

**EQUIPMENT LEASE AGREEMENT BETWEEN PROTERRA OPERATING COMPANY, INC., AND BROWARD COUNTY FOR THE 2021 FEDERAL PUBLIC TRANSPORTATION ASSOCIATION, COMMISSION FOR THE TRANSPORTATION DISADVANTAGED (FPTA/CTD) ANNUAL CONFERENCE AND EXPO**

This Equipment Lease Agreement ("Lease Agreement") is made and entered by and between Proterra Operating Company, Inc., a Delaware corporation headquartered in the State of California (hereinafter called "Proterra"), and Broward County, a political subdivision of the State of Florida (hereinafter called "County").

A. WHEREAS, County owns a low-floor, 40' ZX5 battery all-electric bus, VIN No. 7JZTH13J0MS000432, together with all accessories affixed thereto (collectively "Equipment").

B. WHEREAS, Proterra desires to lease the Equipment from County for staging in conjunction with Proterra's display at the FPTA/CTD Annual Conference and Expo in Daytona Beach, Florida.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. LEASE. County hereby agrees to lease the Equipment to Proterra and Proterra hereby agrees to lease the Equipment from County. Proterra agrees to lease the Equipment "as is."

2. RENT. Proterra agrees to pay to County a one-time fee of \$1.00 upon signing the Lease Agreement and such payment shall be the rental charges payable by Proterra to County with respect to the Equipment during the term of this Lease Agreement.

3. TERM. The term of this Lease Agreement shall be from October 24, 2021, at 12:00 p.m. until October 27, 2021, at 5:00 p.m.

4. USE. Proterra shall only use the Equipment for staging in conjunction with Proterra's display at the 2021 FPTA/CTD Annual Conference and Expo located at the Ocean Center Convention Center, 101 N. Atlantic Avenue, Daytona Beach, FL 32118 (the "Staging Location") to showcase electric vehicle technology during the event. Proterra shall not use the Equipment for any other purpose not stated herein.

Proterra will be responsible for transporting the Equipment from the County's bus maintenance facility located at 3201 Copans Road, Pompano Beach, FL 33064 to the Staging Location and back to the County's bus maintenance facility located at 3201 Copans Road, Pompano Beach, FL 33064 by flatbed truck or equivalent method. Proterra will coordinate the pick-up and transportation of the Equipment with Ripton Richards, email: rrichards@broward.org.

5. SURRENDER. Upon the termination of this Lease Agreement, Proterra shall return the Equipment to the location stated in paragraph 4 in the same condition and state of repair as when the Equipment was picked up by Proterra. Proterra acknowledges that, upon expiration or

termination of this Lease Agreement or upon return of the Equipment for any other reason, Proterra shall provide the following to County:

- a. Documentation indicating that the Equipment is in good condition and repair, in compliance with the County's Maintenance Program;
- b. Documentation of the records for mechanical repairs and inspection of the Equipment, if any; and
- c. Documentation of Equipment sign off executed by County and Proterra to record any scratches or damages at pick-up and return of the Equipment.

6. **OWNERSHIP.** Title to and ownership of the Equipment shall at all times be and remain in the name of County, and Proterra shall have no right or title to the Equipment, except the right during the Term to use the Equipment in accordance with the terms of this Lease Agreement. All intellectual property relating to the Equipment and all other intellectual property and tooling of County is and shall remain the sole property of County, and Proterra shall not infringe upon, misappropriate, disclose, use (other than as expressly permitted in this Lease Agreement) or reverse engineer any such intellectual property and tooling.

7. **OPERATING COSTS.** Proterra shall be solely responsible for all costs associated with transporting the Equipment to and from the FPTA/CTD Annual Conference and Expo.

8. **REPAIRS.** Proterra shall pay for any and all repair costs for loss or damage of any kind to the Equipment sustained while the Equipment is being used by Proterra as provided herein; provided, however, that Proterra shall not make any repairs or allow any other party to repair the Equipment in any way without the prior written approval of County.

9. **INSPECTION.** [OMITTED].

10. **ALTERATION.** Proterra shall not make any alterations or add or allow any other party to alter or add to the Equipment in any way without the prior written approval of County.

11. **MAINTENANCE RECORDS.** Proterra shall follow County's Transportation Department, Maintenance Section's Preventive Maintenance guidelines, as provided by County, and deliver to County as specified or upon request the following records:

- a. Record(s) of all non-Preventive Maintenance performed during the Term, if any;
- b. Record(s) of Preventive Maintenance Bus Inspections performed during the Term, if any; and
- c. Accident/Incident Report(s) involving the Equipment, if any.

12. **MOTOR VEHICLE INSPECTION.** Proterra shall be responsible for ensuring that the Equipment is maintained in compliance with the FTA Motor Vehicle Act and Regulations, including the Driver's Daily Inspection Report.

13. TRAINING. [OMITTED]

14. LIENS AND CHARGES. Proterra shall, at all times, keep the Equipment free from all levies, liens, security interests and encumbrances whatsoever and, if applicable, shall pay all license fees, registration fees and assessments, charges, and taxes, which may be now or hereafter imposed directly upon the leasing, rent, possession or use of the Equipment.

15. WARRANTIES. [OMITTED]

16. ASSIGNMENT. Proterra shall not transfer, deliver up possession of, or sublet the Equipment, and Proterra's interest in this Lease Agreement shall not be assignable by Proterra without a written document that complies with the requirements outlined in Section 34.

17. REPRESENTATIONS AND WARRANTY. County represents and warrants to Proterra that the Equipment is: (i) suitable for use for the purpose for which it was intended; (ii) County owns the Equipment; and (iii) the Federal Transit Administration has an interest in the Equipment.

18. INDEMNIFICATION. The indemnity provided in this Lease Agreement shall survive the termination or expiration of the Agreement and remain in full force and effect.

Proterra shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Proterra, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Proterra shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

19. LIMITATION OF LIABILITY. Any insurance requirement specified in this Lease Agreement in no way limits Proterra's liability.

20. PATENT INDEMNITY. [OMITTED]

21. INSURANCE AND RISK OF LOSS. Throughout the Term, Proterra shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this section. Proterra shall maintain insurance coverage against claims relating to any act or omission by Proterra, its agents, representatives, employees, or Subcontractors in connection with this Lease Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this section.

- a. Proterra shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this section.
- b. On or before the Effective Date or at least five (5) days prior to commencement of the lease, Proterra shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this section. If and to the extent requested by County, Proterra shall provide complete, certified copies of all required insurance policies and all required endorsements within five (5) days after County's request.
- c. Proterra shall ensure that all insurance coverages required by this section shall remain in full force and effect without any lapse in coverage throughout the Term and until all performance required by Proterra has been completed, as determined by County. Proterra or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification and at least ten (10) days prior to the effective date of any cancellation due to nonpayment and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).
- d. All required insurance policies must be issued by insurers: (1) assigned an AM Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.
- e. If Proterra maintains broader coverage or higher limits than the insurance requirements stated in Exhibit C, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Proterra.
- f. Proterra shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least five (5) days prior to the Effective Date or commencement of the lease. Proterra shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Proterra to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Proterra agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Proterra agrees to obtain same in endorsements to the required policies.
- g. Unless prohibited by the applicable policy, Proterra waives any right to subrogation that any of Proterra's insurer may acquire against County, and agrees to obtain same in an endorsement of Proterra's insurance policies.

h. Proterra shall require that each Subcontractor retained by Proterra in connection with this Lease maintains insurance coverage that adequately covers the services provided by that Subcontractor on substantially the same insurance terms and conditions required of Proterra under this section. Proterra shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. Proterra shall not permit any Subcontractor to provide services unless and until all applicable requirements of this section are satisfied.

i. If Proterra or any Subcontractor fails to maintain the insurance required by this Lease Agreement, County may pay any costs of premiums necessary to maintain the required coverage and recover such costs from Proterra. If requested by County, Proterra shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

j. If any of the policies required under this section provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Proterra must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Lease Agreement for at least the duration stated in Exhibit C.

22. **DEFAULT.** Notwithstanding Section 3, Proterra covenants and agrees with County that County shall have the right to cancel and terminate this Lease Agreement by reason of any one or more of the following events:

a. If Proterra fails to perform any of the terms, conditions, covenants and provisions contained in this Lease Agreement that on its part are to be observed and performed, County shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps: (a) to terminate this Lease Agreement; (b) with or without terminating this Lease Agreement, to retake and reclaim possession of all or any portion of the Equipment wherever situated; and (c) to exercise any and all other rights and remedies provided under this Lease Agreement and/or under applicable law. County's recovery of the Equipment upon default will be at Proterra's sole cost and expense.

b. If a petition under any bankruptcy law shall be filed by or against Proterra or Proterra makes any assignment for the benefit of its creditors or Proterra suffers, or permits the appointment of any trustee or receiver or receiver-manager for Proterra's business or assets or any part thereof; or otherwise becomes financially insolvent; or if Proterra makes or suffers any assignment, voluntary or involuntary, such events shall not include Proterra's interest in any of the Equipment included in this Lease Agreement or cause any lien, attachment or levy of execution to become attached thereto.

23. [Reserved]

24. TERMINATION FOR CONVENIENCE. Either party may terminate this Lease Agreement at any time upon five (5) days' written notice to the other party, if the Party determines that such termination is in its best interest.

25. WAIVER. Each Party shall be liable to the other party as contained in this Lease Agreement in accordance with applicable law and the terms of this Lease Agreement. The waiver of any breach of any term or covenant in this Lease Agreement shall not be deemed to be a waiver of any subsequent breach of the same term or covenant under this Lease Agreement.

26. NOTICES. All notices, certificates, or other communications hereunder shall be in writing (including without limitation, telecopy, or facsimile with receipt confirmed) and mailed, telecopied, or delivered to the address set forth below. Any notice, certificate, or other communication which is mailed shall be mailed registered mail, postage prepaid, return receipt requested. Notices, certificates, or other communications shall be effective upon the earlier of (i) actual receipt by the addressee or (ii) the date shown on the return receipt, fax confirmation, or delivery receipt.

To County: Chris Walton  
Director, Transportation Department  
One North University Drive, Suite 3400A  
Plantation, FL 33324

To Proterra: Proterra Operating Company, Inc.  
1815 Rollins Road  
Burlingame, CA 94010

27. INTERPRETATION. It is hereby agreed by and between the parties hereto that wherever the singular or masculine is used throughout this Lease Agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic respectively and vice versa, where the context or the parties hereto so require.

28. GOVERNING LAW. This Lease Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida.

29. FORUM SELECTION. The exclusive venue for any lawsuit arising from, related to, or in connection with this Lease Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Lease Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY TO CONTEST THE DEMAND FOR JURY**

**TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

30. EXECUTORS, ADMINISTRATORS, AND ASSIGNS. This Lease Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors, and permitted assigns.

31. COUNTERPARTS AND EXECUTION AND DELIVERY. This Lease Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument. To evidence its execution of an original counterpart of this Lease Agreement, a party may send a copy of its original signature on the execution page hereof to the other party by PDF transmission and such transmission shall constitute delivery of an executed copy of this Lease Agreement to the receiving party as of the date of receipt thereof by the receiving party or such other date as may be specified by the sending party as part of such transmission.

32. SEVERABILITY. If any of the provisions of this Lease Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, County and Proterra shall negotiate an equitable adjustment in the provisions of the Lease Agreement with a view toward effecting the purpose of this Lease Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.

33. DEPOT CHARGER. Proterra shall provide its own depot charger for the Equipment. Proterra shall be responsible for the portable charger's storage, security, and any theft to the portable charger.

34. ENTIRE AGREEMENT; AMENDMENTS. This Lease Agreement constitutes the entire agreement between Proterra and County regarding the lease of the Equipment. No waiver, consent, amendment, modification, or change of terms of this Lease Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, amendment, modification, or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this Lease Agreement.

The above terms and conditions are hereby acknowledged and agreed to by the parties.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and Proterra, Inc. signing by and through its \_\_\_\_\_ duly authorized to execute same.

COUNTY

ATTEST:

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, by and through  
its Board of County Commissioners

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

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600

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

Angela J. Wallace (Date)  
Transportation Surtax General Counsel

AJW/hb  
BC FPTA Lease Agreement  
09/29/2021  
#20-114.00



**EQUIPMENT LEASE AGREEMENT BETWEEN PROTERRA OPERATING COMPANY, INC., AND BROWARD COUNTY FOR THE 2021 FEDERAL PUBLIC TRANSPORTATION ASSOCIATION, COMMISSION FOR THE TRANSPORTATION DISADVANTAGED (FPTA/CTD) ANNUAL CONFERENCE AND EXPO**

PROTERRA

WITNESSES:

PROTERRA OPERATING COMPANY, INC

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name of Witness above

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Print Name of Witness above

ATTEST:

\_\_\_\_\_  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)


## Exhibit C Minimum Insurance Requirements

### INSURANCE REQUIREMENTS

Project: Electric Bus Move  
Agency: Transit Division

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> On-Hook & Cargo <input checked="" type="checkbox"/> Garage Keepers Legal Liability  Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury  Property Damage  Combined Bodily Injury and Property Damage  Personal Injury  Products & Completed Operations	   \$1,000,000     	   \$2,000,000     
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable			Bodily Injury (each person)  Bodily Injury (each accident)  Property Damage  Combined Bodily Injury and Property Damage	   \$1,000,000	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>					
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$500,000	
<input type="checkbox"/> <b>Professional Liability (Errors and Omissions)</b>	N/A		Extended Reporting Period of:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible:  *Maximum Deductible:		Completed Value
<b>Description of Operations:</b> "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) higher than the amount permitted in this Agreement must be declared to and approved by County and may require proof of financial ability to meet losses. Contractor is responsible for all coverage deductibles unless otherwise specified in the agreement. For Claims-Made policies insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.					

**CERTIFICATE HOLDER:**  
  
 Broward County  
 115 South Andrews Avenue  
 Fort Lauderdale, Florida 33301

 Digitally signed by  
 COLLEEN A. POUNALL  
 Date: 2021.08.26  
 14:10:39 -04'00'  
 \_\_\_\_\_  
 Risk Management Division