

# PALM BEACH TPA AGREEMENT NO. 2021-XX

**BETWEEN**  
**PALM BEACH MPO dba THE PALM BEACH TRANSPORTATION PLANNING AGENCY**  
**AND \_\_\_\_\_ (CONTRACTOR) FOR**

## **PRODUCTS**

This Agreement is made as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Palm Beach MPO, doing business as the Palm Beach Transportation Planning Agency, an entity created pursuant to the provisions of Chapters 163 and 339, Florida Statutes, (hereinafter referred to as the "TPA") located at 301 Datura Street, West Palm Beach, FL 33401 and \_\_\_\_\_, a *Corporation/LLC/Partnership* authorized to do business in the State of Florida and whose principal place of business is located at \_\_\_\_\_ (hereinafter referred to as the "CONTRACTOR" or "CONSULTANT").

## **WITNESSETH**

**WHEREAS**, the TPA defined the Scope of Services as set forth in Exhibit A attached hereto and incorporated herein ("Services" or "Work"), and in accordance with the TPA Procurement Policy, the TPA issued RFP \_\_\_\_ - \_\_ for *SERVICES/GOODS* issued \_\_\_\_\_, 20\_\_ : and

**WHEREAS**, the TPA selected CONTRACTOR from the respondents to RFP \_\_\_\_ - \_\_ *SERVICES/GOODS*; and

**WHEREAS**, the Contractor agrees to provide the Services and the TPA agrees to pay the Contractor for the services upon completion.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, the parties agree as follows:

### **Section 1. Incorporation of Facts; Definitions**

- A. The facts of statements set forth above, in the preamble and recitals ("WHEREAS" clause) to this Agreement, are true and correct and incorporated into and made part of the Agreement by reference.
- B. The following terms as used in this Agreement as defined as follows, unless the context affirmative indicates to the contrary:
  1. "Agreement" means this instrument, as amended from time to time, and all Exhibits.
  2. "Deliverable" means a product or a completed task of the Services to be provided pursuant to this Agreement.
  3. "FDOT" means the Florida Department of Transportation.
  4. "FHWA" means the U.S. Federal Highway Administration.
  5. "FTA" means the U.S. Federal Transit Administration.
  6. "U.S. DOT" means the U.S. Department of Transportation, or any of its agencies such as FHWA or FTA, among others.
  7. "PTG Agreement" means Public Transportation Grant Agreement.
  8. "MPO Agreement" means Metropolitan Planning Organization Agreement.

9. TPA Fiscal year is July 1 through June 30.

Section 2. **Representatives.** TPA's representative during the performance of this Agreement is the Executive Director of the TPA, and CONTRACTORS's representative during the performance of this Agreement is \_\_\_\_\_, who shall serve as the primary contact. Either party to this Agreement may unilaterally change its representative during the term of this Agreement by giving notice to the other party. A change in the designation of CONTRACTOR's representative shall not affect CONTRACTOR's responsibility for the provision of the Services under this Agreement.

Section 3. **Term.** This Agreement shall take effect on \_\_\_\_\_, 20\_\_ and shall remain in full force and effect for a period of \_\_\_\_\_ ( ) months/days, expiring \_\_\_\_\_, 20\_\_. Two (2) additional twelve (12) month renewal option(s) may be exercised at the TPA's sole discretion. If the TPA elects to exercise the option(s), the TPA will notify the Contractor in writing of its election at least fifteen (15) days prior to the expiration of the then current term of the Agreement at the address set forth in Section 36 of this Agreement.

Section 4. **Services.**

- A. The TPA hereby engages the CONTRACTOR to render the Services set forth in Exhibit "A", attached hereto and incorporated herein. The Services are governed by this Agreement and may only be changed by written instrument signed by both parties.
- B. The CONTRACTOR shall comply with all applicable Federal, State, and local laws, Executive Orders, ordinances, and regulations relevant to the Services identified under this Agreement. If any provision of this Agreement requires the CONTRACTOR to violate any Federal, State, or local law, Executive Order, ordinance, or regulation, CONTRACTOR will immediately notify the TPA in writing of the appropriate changes and modifications that are necessary to proceed with the Services in compliance with the law.
- C. This Section 4. shall survive the termination of this Agreement.

Section 5. **Payments.**

- A. The TPA agrees to pay CONTRACTOR a maximum amount under this agreement of \$\_\_\_\_\_. \_\_ dollars in United States currency for the Services, including all out-of-pocket or reimbursable expenses. *If the TPA exercises the option(s) to extend the agreement, the maximum amount increases by \$\_\_\_\_\_. \_\_ dollars for each year extended. The TPA anticipates that funds will be allocated and distributed for each year of the Agreement as follows:*

TPA FY 2022	\$_____ . __
TPA FY 2023	\$_____ . __
TPA FY 2024	\$_____ . __
TPA FY 2025*	\$_____ . __
TPA FY 2026*	\$_____ . __

\* If TPA elects to extend the agreement.

- B. The CONSULTANT will bill the TPA on a monthly basis for deliverables that have been completed and approved by the TPA. The CONSULTANT'S charges for all work provided under any Work Order issued by the TPA shall not exceed the hourly rates set forth in the Hourly Rate

Schedule attached as Exhibit "B" (containing the final loaded rate for billing purposes for the CONSULTANT staff classifications that will perform services under this Agreement), which Exhibit "B" of hereby incorporated into this Agreement and made a part hereof. The parties agree that annual increases to said hourly unloaded rates shall not exceed 3% (three percent), unless increased for good cause established by the CONSULTANT and accepted by the TPA's Executive Director. The parties agree that any modification to the indirect cost percentage used to derive the final loaded rates shall be for good cause established by the CONSULTANT and accepted by the TPA's Executive Director. Loaded hourly rates for services to be performed by personnel not directly employed by the CONSULTANT shall be established within the Work Order for an individual task. Each billing shall not exceed the amount established by the parties for the work or task(s) performed. The total cost of the performance of all of the tasks described in the Scope, as further refined in the Work Orders issued, inclusive of all out-of-pocket or reimbursable expenses, shall be equal to or less than the not to exceed contract amount set forth above.

C. Invoices received from the CONSULTANT will be reviewed and approved by the TPA's representative, indicating that services have been rendered in conformity with this Agreement and then will be sent to the TPA Chief Financial Officer ("CFO") for payment. Each invoice shall be accompanied by the corresponding deliverables previously approved by the TPA's representative so that the TPA and any other governmental agency with oversight over expenditures made pursuant to this Agreement may perform proper pre and post-audits of the bills and determine that services have been rendered towards the completion of the Work in conformity with the requirements of this Agreement, the UPWP, 23 CFR 450.314 and Section 339.175, Florida Statutes ("F.S.") Invoices shall cite the contract number and shall contain an original signature of an authorized CONSULTANT official. Invoices will normally be paid within thirty (30) days following the TPA's representative approval. Payments will be remitted to the CONSULTANT at the address set forth in Section 36 of this Agreement or such other address as is designated in writing by the CONSULTANT to the TPA.

D. In order for each party to close its books and records, the CONSULTANT will clearly state "final invoice" on its last and final billing. This certifies that all deliverables have been properly completed, provided to, and approved by the TPA and all charges and costs have been invoiced to the TPA. Since this account will thereupon be closed, any and all other future charges, if not properly included on this final invoice, are waived by the CONSULTANT. All invoices must be submitted within sixty (60) calendar days of the expiration date of this Agreement. Invoices submitted thereafter will not be eligible for payment, unless this requirement is waived, in writing, by the TPA's Executive Director and the TPA can receive payment under its JPA with the FDOT.

**Section 6. Availability of Funds.** The TPA's performance and obligation to pay under this Agreement is contingent upon its receipt of funds, as a grantee or funding recipient of FDOT or the U.S. Department of Transportation ("USDOT") or an agency thereof, which funds are to be used for the purposes of this Agreement. In addition, the TPA shall not be obligated to perform or pay for any services provided or to be provided under this Agreement, including reimbursement of costs and expenses if:

A. FDOT has not approved this Agreement;

B. FDOT determines that any of the services provided or to be provided, including reimbursement of costs or expenses are not "eligible project costs" for which the TPA may be reimbursed;

C. FDOT shall not approve any requisition or invoice submitted by the TPA to FDOT for

reimbursement; or

D. FDOT shall terminate or cancel its JPA with the TPA or fail to fully fund its obligations thereunder. The TPA's failure to receive funds or the revocation of funding shall constitute a basis for the TPA's termination of this Agreement for convenience.

**Section 7. Reports and Ownership of Documents.** All written information associated with this Agreement shall be considered a Public Record open to public inspection subject to the provisions of Chapter 119, F.S., unless otherwise made confidential or exempt under Florida law. All documents, papers, letters, drawings, maps, books, tapes, photographs, films, characteristics, sketches, programs, data-base reports, data processing software, material, websites/web pages, and other data developed under or arising from this Agreement, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, whether public or private but acting on behalf of the CONSULTANT or the TPA ("Public Record" or "Public Records"), shall be the shared property of the TPA, CONSULTANT, and any agencies that have provided funding but may be reused by the TPA and the CONSULTANT.

A. The CONSULTANT shall deliver to the TPA's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the TPA under this Agreement.

B. To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the TPA or at its expense will be kept confidential by CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the TPA's prior written consent unless required by a lawful court order.

C. All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

D. The CONSULTANT acknowledges that it is subject to Florida's Public Records Law and agrees that it shall comply with the requirements of said law. The CONSULTANT further agrees that the TPA may unilaterally terminate this Agreement (and such termination will be for cause) if the CONSULTANT refuses to produce or to allow public access to any Public Records or does not produce or allow access within a reasonable period of time after a request for Public Records has been received. The CONSULTANT agrees that it shall not initiate or take any action against the TPA, if the TPA terminates this Agreement because of the CONSULTANT's failure to comply with Florida's Public Records Law. Notwithstanding the foregoing, refusal of the CONSULTANT to allow public access to such Public Records shall not constitute ground(s) for unilateral cancellation of this Agreement by the TPA, if pursuant to direction of the TPA, the CONSULTANT withholds access to said Public Record, because it is confidential or exempt from disclosure status pursuant to federal or Florida law. Further, if a request for a Public Record is made to the CONSULTANT, upon the furnishing of that Public Record to the requestor, the TPA shall be promptly notified and furnished, at no cost, with a similar copy of the Public Record.

E. To the extent required by law, documents prepared pursuant to this Agreement are subject to Florida's Public Record Law. The CONSULTANT agrees to keep and maintain Public Records in the CONSULTANT's possession or control in connection with their performance under this Agreement. The CONSULTANT additionally agrees to comply specifically with the provisions of

Section 119.0701, F.S. The CONSULTANT shall ensure that Public Records that are confidential or exempt, as provided by Florida or federal law, from Public Records disclosure requirements are not disclosed, except as authorized by law and as approved by the TPA, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TPA.

F. Upon request from the TPA's custodian of Public Records, the CONSULTANT shall provide the TPA with a copy at no cost to the TPA of the requested records. Unless otherwise provided by law, copies of any and all Public Records are and shall remain the property of the TPA.

G. All Public Records held by the CONSULTANT must be retained for a period of five (5) years or such later date as may be provided by Florida's governmental Public Records retention schedules, whichever date shall be later in time.

H. Upon completion of this Agreement or in the event of termination by either party, at the request of the TPA copies of any and all Public Records relating to the Agreement in the possession of the CONSULTANT related to this Agreement shall be delivered by the CONSULTANT to the TPA, at no cost to the TPA, within forty-five (45) days (unless the TPA advises the CONSULTANT that it already has copies of those Public Records). Unless the TPA advises the CONSULTANT that it already has copies of those Public Records, copies of all such records stored electronically by the CONSULTANT shall be delivered to the TPA in a format that is compatible with the TPA's information technology systems. Once the Public Records have been delivered upon completion or termination of this Agreement, the CONSULTANT may destroy any and all duplicate Public Records that are exempt or confidential and exempt, as defined by Florida or Federal law, from Public Records disclosure requirements, pursuant to law.

**IF THE CONTRACTOR OR THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Nick Uhren  
561.725.0800  
NUhren@PalmBeachTPA.org  
Palm Beach TPA, 301 Datura Street, West Palm Beach, Florida 33401**

The name and address of the custodian of Public Records may be unilaterally changed from time to time by the TPA by affording to the CONSULTANT notice as provided in Section 36. of this Agreement.

I. This Section 8. shall survive the termination of this Agreement.

#### **Section 8. Access and Audits.**

A. The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after completion or termination of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, the CONSULTANT shall maintain such records until notified by the TPA that the litigation or claims have been concluded and resolved. The CONSULTANT shall maintain all records in Palm Beach County or such other location in the State of Florida approved by the TPA's Contract Representative.

B. The CONSULTANT shall comply and cooperate with any audit, monitoring procedures, accounting process or other processes deemed appropriate by the TPA or FDOT, including but not limited to site visits and limited scope audits. FDOT, the State of Florida Chief Financial Officer, Comptroller or Auditor General, the USDOT, Federal Transit Administration ("FTA") or their authorized employees and representatives, and any agency thereof, shall have access to and the CONSULTANT shall make available its books, records, and documents related to the performance of this Agreement, for the purpose of inspection, audit or reproduction during normal business hours at the TPA's or the CONSULTANT's place of business.

**Section 9. Preparation of Documents, Certifications and Reports.** Should the TPA be required by FDOT or an agency of the Federal or State government, including but not limited to the USDOT, or any agency thereof, to provide any certifications, documents or reports related to or produce as a result of this Agreement, the CONSULTANT will cooperate and assist the TPA with the preparation of such at no cost to the TPA or any agency of the Federal or State government.

**Section 10. No Agency Relationship.** Nothing contained in this Agreement or in any contract of the CONSULTANT's shall create an agency relationship between the TPA and the CONSULTANT. Neither party shall be deemed to have assumed any liability for the negligent or wrongful acts or omissions of the other party, or of its officers, employees, servants, or agents. In addition, nothing contained herein shall be construed as a waiver of sovereign immunity by either party or a waiver of the liability limits set forth in Section 768.28, F.S.

**Section 11. FDOT Funded Project.**

A. This Agreement is funded in whole or in part with funds received from FDOT by the TPA. The expenditure of such funds is subject to the terms and conditions of any agreement between the TPA and the FDOT providing funding for this Agreement. The CONSULTANT shall not perform any act, fail to perform any act or refuse to comply with TPA requests which would cause the TPA to be in violation of any term or condition of its JPA with FDOT or cause FDOT to refuse to approve a requisition or invoice for payment or reimbursement submitted by the TPA. The CONSULTANT will immediately remedy any deficiency or violation found by the TPA upon notice of such from the TPA, or alternatively, and in addition to any other right to terminate this Agreement, the CONSULTANT may terminate this Agreement by providing written notice to the TPA. In the event of termination, the CONSULTANT will be paid by the TPA for services satisfactorily rendered through the effective date of termination; provided, that, no circumstance(s) exists which would limit or restrict the TPA's obligation to pay, as set forth in this Agreement, including but not limited to those described in Section 7. The TPA's obligation to pay the CONSULTANT is contingent upon the TPA's receipt of funds from the FDOT for the purposes of this Agreement.

B. If any provision of this Agreement requires the CONSULTANT to violate any federal, state or local law or regulation, the CONSULTANT will at once notify the TPA in writing of the appropriate changes and modifications that are necessary to enable it to go forward with the Work in compliance with law.

**Section 12. Termination.** This Agreement may be terminated by the CONSULTANT for cause upon thirty (30) days written notice to the TPA's representative. It may also be terminated by the TPA, in whole or in part, for cause, immediately upon written notice to the CONSULTANT, and without cause and for the convenience of the TPA upon five (5) days written notice to the CONSULTANT. Notwithstanding the forgoing or anything in this Agreement to the contrary, termination by the TPA shall not become effective until written notice of termination has actually been received by the CONSULTANT at its address set forth in this Agreement or other address designated in writing by the

CONSULTANT in a notice to the TPA. The CONSULTANT shall not be entitled to any anticipated lost profits on uncompleted Work or other damages because of the TPA's termination of this Agreement for convenience. The CONSULTANT shall be paid for services rendered to the TPA's satisfaction through the date of termination except, if the CONSULTANT is in default, the TPA shall have a right of set off against the amount that would otherwise be payable to the CONSULTANT to compensate the TPA for any actual damages suffered because of the CONSULTANT default(s). After receipt of a Termination Notice from the TPA, except as otherwise directed by the TPA, the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Incur no further costs or place orders for materials, services, or facilities, except as may be necessary to complete that portion of the Work not terminated; provided, that the CONSULTANT has obtained the TPA's agreement that such must be completed.
- C. Terminate and settle all orders and subcontracts relating to the performance of the terminated Work.
- D. Transfer all Work in process, completed Work, and other materials related to the terminated Work to the TPA.
- E. Continue and complete all parts of the Work that have not been terminated and prepare all necessary reports and documents required under the terms of this Agreement, up to the date of termination, as requested by the TPA's Contract Representative.

**Section 13. Indemnification.** The CONSULTANT shall save, protect, reimburse, indemnify and hold the TPA, and their respective agents, employees, volunteers and elected officers harmless from and against claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of or related in any manner to the extent of the CONSULTANT's negligent performance of the terms of this Agreement or due to the negligent acts, errors or omissions, of any kind or character, of the CONSULTANT or any of its officers, agents, employees or volunteers.

**Section 14. Claims/Damages.** The TPA and the CONSULTANT each acknowledge the waiver of sovereign immunity for liability in tort contained in Section 768.28, F.S., 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. The TPA and the CONSULTANT agree to be responsible for all such claims, and damages, in tort, to the extent and limits provided in Section 768.28, F.S., 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 CONSULTANT agrees that neither the TPA nor FDOT shall be subject to any obligations or liabilities to any third-party contractor, subcontractor or any other entity pertaining to any matter resulting from this Agreement. Notwithstanding the foregoing and to the extent permitted by law, CONSULTANT agrees to indemnify, defend and hold the TPA harmless from any claim, damage, loss, cost, charge or expense arising out of any act, error, omission or negligent act of the CONSULTANT, its officers, employees, and agents, in the performance of this Agreement, except that the CONSULTANT shall not be responsible to the extent of any act, error, omission or negligent act of the TPA or its officers or employees during the

performance of this Agreement.

Section 15. **Insurance.** It shall be the responsibility of the CONSULTANT to provide evidence of the following minimum amounts of insurance coverage or legal liability protection:

A. Required Insurance Coverages. Without waiving the right to Sovereign Immunity as provided by Section 768.28, F.S., and as a minimum, the CONSULTANT and the TPA agree that the limits of insurance coverage which the CONSULTANT is to procure and maintain through the term of this Agreement, on behalf of itself, will procure and maintain (or cause to be procured and maintained by any CONSULTANT sub-contractor) the following coverages:

1. Commercial General Liability. During the term of this Agreement, the CONSULTANT, on its behalf, shall maintain Commercial General Liability Insurance. Coverage shall include, as a minimum: (i) Premises Operations, (ii) Personal Injury Liability, (iii) Property Damage, (iv) Expanded Definition of Property Damage, (v) Products and Completed Operations, and (vi) Incidental Contractual Liability in both the primary and any umbrella policy coverage. The minimum limits acceptable shall be not less than \$1,000,000 Combined Single Limit for bodily injury or death of one or more persons, or property damage in aggregate, and naming the TPA as an "additional insured". The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy. No primary policy shall have a deductible of not more than \$10,000 without the written approval of the TPA, and the excess/umbrella policy shall provide insurance for any loss or damage over the maximum limits of the primary policy.

2. Workers' Compensation and Employers Liability. The CONSULTANT shall maintain Workers' Compensation Insurance, employer's liability insurance and any other insurance as required by Florida Statutes. In addition, the CONSULTANT must obtain Employers' Liability Insurance with limits of not less than: (i) \$500,000 Bodily Injury by Accident, and (ii) \$500,000 Bodily Injury by Disease, each employee adjusted periodically as may be required by law from time to time. The Workers' Compensation insurance shall extend to all employees of the CONSULTANT and, if required by law, shall also extend to volunteers of the CONSULTANT.

3. Business Automobile Liability. During the term of this Agreement, the CONSULTANT shall maintain Business Automobile Liability Insurance with coverage extending to all Owned, Non-Owned and Hired autos used by the CONSULTANT in connection with its operations under this Agreement. The minimum limits acceptable shall be \$1,000,000 Combined Single Limit ("CSL"). The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Business Automobile Liability policy.

4. The CONSULTANT reserves the right to self-insure for the coverage limits set forth above.

B. Evidence of Insurance. Prior to the CONSULTANT receiving its Notice to Proceed from the TPA, satisfactory evidence of the required insurance shall be provided to the TPA. Satisfactory evidence shall be either: (i) a copy of the declaration page certified by the insurer to the TPA designating the TPA as an "additional insured" as appropriate; or (ii) an insurance company certified copy of the actual insurance policy. The TPA, at its sole option, may from time to time request a certified (by the insurer) copy of any or all insurance policies required by this



Agreement. The CONSULTANT, in the manner provided in this Agreement for giving notice, shall forward to the TPA any of the instruments required hereunder within thirty (30) days of request by the TPA or, on not less than a yearly basis, not later than the effective date of any policy or policy renewal. If the CONSULTANT does not furnish proof of insurance as set forth in this section within thirty (30) days of the receipt of a request therefore from the TPA or on not less than a yearly basis, or if the CONSULTANT fails to at all or any times to maintain adequate insurance as required herein, the TPA may, but shall not be obligated to obtain insurance to satisfy this Section 16. The declaration page or policy shall list the "Palm Beach Metropolitan Planning Organization, d/b/a the Palm Beach TPA", as the named "additional insured." The CONSULTANT's failure to provide evidence of coverage prior to the time the CONSULTANT is to commence performance shall be grounds for the TPA's cancellation or termination of this Agreement. If the CONSULTANT elects to self-insure during the term of this Agreement, it shall provide evidence thereof in a form deemed satisfactory to TPA and have received TPA's approval in writing thereof prior to terminating the CONSULTANT's insurance coverage.

C. When obtaining new insurance, the CONSULTANT shall obtain evidence of insurance as set forth in Section 15.B. containing a statement that unequivocally provides that not less than thirty (30) days written notice to TPA will be given prior to cancellation or non-renewal of coverage thereunder. In the event the CONSULTANT is unable to provide the proper evidence of insurance as provided in Section 16.B. above that satisfy the notice requirements of this paragraph, the TPA's Executive Director may, on a case by case basis and for good cause shown (e.g., the CONSULTANT is unable to furnish proper evidence of insurance that complies in all respects with the notice requirements after diligently attempting to obtain such evidence), waive or vary these notice requirements, but the TPA Executive Director shall not be obligated to waive or vary these requirements.

D. All insurance must be acceptable to and approved by TPA as to form, types of coverage, and acceptability of the insurers providing coverage.

#### E. General Insurance Provisions.

1. Prior to issuance of a Notice To Proceed by the TPA and prior to any construction or other Work as part of this Agreement, and at all times during the term of this Agreement, the CONSULTANT at its sole cost and expense, shall procure and at all times maintain the insurance specified in this Section 16. In addition, the CONSULTANT shall ensure that their subcontractors, and any other contractors in privity with the CONSULTANT shall maintain the insurance coverages set forth below. Any attorneys' or paralegals' fees shall be in addition to the coverage or limits set forth herein.
2. All insurance to be obtained will name the TPA, as its respective interests may appear, and will require the insurer to give written notice of any cancellation or change to be sent to the CONSULTANT and the TPA at least forty-five (45) days prior to cancellation, termination, or material change.
3. Unless otherwise approved by the TPA, in its sole discretion, all insurance shall be Occurrence Form, to the extent that such form of insurance is available on commercially reasonable terms, policies of insurance, shall not have a deductible of more than \$10,000 unless approved in writing by the TPA Contract Representative, shall be with an insurance company licensed by the State of Florida Insurance Commissioner, or said Commissioner's successor, to issue the policy presented, issued by a company having an A.M. Best's Rating Guide financial strength rating of A or better and a financial size category of VII or better. In the event that A.M. Best's Rating Guide is discontinued, the TPA and the CONSULTANT shall amend this

Agreement to provide a successor rating service and ratings, which in the TPA's reasonable judgment are similar to what is required by this Agreement. "Claims made" insurance shall not be acceptable insurance under this Agreement.

4. The CONSULTANT, and its general contractor, any other contractors in privity with either the CONSULTANT shall be solely responsible for all deductibles and retentions contained in their respective policies.
5. The TPA will be included as an "Additional Insured" on the Commercial General Liability, any Umbrella Liability, and Builders' Risk policies. The CONSULTANT's insurance policies will be primary over any and all insurance available to the TPA, whether purchased or not, and must be non-contributory.
6. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms, as revised from time to time, issued by the Insurance Services Office ("ISO") or the National Council on Compensation Insurance ("NCCI"). If ISO or NCCI issues new policy forms during the policy term of the required insurance, the CONSULTANT will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.
7. The CONSULTANT will ensure that each insurance policy obtained by it or by any sub-contractor on the Work provides that the insurance company waives all right of recovery by way of subrogation against the TPA in connection with any damage covered by any policy.

F. Premiums and renewals. The CONSULTANT shall pay as the same become due all premiums for the insurance required by this section 15., shall renew or replace each such policy and deliver to the TPA evidence of the payment of the full premium thereof prior to the expiration date of such policy.

G. Adequacy of Insurance Coverage.

1. The adequacy of the insurance coverage required by this section 16. may be reviewed periodically by the TPA in its reasonable discretion. The TPA may request a change in the insurance coverage, if it is commercially reasonable; provided, that such coverage is available at commercially reasonable rates.
2. The CONSULTANT has the right to contest the request for a change in insurance but must be commercially reasonable.

H. TPA right to procure insurance. If the CONSULTANT or its sub-contractor refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the TPA, at its option, may but shall not be obligated to, procure or renew such insurance. Regardless of whether the TPA decides to obtain insurance, that shall not excuse the CONSULTANT's responsibility for any loss, damages, or injury. In that event, all commercially reasonable amounts of money paid therefor by the TPA shall be treated as a right to suspend any payments under this Agreement to the CONSULTANT, until the CONSULTANT pays any insurance premiums due or paid for by the TPA. Such amounts shall be paid by the CONSULTANT to the TPA within twenty (20) calendar days of written notice thereof.

I. Waiver of Subrogation. A full waiver of subrogation shall be obtained from all insurance carriers. The CONSULTANT shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the TPA in connection with any damage covered by any policy.

Section 16. **Personnel.** The CONSULTANT warrants that all professional services shall be performed by skilled and competent personnel to the highest professional standards in the field.

A. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the TPA nor shall they be considered as joint employees or volunteers of the TPA.

B. All the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, licensed, authorized or permitted under state and local law to perform such services.

**Section 17. Public Entity Crimes.** In accordance with Sections 287.132 and 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, CONSULTANT certifies that it, its affiliates, suppliers, and subcontractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date of this Agreement.

**Section 18. Discriminatory Vendor List.** The CONSULTANT hereby certifies that it has not been placed on Florida's Department of Management Services' Discriminatory Vendor List as provided under Section 287.134, F.S.

**Section 19. Criminal History Records Check.** The CONSULTANT shall comply with the provisions of Palm Beach County Ordinance No. 2003-030, the Criminal History Records Check Ordinance (Ordinance), if the CONSULTANT's employees or subcontractors are required under this Agreement to enter a critical facility as identified in Palm Beach County Resolution No. R-2003-1274. CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a critical facility will be subject to a fingerprint based criminal history records check. Although the TPA agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with the Ordinance.

**Section 20. E-Verify.**

A. The TPA has agreements with FDOT which require the TPA to agree and assure the FDOT that the U.S. Department of Homeland Security's E-Verify System (System) will be used to verify the employment eligibility of CONSULTANT's employees and the employees of the CONSULTANT's subcontractors, performing Work pursuant to this Agreement. In addition, Florida law will effective January 1, 2021, require that the e-verify system be used by the CONSULTANT. See Cs/CS/CS/SB 664 (2020 Florida Legislature). Accordingly, the CONSULTANT agrees that it will utilize the System, in accordance with the law and the regulations applicable to the System, to verify the employment eligibility of its employees and that it will require any subcontractor used in the performance of the Work to verify the employment eligibility of its employees. The CONSULTANT shall provide evidence that it and its subcontractors have so verified the employment eligibility of all employees to the TPA and FDOT on forms and in the manner required by the TPA.

B. The CONSULTANT acknowledges that the TPA has received and will seek funds from the FDOT, and that such funds may be used to pay CONSULTANT for the services it provides under this Agreement. The CONSULTANT further acknowledges that FDOT has advised recipients of FDOT funds that it will consider a contractor's employment of unauthorized aliens to be a material violation of the Immigration and Nationality Act and this Agreement. The

CONSULTANT affirms to the TPA that it will not employ unauthorized aliens or take any other act which may cause the TPA to be in violation of any term or condition of any agreement between the TPA and the FDOT.

**Section 21. Title VI – Nondiscrimination Policy Statement.** During the performance of this Agreement, the CONSULTANT agrees for itself, its assignees and successors in interest as follows:

A. Compliance with Regulations: The CONSULTANT shall comply with the nondiscrimination regulations applicable to federally assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") set forth at 49 CFR Part 21, as they may be amended from time to time (referred to hereinafter as the "Regulations"). Said Regulations are hereby incorporated into and made a part of this Agreement by reference.

B. Nondiscrimination: The CONSULTANT, with regard to the work performed during this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21, as they may be amended from time to time, of the Regulations, including employment practices if this Agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations made by the CONSULTANT, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration (FTA), Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the Florida Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, the Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, the Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT until the CONSULTANT complies; and/or
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (E) of this section in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the Florida Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, the Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G. The CONSULTANT does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Acts of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 U.S.C. 2000d, *et. seq.* and 3601 *et. seq.*), and all applicable implementing regulations of the U.S.DOT and its agencies.

H. The CONSULTANT does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act (42. U.S.C. 12102, *et. seq.*) and all applicable implementing regulations of the U.S.DOT and its agencies.

I. The CONSULTANT shall report all grievances or complaints pertaining to its actions and obligations under this Article to the TPA.

## Section 22. **Conflict of Interest.**

A. The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such interest shall be employed to assist in the performance of this Agreement.

B. The CONSULTANT shall promptly notify the TPA's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the CONSULTANT's judgment or the quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest, or circumstance, the nature of work that the CONSULTANT may undertake and advise the TPA as to whether the association, interest, or circumstance would constitute a conflict of interest if entered into by the CONSULTANT. The TPA may notify the CONSULTANT of its opinion as to whether a conflict exists under the circumstances identified by the CONSULTANT. If, in the opinion of the TPA, the prospective business association, interest or circumstance would constitute a conflict of interest by the CONSULTANT, then the CONSULTANT shall immediately act to resolve or remedy the conflict. If the CONSULTANT shall fail to do so, the TPA may terminate this Agreement for cause.

C. The CONSULTANT shall not enter into any contract, subcontract, or arrangement in connection with the Work (also referred to as "Project," "Scope," or "Scope of Services") or any

property included or planned to be included in the Work, with any officer, director or employee of the TPA or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's director's or employee's spouse or child, or any combination of them, has a material interest.

D. "Material Interest" means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.

E. The CONSULTANT shall not enter into any contract or arrangement in connection with the Work or Project, with any person or entity that was represented before the TPA by any person, who at any time during the immediately preceding two (2) years, was an officer, director or employee of the TPA.

F. The CONSULTANT agrees for itself and shall insert in all contracts entered into in connection with the Work or Project or any property included or planned to be included in the Work or Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

No member, officer, or employee of the TPA during his tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**Section 23. Independent Contractor Relationship.** The CONSULTANT is and shall be, in the performance of the Work, services and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the TPA. 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 the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects, the CONSULTANT's relationship and the relationship of its employees to the TPA shall be that of an Independent Contractor and not as employees or agents of the TPA. The CONSULTANT does not have the power or authority to bind the TPA in any promise, agreement, or representation.

**Section 24. Assignment.** Neither this Agreement nor any interest herein shall be assigned, subcontracted, conveyed, transferred, or otherwise encumbered, in whole or in part, by the CONSULTANT without the prior written consent of the TPA, which consent may be withheld or refused for any reason or no reason. The parties agree that additional consideration incorporated into the payment schedule of this Agreement has been made for this provision.

**Section 25. Contingent Fees.** The CONSULTANT warrants that it has not employed or retained any company or person, other than a *bona fide* employee working solely for the CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a *bona fide* employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

**Section 26. Members of Congress.** No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

A. The CONSULTANT agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the TPA, to any person for influencing or attempting to influence any officer or employee of any federal 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 contract, 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 contract, grant, loan or cooperative agreement. This certification is a material representation of fact upon which reliance is 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. code. 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.

B. If any funds other than federal appropriated funds have been paid to the CONSULTANT for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Work, the CONSULTANT shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions or provide notification to the TPA in any other manner the TPA may allow.

C. The CONSULTANT shall include the two (2) above-stated clauses modified to show the contractual relationship, in all subcontracts it enters into related to the Work.

D. The CONSULTANT may not expend any funds received under this Agreement for lobbying the Florida Legislature or any agency of the State.

**Section 27. Application of Federal Requirements.** This Agreement is funded, in part, by funds made available by the FTA. Additional terms and conditions are set forth in Exhibit "C" attached hereto and made applicable to the CONSULTANT and a part of this Agreement by this reference. The CONSULTANT shall perform the duties and obligations described in Exhibit "C" and shall complete the representations and provide any information required therein.

**Section 28. Remedies.** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. No person or entity other than the CONSULTANT or the TPA shall have any rights in this Agreement or any remedy against either the CONSULTANT or the TPA for a violation of any of the terms and conditions set forth herein or pertaining in any way to the services to be rendered by the CONSULTANT to the TPA hereunder.

**Section 29. Enforcement Costs.** Any costs or expenses, including reasonable attorney fees, associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties.

**Section 30. No Waiver.** No waiver of any provisions of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver.

**Section 31. Captions.** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.





giving written notice thereof to the other party pursuant to this Section 36., but the change is not effective until the change notice is actually received by the other party.

F. Notice given by certified mail, return receipt requested, properly addressed and with postage fully prepaid, is deemed given when deposited in the United States mails within the continental United States, if the notice is thereafter delivered in due course at the address to which properly sent. Notice given by overnight courier, service prepaid, properly addressed is deemed given when deposited with the courier within the continental United States, if the notice is thereafter delivered in due course at the address to which properly sent. Notice given by manual delivery is deemed given only when actually received by the recipient.

G. Relay of Official Notices and Communications. If the CONSULTANT or the TPA receives any notice from a governmental body or governmental officer that pertains to this Agreement or performance pursuant hereto, or receives any notice of litigation or threatened litigation affecting any of the aforementioned subjects, then the receiving party shall promptly send it (or a copy of it) to the other party to this Agreement.

**Section 37. No Intended Third Party Beneficiaries.** The parties acknowledge that this Agreement is not intended to be a third party beneficiary contract, either express or implied, and confers no rights on anyone other than the TPA and the CONSULTANT.

**Section 38. Disadvantaged Business Enterprises (DBE) and Prompt Payment.**

A. This Agreement is subject to the requirements of 49 CFR Part 26. As required by 49 CFR 26.13, the CONSULTANT will not discriminate on the basis of race, color, national origin, or sex in the performance of any U.S. DOT- assisted contract or the requirements of 49 CFR Part 26. The CONSULTANT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the performance of this Agreement. The TPA's DBE Program, as required by 49 CFR Part 26 and approved by DOT is incorporated by reference into this Agreement. Implementation of this program is a legal obligation and the failure to carry out its terms shall be treated as a violation of this Agreement.

B. Neither the CONSULTANT nor any subcontractor it may use in the performance of this Agreement shall discriminate on the basis of race, color, national origin, or sex in the award of or the performance of this Agreement. The CONSULTANT shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement and the Work associated with this U.S. Department of Transportation (U.S. DOT) assisted contract. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy or action as the TPA deems appropriate which may include but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages, and/or
4. Disqualifying CONSULTANT from future contracts as non-responsible.

C. CONSULTANT shall include the statements set forth in paragraphs A. and B. above in each subcontract or sub-consultant contract it lets.

D. The CONSULTANT is encouraged to seek disadvantaged business enterprises (DBEs) for participation in subcontracting opportunities. A contract goal of 10.65% has been established for this Agreement. The CONSULTANT will comply with the tasks and proportionate dollar amounts throughout the term of this Agreement as it relates to the use of DBEs so that it maintains and meets this goal throughout the term of the Agreement. The provisions of this section apply to the CONSULTANT's selection and use of subcontractors, including DBE subcontractors, to perform any part of this Agreement.

E. The TPA has adopted the Florida Department of Transportation's (FDOT) DBE Program, including but not limited to FDOT's Methodology for Determining DBE Goals and FDOT's Annual Goal of 10.65% for DBE participation in solicitations and award of contracts. This DBE Program, as adopted by TPA, is incorporated into and made a part of this Agreement. The CONSULTANT acknowledges that it has reviewed and is familiar with the terms of the DBE Program. DBE participation towards overall and contract specific goals will be counted as provided in 49 CFR 26.55 and TPA's adopted DBE Program.

F. The CONSULTANT shall abide by the provisions of the TPA's adopted DBE Program, as it may be amended from time to time, and acknowledges that its failure to comply with said Program is a material breach which may result in the termination of this Agreement or such other sanctions or action deemed appropriate by the TPA under the circumstances, including but not limited to the sanctions identified in paragraph B. above.

G. The CONSULTANT understands that each DBE firm utilized in the performance of this Agreement must be certified by FDOT or other participant(s) in Florida's United Certification Program in order to be counted toward the DBE participation goal.

H. The TPA reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement.

I. The CONSULTANT will only be permitted to replace a certified DBE subcontractor who is unwilling or unable to perform. If a subcontractor fails to perform or make progress as required by this Agreement and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by TPA. If a goal or preference points has been assigned to this Agreement, the CONSULTANT shall make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on this Agreement with another certified DBE, to the extent needed to meet the contract goal. The CONSULTANT shall notify the TPA immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation of such. The CONSULTANT must obtain the TPA's representative's prior approval to substitute a DBE. The CONSULTANT shall provide copies of new or amended subcontracts, or documentation of good faith efforts, as required by the TPA. If the CONSULTANT fails or refuses to comply in the time specified, the TPA may issue an order stopping all or part of the work and payments therefor until satisfactory action has been undertaken, terminate this Agreement for

noncompliance/default, impose sanctions, or take other action deemed appropriate by the TPA under the circumstances.

J. The CONSULTANT shall provide the TPA with a copy of the CONSULTANT's contract with any subcontractor and any other related documentation requested by TPA's representative. A copy of the Sub-Consultant Qualification Questionnaire Form and Prime Consultant Qualification Questionnaire Form submitted by the CONSULTANT with its proposal, and documentation evidencing the certification of DBEs to be used in the performance of this Agreement, are attached to this Agreement as Exhibit "D" and incorporated into and made a part hereof.

K. The CONSULTANT agrees to maintain in Palm Beach County, Florida or such other location in Florida approved by the TPA's representative, all relevant records, documents of payments and information necessary to document payments to DBEs for at least five (5) years following the termination of this Agreement. In the event litigation is commenced involving or relating to a DBE, the CONSULTANT agrees to maintain such records until the conclusion of all litigation and the expiration of any appeal periods. All such records and information shall be immediately made available for reproduction, examination or inspection upon the request of TPA's representative or any authorized representative of FDOT or the U.S. DOT or any agency thereof. The CONSULTANT agrees to require all of its DBE subcontractors to comply with the same records and information maintenance and availability requirements that it is subject to in this Agreement.

L. The CONSULTANT shall, on a monthly basis or such other period required by the TPA's representative, submit payment certification(s) for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how much. Such certifications shall be made in the manner required and/or on a form(s) furnished by the TPA's representative. Said form(s) shall be signed by the CONSULTANT, affirmed as true and accurate, and shall be subject to all statutory and legal requirements applicable to the submission of false statements. The CONSULTANT will fully participate and cooperate with TPA, FDOT, U.S. DOT or its agencies, and their authorized representatives, regarding any monitoring process it establishes pertaining to the use and review of all subcontractors, including all interim and final audits of payments to subcontractors. Audits may be conducted to review payments to DBE subcontractors to ensure that the actual amount paid to DBEs equals or exceeds the dollar amounts of the Work the CONSULTANT represented would be subcontracted to or performed by DBEs, or for which DBEs would be utilized.

M. Prior to receiving any progress payment due under this Agreement, the CONSULTANT shall certify that it has disbursed to all subcontractors and suppliers, having an interest in the Agreement or performing work or providing materials or supplies used by the CONSULTANT in its performance of the Work, their pro-rata share(s) of the payment received by the CONSULTANT from previous progress payments for all work completed and materials furnished in the previous period, less any retainage withheld by the CONSULTANT pursuant to an agreement with a subcontractor for payment, as approved by the TPA and FDOT, and as deemed appropriate by TPA. The CONSULTANT shall return all retainage payments withheld by the CONSULTANT within thirty (30) days after each subcontractor's work has been satisfactorily completed. The CONSULTANT shall not be entitled to any progress payment

before certification, unless the CONSULTANT demonstrates good cause for not making any such required payment and furnishes written notification of such good cause, acceptable to the TPA, to both the TPA and the affected subcontractors and suppliers.

N. Within thirty (30) days of the CONSULTANT's receipt of any payment(s) received under this Agreement and any final progress payment received thereafter, the CONSULTANT shall pay all subcontractors and suppliers having an interest in the Agreement or performing work or providing materials or supplies used by the CONSULTANT in its performance of the Work, their pro-rata share(s) of the payment(s), unless the CONSULTANT demonstrates good cause, acceptable to the TPA, for not making any required payment(s) and furnishes written notification to the TPA and the affected subcontractors and suppliers within said thirty (30) day period.

O. The provisions of this section shall be construed in conformity with any requirement of state or federal law. In the event of any conflict, state or federal law will control the resolution of the conflict.

**Section 39. Truth in Negotiations Certificate.** Signature of this Agreement by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no high than those charged the CONSULTANT's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the TPA determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. TPA shall exercise its rights under this section within three (3) years following final payment.

**Section 40. Federal and State Taxes.** The TPA is exempt from payment of the Florida State Sales and Use Taxes. The TPA may sign or have cause to have signed an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the TPA, nor is the CONSULTANT authorized to use the TPA's Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect t this Agreement.

**Section 41. Successor and Assigns.** The CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. The CONSULTANT shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other

**Section 42. Excusable Delays.** The CONSULTANT shall not be considered in default by reason of any failure in performance if its failure arises out of causes reasonably beyond the control of the CONSULTANT and without its fault or negligence. Such causes are limited to, acts of God, force majeure, natural or public health emergencies, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT's request, the TPA shall consider the facts and extent of any failure to perform the Work and, if the CONSULTANT's failure to perform was without its fault or negligence, a

Work Order's Timeline or Schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the TPA's rights to change, terminate, or stop any or all of the Work at any time.

Section 43. **Arrears** The CONSULTANT shall not pledge the TPA's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

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**IN WITNESS WHEREOF**, the Palm Beach Transportation Planning Agency and the CONSULTANT have hereunto set their hands to this Agreement on this \_\_ day of [month], 20\_\_.

[CONSULTANT].

TPA:

[CONSULTANT NAME]

Palm Beach MPO, d/b/a  
Palm Beach Transportation  
Planning Agency

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

By: \_\_\_\_\_  
Mayor Fred Pinto, Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST FOR [Consultant name]:

ATTEST FOR TPA:

\_\_\_\_\_

\_\_\_\_\_

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

Margarita Pierce, TPA Executive Administrator

APPROVED AS TO TERMS AND  
CONDITIONS

\_\_\_\_\_  
Nick Uhren, P.E.  
TPA Executive Director

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

\_\_\_\_\_  
Paul R. Gougelman, Esq.  
TPA General Counsel

**Exhibit A**  
SCOPE OF SERVICES

**Exhibit B**

**[INSERT CONSULTANT PRICE OR HOURLY RATE SCHEDULE]**



## Exhibit C

### FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACT CLAUSES

A. No Government Obligation to Third Parties. CONSULTANT agrees, absent express written consent of the Federal Government, that the Federal Government is not a party to the contract and shall not be subject to any obligations or liabilities to any third party contractor, or any sub-recipient, or any other party pertaining to any matter resulting from this contract or purchase order. CONSULTANT agrees to include a similar provision in each subcontract financed in whole or in part with federal assistance provided by the FTA.

B. Program Fraud and False or Fraudulent Statements. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, *et seq.*, and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with this Agreement. Upon execution of this Agreement, CONSULTANT certifies and affirms the truthfulness and accuracy of any statement it has made, causes to be made, makes, or may make pertaining to the Agreement or the underlying FTA assisted project for which this Agreement or Work Order is being performed. In addition to other penalties that may apply, CONSULTANT acknowledges that if it makes 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 it to the extent the Federal Government may deem appropriate. CONSULTANT 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 in connection with an urbanized area formula project financed with federal assistance authorized for 49 USC §5307, the Federal Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n) (1), to the extent the Federal Government deems appropriate. CONSULTANT agrees to include the above stated provisions in each subcontract financed in whole or in part with federal assistance provided by the FTA. CONSULTANT shall not modify the above stated provisions except to identify the subcontractor who will be subject to the provision.

C. Federal Changes. CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, as they may be promulgated or amended from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this Agreement. CONSULTANT agrees to include the above stated provision in each subcontract financed in whole or in part with federal assistance provided by the FTA.

D. Incorporation of Federal Transit Administration (FTA) Terms. This Agreement shall be deemed to include and does hereby incorporate by reference all standard terms and conditions required by the U.S. DOT and FTA, regardless of whether expressly set forth in this Agreement and include, but are not limited to, all of the duties, obligations, terms and conditions applicable to the Work as described in FTA Circular 4220.1F, and applicable federal law. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with any other provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requirement which would cause the TPA to be in violation of its JPA or any FTA terms and conditions applicable to this Project. CONSULTANT agrees

to include the above stated provision in each subcontract financed in whole or in part with FTA assisted funding.

E. Civil Rights. The following requirements apply to this Agreement:

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

2. Equal Employment Opportunity:

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

(b) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623 and federal transit law at 49 USC §5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

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

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

F. Disadvantaged Business Enterprises (DBE). See Section 39 of the Agreement.

G. Government-wide Debarment and Suspension. If this Agreement has a value of \$25,000 or more, this procurement is a covered transaction for purposes of 49 CFR Part 29. As such, CONSULTANT is required to verify that neither it nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945 and does so hereby certify. CONSULTANT agrees to comply with and does hereby assure and certify the compliance of each third-party contractor and sub-recipient at any tier, with 49 CFR 29, Subpart C, while its proposal, offer or bid is pending and throughout the period that any agreement arising out of such offer, proposal or bid is in effect. CONSULTANT further agrees to include a provision requiring such compliance in its subcontracts or any lower tier covered transaction it enters into.

H. Clean Air. The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, et seq. CONSULTANT agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. CONSULTANT further agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

I. Clean Water. If this Agreement is valued at \$100,000 or more, CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. CONSULTANT agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

J. Energy Conservation. CONSULTANT 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.

K. Seat Belts. CONSULTANT is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate CONSULTANT-owned, rented or personally operated vehicles, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging, and to address each in every sub-agreement it enters into related to this Agreement. Specifically, CONSULTANT is encouraged to comply with: (a) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note; (b) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (c) U.S. DOT provisions pertaining to Distracted Driving as set forth in said orders.