

TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members

AGENDA ITEM 8D

From: Staff

Date: March 20, 2015 Council Meeting

Subject: Contract with South Florida Regional Transportation Authority

Introduction

The purpose of this item is to request Council approval to execute a new agreement (attached) with the South Florida Regional Transportation Authority (SFRTA) to provide professional services relating to transportation and land use planning in support of regional mobility and transit development. Council staff has been requested by the SFRTA to continue to provide planning assistance, including general planning services as well as project-specific assistance to be determined by the SFRTA.

Background

For the past several years, Council staff has assisted the SFRTA with broad range of transportation and land use planning assistance. Council's current agreement expires in June 2015, and the subject agreement would extend Council's professional services relationship with the SFRTA through June 2020.

Council has been engaged in several planning assistance agreements with the SFRTA since 2008. A portion of Council's assistance has focused on general land use, transportation, and outreach assistance with local governments and agencies. Additionally, Council has provided project-specific assistance, including station-area planning around existing and anticipated Tri-Rail commuter rail stations, development of transit-oriented development comprehensive plan policies and land development regulations, evaluation of bicycle/pedestrian connections to Tri-Rail stations, and review of site plans and concepts. Additionally, Council staff has provided assistance regarding SFRTA documents, such as the Coastal Link Station Area Market and Economic Analysis, Transit Development Plan, and Transit Resource Guide.

Conclusion

Improving the relationship between land use patterns and transportation planning will improve the efficiency and effectiveness of the transportation network, create better opportunities for multi-modal success, and enhance quality of life throughout the region. Additional funding will

allow Council to assist in the advancement of these goals, enhance the transit-supportive land use and policy framework in the region, provide direct assistance to local governments, and help implement the Strategic Regional Policy Plan.

Recommendation

Council should authorize the Executive Director, in consultation with Council's attorney, to negotiate amendments to the contract and to execute the final contract on behalf of Council.

Attachment

**AGREEMENT BETWEEN**  
**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (SFRTA)**  
**and**  
**TREASURE COAST REGIONAL PLANNING COUNCIL (TCRPC)**  
**For PROFESSIONAL PLANNING SERVICES**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_ 2015 ("Effective Date"), by and between the TREASURE COAST REGIONAL PLANNING COUNCIL, a body corporate and politic and an agency of the State of Florida, hereinafter referred to as "TCRPC" and the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic and corporate, an agency of the State of Florida, hereinafter referred to as "SFRTA."

**RECITALS**

A. TCRPC was created pursuant to Section 186.501, Florida Statutes (1982), as amended and known as the "Florida Regional Planning Council Act" (the "Act").

B. Section 186.505, Florida Statutes, provides that TCRPC may enter into contracts to provide, at cost, such services related to its responsibilities as may be requested by local governments or organizations within the region and which TCRPC finds feasible to perform.

C. SFRTA desires to engage professional services related to strategic regional transit, land use and economic planning.

D. The purpose of this Agreement is to define the Scope of Services to be provided by TCRPC to SFRTA and to fix the compensation to TCRPC for such services.

**NOW, THEREFORE**, in consideration of the promises, the mutual covenants, conditions, provisions and undertakings herein contained, and for other good and valuable considerations, the parties do mutually covenant and agree with each other as follows:

**ARTICLE I**

**SCOPE OF SERVICES**

1.1 TCRPC shall provide to SFRTA the services outlined in Exhibit A Scope of Services, consistent with the terms, conditions and provisions of the Act and other applicable professional and ethical requirements imposed upon TCRPC by existing Florida Statutes and Administrative Code Rules.

1.2 TCRPC agrees that it shall perform the work outlined in the Scope of Services at the direction of SFRTA and shall comply with any and all requirements of the SFRTA assignments.

## **ARTICLE II**

### **COMPENSATION**

2.1 SFRTA shall compensate TCRPC for its performance of the Scope of Services in the amount of One Hundred Thousand and no/100 Dollars (\$100,000.00) per year for the Term of Agreement (as defined in Section 3.2 below). During the Term of the Agreement, TCRPC shall invoice SFRTA quarterly in arrears in the amount of Twenty-Five Thousand and no/100 Dollars (\$25,000.00). The invoice shall be received by SFRTA no later than ten (10) business days following the end of the preceding quarter. SFRTA shall process the invoices consistent with Florida Statutes.

2.2 SFRTA shall not compensate TCRPC for duplicative work that has already been developed by others, either for SFRTA or for other third parties, that is available as a public record.

2.3 Partial or full payment of the quarterly invoices may be rejected, as determined solely by SFRTA, if quarterly reports or deliverables are past due.

2.4 SFRTA, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void and no money may be paid on such contract. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, SFRTA's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by SFRTA's Governing Board.

## **ARTICLE III**

### **EFFECTIVE DATE AND TERM OF AGREEMENT**

3.1 This Agreement shall commence on the Effective Date, which shall be the date on which the last party signs.

3.2 The term of the Agreement shall be for five (5) years ("Term of Agreement").

## **ARTICLE IV**

### **PROFESSIONAL STAFFING**

4.1 It is anticipated that TCRPC shall fulfill its obligations under this Agreement with concentrations of professional time which may vary from day to day, or week to week and shall use professional staff with the necessary expertise to perform the Scope of Services.

4.2 Nothing in this Agreement precludes TCRPC from subcontracting with private contractors and consultants to perform some of the work assigned to the TCRPC. TCRPC acknowledges and agrees that it is solely liable for the work performed under this Agreement and for any payments, judgments, claims, etc. owed to such subcontractors and/or subconsultants.

## **ARTICLE V**

### **TERMINATION**

Either party may cancel this Agreement by providing no less than fifteen (15) days prior written notice to the other party, by certified mail, personal delivery or facsimile transfer. In the event that either party terminates this Agreement, SFRTA agrees to pay TCRPC the prorated amount of the quarterly payment that is not disputed by SFRTA, corresponding with the termination date. TCRPC agrees that in the event of termination of this Agreement by SFRTA, payment of any remaining duly owed monies under this Agreement shall be its sole and exclusive remedy. In the event either party terminates this Agreement, all files and work product completed to date shall be delivered to SFRTA.

## **ARTICLE VI**

### **CLAIMS, DAMAGES, INSURANCE.**

6.1 SFRTA and TCRPC each acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes, Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or property damage caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. SFRTA and TCRPC agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes, Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense that the parties may have under such statute, nor as consent to be sued by third parties. The parties agree to maintain insurance coverage or be self-insured for general liability, auto liability, and worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as it may be amended from time to time.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

#### **7.1 ASSIGNMENT**

TCRPC shall not assign, transfer, convey, sublet or otherwise dispose of any resultant Agreement, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of SFRTA.

SFRTA may assign its rights and obligations under any resultant Agreement to any successor to the rights and functions of SFRTA or to any governmental agency to the extent required by applicable laws or governmental regulations all or part of the specified deliverable items as originally competed and evaluated to one or more third parties.

## 7.2 LEGAL REQUIREMENTS

TCRPC is required to be familiar and shall comply with all Federal, State and local laws, ordinances, rules, and regulations that in any manner affect or apply to the Work, including but not limited to the Federal Requirements provided in Exhibit B Federal Requirements. Ignorance on the part of TCRPC shall in no way relieve TCRPC from responsibility

## 7.4 NO FEDERAL GOVERNMENT OBLIGATIONS

Although this Agreement is funded with Federal grant funds, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to TCRPC, or any other person other than SFRTA in connection with the performance of this Agreement. Notwithstanding any concurrence that may be provided by the Federal Government in or approval of any solicitation, or contract, the Federal Government has no obligations or liabilities to any party, including TCRPC.

## 7.5 RIGHTS IN DOCUMENTS AND TECHNICAL DATA

All documents and materials prepared or developed by TCRPC and its subcontractors pursuant to this Agreement shall become the property of SFRTA without restriction or limitation on their use and shall be made available upon request to SFRTA at any time. Original copies of such shall be delivered to SFRTA upon completion of the services or termination of the services. TCRPC shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of SFRTA, except when used for the following purposes: (a) amending or adopting TCRPC's Strategic Regional Policy Plan; (b) the preparation of and inclusion in local government planning documents; and (c) other purposes in furtherance of Transit/TOD objectives. The TCRPC agrees to notify SFRTA when it intends to use the material for the purposes outlined in (a) through (c).

No material or technical data prepared by TCRPC under this Agreement is to be released by TCRPC to any other person or agency except as necessary for the performance of the services. All press releases or information to be published in print or electronic media, shall be distributed only after first being authorized in writing by SFRTA.

SFRTA shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.

TCRPC shall agree to grant to SFRTA and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for this Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for SFRTA to use in the manner herein described.

TCRPC warrants that any deliverables to be produced by TCRPC under this Agreement shall be produced without infringement by TCRPC of any United States or foreign patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against SFRTA claiming it or TCRPC infringed upon a patent or copyright in the production of deliverables under this Agreement, TCRPC shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by SFRTA, and shall, to the maximum extent permitted by law, indemnify and hold harmless SFRTA, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including but not limited to, defense costs and attorney fees.

#### 7.6 GOVERNING LAW AND VENUE

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in Broward County, Florida.

#### 7.7 NO WAIVER

The failure of SFRTA to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

#### 7.8 JOINT PREPARATION

The preparation of this Agreement has been a joint effort of the parties, 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.

#### 7.9 RELATIONSHIP OF THE PARTIES

Except as set forth herein, no party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party. TCRPC is and shall be in the performance of all work, services, and activities under this agreement independent, and not an employee, agent, or servant of SFRTA. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to TCRPC's sole discretion, supervision, and control. TCRPC shall exercise control over the means and manner in which it and its employees perform the work, and in all respect TCRPC's relationship and the relationship of its employees to SFRTA shall be that of an independent contractor and not as employees or agent.

#### 7.10 CONFLICT

Where there is a conflict between any provision set forth within this Agreement and a more stringent state or federal provision that is applicable to any services performed under this Agreement, the more stringent state or federal provision shall prevail.

#### 7.11 SEVERABILITY

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of the Agreement shall be construed to be in full force and effect.

#### 7.12 PRIOR AGREEMENTS

It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and that 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, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. All changes to, additions to, modifications of, or amendments to this Agreement, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

#### 7.13 EXECUTION

This document shall be executed in at least two (2) counterparts each of which shall be deemed to be a duplicate original.

#### 7.14 NOTICES

Any notice, request or communication required or permitted hereunder shall be deemed to have been duly given if sent by certified mail, postage prepaid and return receipt requested, or by Federal Express or similar overnight delivery service, to the parties at their respective addresses as set forth below:

If to SFRTA:

800 NW 33<sup>rd</sup> Street  
Pompano Beach, FL. 33064  
Attention: Executive Director

With a copy to:

800 NW 33<sup>rd</sup> Street  
Pompano Beach, FL. 33064  
Attention: General Counsel

If to TCRPC:

421 SW Camden Avenue  
Stuart, Florida 34994  
Attention: Executive Director

With a copy to:

Roger G. Saberson,  
Roger G. Saberson, P.A.  
70 SE 4<sup>th</sup> Avenue  
Delray Beach, FL 33483-4514

#### 7.15 INCORPORATION BY REFERENCE

The recitals at the beginning of this Agreement are true and correct and, by this reference, are made a part hereof and are incorporated herein. Similarly, all exhibits and other attachments to this Agreement that are referenced to this Agreement are, by this reference made a part hereof and are incorporated herein.

#### 7.16 HEADINGS

Article and section headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

#### 7.17 MISCELLANEOUS

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

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**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates of each signature. TCRPC, through its Executive Director and SFRTA, through its Chair, are authorized to execute same by the respective boards of each agency.

ATTEST

**TREASURE COAST REGIONAL  
PLANNING COUNCIL**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
MICHAEL BUSHA,  
EXECUTIVE DIRECTOR

Approved as to legal form:

\_\_\_\_\_  
ROGER SABERSON,  
General Counsel to TCRPC

ATTEST

**SOUTH FLORIDA REGIONAL  
TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
JACK STEPHENS,  
EXECUTIVE DIRECTOR

\_\_\_\_\_  
BRUNO BARREIRO,  
CHAIR

(SFRTA SEAL)

Approved as to form by:

\_\_\_\_\_  
TERESA J. MOORE  
GENERAL COUNSEL

**EXHIBIT A**  
**SCOPE OF SERVICES**

**INTRODUCTION**

TCRPC provides a broad-based policy and planning view of the Treasure Coast Region specifically Indian River, St. Lucie, Martin and Palm Beach counties. This translates to extensive expertise in a wide range of planning and review activities, including:

- Comprehensive land use planning and review
- Development review
- Watershed planning and conservation
- Water and sewer capacity analysis and planning
- Housing and school capacity analysis and planning
- Urban Brownfield redevelopment assistance
- Land use and transportation planning and development guidance

Through its activities, TCRPC has expertise in land use and growth management regulation and processes. In addition, its role in facilitating collaboration throughout the region on transportation-related projects is a major asset in development of regional transportation and land use plans.

SFRTA, as the only truly regional transportation planning and operating organization in this region, has a strong interest in developing a regional strategy for addressing transportation needs in an efficient and effective manner. This can only be achieved through careful consideration of the built environment along with the transportation network. TCRPC proposes to partner with SFRTA to enhance the region's strategic planning process and help build consensus on transportation issues throughout the region.

**SPECIFIC TASKS**

TCRPC shall assist in the planning, technical, managerial and administrative efforts related to transportation studies, projects and/or activities of SFRTA. TCRPC shall conduct the technical work identified in the projects selected by SFRTA for implementation and also other technical land use and transportation planning activities as requested by SFRTA.

SFRTA and TCRPC shall meet quarterly to mutually determine TCRPC's tasks for SFRTA during the upcoming quarter. Tasks may take longer than one (1) quarter if mutually agreed upon in the quarterly meeting. Tasks may include, but are not limited to, the tasks referenced in the introduction above. TCRPC shall submit meeting minutes and task schedules to SFRTA within fourteen (14) days following each quarterly meeting. TCRPC shall submit to SFRTA's project manager work products and a quarterly report detailing progress on the mutually determined course of work no later than seven (7) days prior to the subsequent quarterly meeting.

As needed, SFRTA may also assign tasks to TCRPC in writing. The notice will include a description of the work requested, and proposed due date. TCRPC shall confirm receipt and acceptance of the assigned task(s) and associated schedule within seven (7) days after the date

of the assignment request. Proposed due dates may or may not correspond to quarterly meeting dates. If assigned within the quarter, the assignment shall be incorporated into the next quarterly report.

TCRPC shall ensure that the work performed for SFRTA is complementary and not duplicative of any work performed by or for other agencies or governmental entities in the region. It is the intent of TCRPC to work to the best advantage of all agencies in the regional context, to communicate effectively to each, and to use project synergies to further each of the respective projects provided to it by SFRTA and other regional transportation entities.

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## EXHIBIT B

### FEDERAL REQUIREMENTS

TCRPC shall at all times comply with all applicable FTA regulations, policies, procedures and directives. TCRPC's failure to so comply shall constitute a material breach of this agreement.

1. Drug free Workplace. The TCRPC shall comply with the terms of the State of Florida and the U.S. DOT regulations for Drug Free Workplace Requirements, 49 C.F.R. Part 29, Subpart F.

2. Debarment and Suspension. The TCRPC shall comply with U.S. DOT regulations, "Government wide Debarment and Suspension" (Non-procurement). This requirement shall pass to any and all subcontractors engaged to perform services under the Agreement.

3. Program Fraud and False or Fraudulent Statements or Related Acts. TCRPC acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. And U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, TCRPC 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 services under this Agreement are being performed. In addition to other penalties that may be applicable, TCRPC 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 TCRPC to the extent the Federal Government deems appropriate.

TCRPC 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 TCRPC, to the extent the Federal Government deems appropriate.

TCRPC 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.

4. Lobbying. TCRPC shall comply with the terms of 31 U.S.C. Section 1352, which prohibits the use of Federal funds for lobbying any official or employee of any Federal agency, or member or employee of Congress. The TCRPC shall disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with this Project. THE AGREEMENT EXPRESSLY PROHIBITS LOBBYING. TCRPC agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20. This requirement shall pass to any and all subcontractors engaged to perform services under the Agreement.

5. Interest of Members of or Delegates to Congress. In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of the Agreement or to any benefit arising therefrom.

6. Organizational Conflict of Interest. Prior to entering into this Agreement, TCRPC is required to inform SFRTA of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to TCRPC, or may impact TCRPC's objectivity in performing the contract work. In addition, the TCRPC shall not take any position that may be considered adverse to SFRTA in any way without SFRTA's written prior approval.

7. Civil Rights. Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, TCRPC agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, TCRPC agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, TCRPC agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect services performed under this Agreement. TCRPC 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, TCRPC agrees to comply with any implementing requirements FTA may issue.

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, TCRPC agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, TCRPC agrees to comply with any implementing requirements FTA may issue.

Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, TCRPC agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, TCRPC agrees to comply with any implementing requirements FTA may issue.

TCRPC also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

8. Clean Air. TCRPC agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. TCRPC agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. TCRPC also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

10. Retention & Access to Records. TCRPC agrees to provide SFRTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the TCRPC, which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. TCRPC also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO access to TCRPC's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

TCRPC agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case TCRPC agrees to maintain same until SFRTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

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

12. Buy America Requirements. TCRPC agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver have been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7.

TCRPC must submit to SFRTA the appropriate Buy America certification on FTA-funded contracts, except those subject to a general waiver.

13. Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. TCRPC shall not perform any act, fail to perform any act, or refuse to comply with any SFRTA requests which would cause SFRTA to be in violation of the FTA terms and conditions.

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