.

The TMA shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the CITY along with documentation concerning the selection process.

12.5.3 Hatch Act

The TMA agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

12.54 Lobbying

The TMA hereby certifies that:

- a. The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), if the procurement contract amount is in excess of \$100,000. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- b. No federal appropriated funds have been paid or will be paid, by or on behalf of TMA, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and

the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

- c. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, TMA will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- d. TMA will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and agreements under grants, loans, and cooperative agreements) and that all TMAs shall certify and disclose accordingly:
- e. Lobbying Certification

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

12.5.6. Copyright

If this Agreement results in any copyrightable material or inventions, the CITY and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

ARTICLE 13 MISCELLANEOUS

13.1 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters

contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

13.2 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he/she is, on the date he/she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
Mayor

[Witness type or print name]

By _____
City Manager

Witness type or print name]

ATTEST:

(CORPORATE SEAL)

City Clerk

Approved as to form:

City Attorney

WITNESSES:

DOWNTOWN FORT
LAUDERDALE TRANSPORTATION
MANAGEMENT ASSOCIATION, INC.

By _____
ALAN HOOPER, Chairman

[Witness type or print name]

[Witness type or print name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2015, by ALAN HOOPER, Chairman, Downtown Fort Lauderdale Transportation Management Association, Inc. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number